

On September 5, 2017, the acting Secretary of Homeland Security issued a [memorandum](#) terminating the Deferred Action for Childhood Arrivals (DACA) program and rescinding the June 15, 2012 memorandum that created it. DACA protected certain people brought to the United States as children (often referred to as “Dreamers”) from deportation, and also authorized them to work lawfully in the United States.

For our purposes, the end of DACA affects best practices for criminal defense of individuals with DACA or who were eligible for DACA.

First, any initial DACA applications filed after September 5, 2017 will be rejected. For a defendant who is currently undocumented but would have been eligible for DACA, pleading to a DACA-safe offense is not an effective defense strategy.

Second, there is likely no longer a reason to preserve DACA status at the expense of longer-term eligibility for immigration benefits. For example, because the criminal convictions that made a person ineligible for DACA were different from the statutory criminal grounds of inadmissibility, a defendant with DACA may have chosen to plead to an offense that maintained DACA status but made them inadmissible. That inadmissibility could subsequently prevent the defendant from regularizing status through, for example, a newly-acquired spouse. Now, however, in almost all cases it is probably advisable to maintain longer-term eligibility for immigration benefits rather than preserve time-limited DACA status.

As the administration implements its new policy, we will get more information about how DACA recipients with criminal charges or convictions will be treated. It is possible that any criminal charge or conviction will result in revocation of DACA. In general, individuals with DACA should probably be treated as undocumented for purposes of criminal defense—that is, with maximum caution, making every effort to preserve admissibility and eligibility for relief from removal. Because people with DACA frequently have mixed-status families, may have complicated options for relief, and are particularly vulnerable upon removal, it is particularly important to do a careful intake that screens for all possible immigration relief.