



# Federal Court Strikes Down Trump Administration's DACA Rollback, But Immigration Officials Show No Signs of Compliance

Insights

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A federal judge recently struck down the Trump administration's recent efforts to significantly restrict the Deferred Action for Childhood Arrivals (DACA) program, which provides protection from deportation for approximately 700,000 young immigrants who were brought to the U.S. as children and no longer have lawful immigration status. However, federal immigration officials have not yet begun complying with the decision, leaving the country in a state of temporary limbo. What do employers need to know about this development?

## DACA Program Explained + Brief Litigation History

DACA recipients are eligible for employment authorization in renewable two-year increments. DACA recipients represent a sizeable group with the U.S. workforce. More than half of DACA recipients are employed in the U.S., commonly in hospitality, retail trade, construction, health and human services, and professional services.

The Trump administration has made several attempts to end or curtail the DACA program. In 2017, former Acting Department of Homeland Security (DHS) Secretary Elaine Duke announced that the DACA program would be phased out. Her memorandum provided that U.S. Citizenship & Immigration Services (USCIS) would reject all initial DACA applications filed after September 5, 2017 and all renewal applications filed after October 5, 2017. The Memo was swiftly challenged in federal court, resulting in court orders requiring the government to accept applications for DACA renewal nationwide.

In June 2020, the U.S. Supreme Court preserved DACA by ruling that the administration's justifications for ending the program were arbitrary and capricious. Recognizing that the program created significant reliance interests for DACA recipients, their employers, and the economy, the Court found that government did not comply with the procedural requirement to provide a reasoned explanation for its action.

Despite this ruling, USCIS continued to reject initial DACA applications, and the U.S. District Court in Maryland directed the administration to begin accepting new DACA applications in July 2020. Instead, Acting Secretary of Homeland Security Chad Wolf issued a memorandum directing DHS to conduct a comprehensive review of the program and determine whether steps should be taken to

terminate it. The Memo also directed DHS to implement the following restrictions on the DACA program:

- Reject all initial DACA requests and associated applications for employment authorization;
- Limit the validity period of any DACA approvals and associated applications for employment authorization to a period of one year instead of two; and
- Reject DACA recipients' applications for Advance Parole, which allow international travel, unless exceptional circumstances are demonstrated.

But the most recent ruling – a November 14 ruling in the U.S. District Court for the Eastern District of New York – held that Acting Secretary Wolf's was not lawfully serving as Acting Secretary at the time that the Memo was issued, and he did not possess the authority to publish the Memorandum. Similar findings have recently been made in federal litigation on additional matters, including litigation challenging Wolf's authority to increase government filing fees for immigration petitions. As a result of the ruling, the Memo and restrictions on the DACA program set forth therein are invalid.

### **Implications For Employers**

The rejection of the administration's restrictions on DACA is good news for employers. Once USCIS has restored the DACA program as ordered by the court, employers and DACA recipients can expect more certainty and stability in an ongoing employment relationship. Longer validity periods for DACA approvals and employment authorization requires less frequent renewals and reduces the risk of gaps in work authorization in the event of government processing delays.

At this time, however, USCIS has not formally begun to accept initial DACA applications in accordance with the court's ruling. Instead, USCIS' [application and form instructions](#) for DACA applications continues to indicate that initial DACA requests will be rejected and that all DACA grants will be limited to one year. In response to the recent ruling, DHS [indicated](#) that it "continues to evaluate its legal options in these cases" and is working to ensure that the "challenged policies and regulations remain in effect."

We expect the incoming Biden administration to take immediate steps to once again implement the DACA program in its original state, and the ongoing litigation will be mooted. However, employers will most likely be living in a state of uncertainty for the next several months as the litigation drags on and the Trump administration resists judicial efforts to address Secretary Wolf's authority.

If you have questions about the impact of the recent litigation or would like to discuss how to prepare your organization, please contact your Fisher Phillips attorney or a member of the firm's [Global Immigration Practice Group](#).

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