

File No. 191270

Committee Item No. \_\_\_\_\_

Board Item No. 31

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: \_\_\_\_\_

Date: \_\_\_\_\_

Board of Supervisors Meeting

Date: December 17, 2019

#### Cmte Board

- |                          |                                     |  |
|--------------------------|-------------------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/>            | Motion                                       |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Resolution                                   |
| <input type="checkbox"/> | <input type="checkbox"/>            | Ordinance                                    |
| <input type="checkbox"/> | <input type="checkbox"/>            | Legislative Digest                           |
| <input type="checkbox"/> | <input type="checkbox"/>            | Budget and Legislative Analyst Report        |
| <input type="checkbox"/> | <input type="checkbox"/>            | Youth Commission Report                      |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Introduction Form                            |
| <input type="checkbox"/> | <input type="checkbox"/>            | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/>            | MOU  |
| <input type="checkbox"/> | <input type="checkbox"/>            | Grant Information Form                       |
| <input type="checkbox"/> | <input type="checkbox"/>            | Grant Budget                                 |
| <input type="checkbox"/> | <input type="checkbox"/>            | Subcontract Budget                           |
| <input type="checkbox"/> | <input type="checkbox"/>            | Contract/Agreement                           |
| <input type="checkbox"/> | <input type="checkbox"/>            | Award Letter                                 |
| <input type="checkbox"/> | <input type="checkbox"/>            | Application                                  |
| <input type="checkbox"/> | <input type="checkbox"/>            | Public Correspondence                        |

#### OTHER

- |                          |                                     |  |
|--------------------------|-------------------------------------|--|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Memorandum of Rescission of DACA 09/05/17</u> |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Homeland Security Memo 06/15/12</u>           |
| <input type="checkbox"/> | <input type="checkbox"/>            | _____  |
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Prepared by: Jocelyn Wong

Date: December 13, 2019

Prepared by: \_\_\_\_\_

Date: \_\_\_\_\_

1 [Urging the United States Congress to Pass Legislation Providing and Expanding Family  
2 Support Visas]

3 **Resolution calling upon the United States Congress to pass legislation providing and**  
4 **expanding family support visas to undocumented or Temporary Protected Status**  
5 **recipient parents of United States citizen children or Deferred Action for Childhood**  
6 **Arrivals eligible children, to allow them and their children to stay and work in the**  
7 **United States with a path to citizenship.**

8  
9 WHEREAS, Current United States immigration policies cause thousands of family  
10 separations each year, through the detention or deportation of parents; and

11 WHEREAS, The separation of children from their parents is a violation of human rights  
12 and should not be experienced by any child; and

13 WHEREAS, A parental separation has significant long-term effects on a child's  
14 psychological, educational, health, and economic quality-of-life; and

15 WHEREAS, The alternative to separation is the de facto deportation of U.S. citizen  
16 children from their communities to their parents' countries of origin, where they must struggle  
17 to begin anew, jeopardizing their rights as U.S. citizens and their universal rights as children;  
18 and

19 WHEREAS, The five million U.S. citizen children and two million children brought to  
20 this nation as infants, and raised here among U.S. citizens, should not be deprived of the  
21 right to family and parental guidance and support upon unnecessary separation; and

22 WHEREAS, The Obama Administration issued an executive memorandum on June 15,  
23 2012, which provided the deferral of deportation and the provision of work authorization for  
24 undocumented individuals brought to this country as minors and further established the  
25

1 practice of using prosecutorial discretion to defer deportations until the Congress could arrive  
2 at a permanent solution; and

3 WHEREAS, In spite of the continuing threat of injustice to children, the current  
4 administration rescinded the Deferred Action for Childhood Arrivals (DACA) memorandum on  
5 September 5, 2017, without Congress having established any alternative; and

6 WHEREAS, These provisions represented a just and much needed temporary relief  
7 and should be maintained by act of Congress; and

8 WHEREAS, Parents with U.S. citizen children who were given protected status  
9 through prosecutorial discretion and who reported regularly to Immigration and Customs  
10 Enforcement (ICE) as they were required were among the first to be deported under this  
11 administration; and

12 WHEREAS, Over the past year, there has been a 250% increase in deportations of  
13 those with no criminal records, most of whom have families and children, with the likelihood  
14 that these numbers will continue to increase; and

15 WHEREAS, At least 325,000 Salvadorans, Nicaraguans, Hondurans, and Haitians  
16 have lived in this country for many years and have established families with 273,000 U.S.  
17 born citizen children, as well as other children brought here at an early age who have known  
18 no other country, now face the cancellation of Temporary Protected Status (TPS) and are  
19 being deported; and

20 WHEREAS, Millions of hardworking undocumented people who contribute a great deal  
21 to this country are living in fear of deportation; and

22 WHEREAS, The children of those undocumented individuals are being forced every  
23 day to live with the threat of family separation or deportation of their parents; and

24 WHEREAS, The San Francisco Board of Supervisors has repeatedly affirmed its  
25 dedication to protecting immigrant communities by condemning the actions targeting

1 immigrant communities of the current administration; and

2 WHEREAS, 2019 marks the 30th anniversary of San Francisco's Sanctuary City  
3 Ordinance, and the City and County of San Francisco is committed to upholding and  
4 defending the human and civil rights of all immigrant individuals and families; and

5 WHEREAS, The passage of a clean DACA bill by Congress will prevent future  
6 separation of families and provide a pathway to citizenship for the parents of U.S. citizen  
7 children or DACA eligible children; now, therefore, be it

8 RESOLVED, That the Board of Supervisors of the City and County of San Francisco  
9 urges Congress to pass such legislation to grant Family Support Visas to undocumented  
10 parents or grandparents of U.S. citizen children or DACA eligible children, and to TPS-  
11 recipient parents with U.S. citizen children or DACA-eligible children; and, be it

12 FURTHER RESOLVED, That such Family Support Visas be renewable every three  
13 years on proof of the continued verification of the original conditions of issue; and, be it

14 FURTHER RESOLVED, That such Visas create a pathway to citizenship for DACA and  
15 TPS recipients as well as reunite families at the border and release them from detention;  
16 and, be it

17 FURTHER RESOLVED, That the Board of Supervisors urges Congress to pass such  
18 legislation with expediency; and, be it

19 FURTHER RESOLVED, That the Clerk of the Board of Supervisors shall notify  
20 members of Congress from San Francisco and the United States Senators from California  
21 with a request to take all action necessary to achieve the objectives of this Resolution.



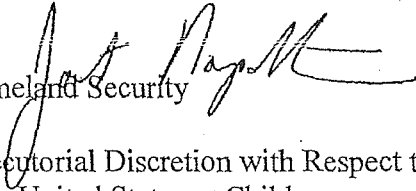
# Homeland Security

June 15, 2012

MEMORANDUM FOR: David V. Aguilar  
Acting Commissioner, U.S. Customs and Border Protection

Alejandro Mayorkas  
Director, U.S. Citizenship and Immigration Services

John Morton  
Director, U.S. Immigration and Customs Enforcement

FROM: Janet Napolitano   
Secretary of Homeland Security

SUBJECT: Exercising Prosecutorial Discretion with Respect to Individuals  
Who Came to the United States as Children

By this memorandum, I am setting forth how, in the exercise of our prosecutorial discretion, the Department of Homeland Security (DHS) should enforce the Nation's immigration laws against certain young people who were brought to this country as children and know only this country as home. As a general matter, these individuals lacked the intent to violate the law and our ongoing review of pending removal cases is already offering administrative closure to many of them. However, additional measures are necessary to ensure that our enforcement resources are not expended on these low priority cases but are instead appropriately focused on people who meet our enforcement priorities.

The following criteria should be satisfied before an individual is considered for an exercise of prosecutorial discretion pursuant to this memorandum:

- came to the United States under the age of sixteen;
- has continuously resided in the United States for a least five years preceding the date of this memorandum and is present in the United States on the date of this memorandum;
- is currently in school, has graduated from high school, has obtained a general education development certificate, or is an honorably discharged veteran of the Coast Guard or Armed Forces of the United States;
- has not been convicted of a felony offense, a significant misdemeanor offense, multiple misdemeanor offenses, or otherwise poses a threat to national security or public safety; and
- is not above the age of thirty.

Our Nation's immigration laws must be enforced in a strong and sensible manner. They are not designed to be blindly enforced without consideration given to the individual circumstances of each case. Nor are they designed to remove productive young people to countries where they may not have lived or even speak the language. Indeed, many of these young people have already contributed to our country in significant ways. Prosecutorial discretion, which is used in so many other areas, is especially justified here.

As part of this exercise of prosecutorial discretion, the above criteria are to be considered whether or not an individual is already in removal proceedings or subject to a final order of removal. No individual should receive deferred action under this memorandum unless they first pass a background check and requests for relief pursuant to this memorandum are to be decided on a case by case basis. DHS cannot provide any assurance that relief will be granted in all cases.

1. With respect to individuals who are encountered by U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), or U.S. Citizenship and Immigration Services (USCIS):

- With respect to individuals who meet the above criteria, ICE and CBP should immediately exercise their discretion, on an individual basis, in order to prevent low priority individuals from being placed into removal proceedings or removed from the United States.
- USCIS is instructed to implement this memorandum consistent with its existing guidance regarding the issuance of notices to appear.

2. With respect to individuals who are in removal proceedings but not yet subject to a final order of removal, and who meet the above criteria:

- ICE should exercise prosecutorial discretion, on an individual basis, for individuals who meet the above criteria by deferring action for a period of two years, subject to renewal, in order to prevent low priority individuals from being removed from the United States.
- ICE is instructed to use its Office of the Public Advocate to permit individuals who believe they meet the above criteria to identify themselves through a clear and efficient process.
- ICE is directed to begin implementing this process within 60 days of the date of this memorandum.
- ICE is also instructed to immediately begin the process of deferring action against individuals who meet the above criteria whose cases have already been identified through the ongoing review of pending cases before the Executive Office for Immigration Review.

3. With respect to the individuals who are not currently in removal proceedings and meet the above criteria, and pass a background check:

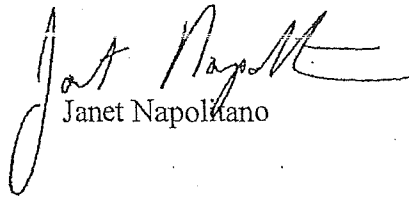
- USCIS should establish a clear and efficient process for exercising prosecutorial discretion, on an individual basis, by deferring action against individuals who meet the

above criteria and are at least 15 years old, for a period of two years, subject to renewal, in order to prevent low priority individuals from being placed into removal proceedings or removed from the United States.

- The USCIS process shall also be available to individuals subject to a final order of removal regardless of their age.
- USCIS is directed to begin implementing this process within 60 days of the date of this memorandum.

For individuals who are granted deferred action by either ICE or USCIS, USCIS shall accept applications to determine whether these individuals qualify for work authorization during this period of deferred action.

This memorandum confers no substantive right, immigration status or pathway to citizenship. Only the Congress, acting through its legislative authority, can confer these rights. It remains for the executive branch, however, to set forth policy for the exercise of discretion within the framework of the existing law. I have done so here.

  
Janet Napolitano





 Official website of the Department of Homeland Security



U.S. Department of  
Homeland Security

## Archived Content

In an effort to keep DHS.gov current, the archive contains outdated information that may not reflect current policy or programs.

# Memorandum on Rescission Of Deferred Action For Childhood Arrivals (DACA)

Release Date: September 5, 2017

### MEMORANDUM FOR:

James W. McCament  
Acting Director  
U.S. Citizenship and Immigration Services

Thomas D. Homan  
Acting Director  
U.S. Immigration and Customs Enforcement

Kevin K. McAleenan  
Acting Commissioner  
U.S. Customs and Border Protection

Joseph B. Maher  
Acting General Counsel

Ambassador James D. Nealon  
Assistant Secretary, International Engagement

2117

Julie M. Kirchner  
Citizenship and Immigration Services Ombudsman

**FROM:**

Elaine C. Duke  
Acting Secretary

**SUBJECT:**

**Rescission of the June 15, 2012 Memorandum Entitled “Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children”**

This memorandum rescinds the June 15, 2012 memorandum entitled “Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children,” which established the program known as Deferred Action for Childhood Arrivals (“DACA”). For the reasons and in the manner outlined below, Department of Homeland Security personnel shall take all appropriate actions to execute a wind-down of the program, consistent with the parameters established in this memorandum.

## Background

The Department of Homeland Security established DACA through the issuance of a memorandum on June 15, 2012. The program purported to use deferred action—an act of prosecutorial discretion meant to be applied only on an individualized case-by-case basis—to confer certain benefits to illegal aliens that Congress had not otherwise acted to provide by law.<sup>[1]</sup><sup>(# ftn1)</sup> Specifically, DACA provided certain illegal aliens who entered the United States before the age of sixteen a period of deferred action and eligibility to request employment authorization.

On November 20, 2014, the Department issued a new memorandum, expanding the parameters of DACA and creating a new policy called Deferred Action for Parents of Americans and Lawful Permanent Residents (“DAPA”). Among other things—such as the expansion of the coverage criteria under the 2012 DACA policy to encompass aliens with a wider range of ages and arrival dates, and lengthening the period of deferred action and work authorization from two years to three—the November 20, 2014 memorandum directed USCIS “to establish a process, similar to DACA, for exercising prosecutorial discretion through the use of deferred action, on a case-by-case basis,” to certain aliens who have “a son or daughter who is a U.S. citizen or lawful permanent resident.”

Prior to the implementation of DAPA, twenty-six states—led by Texas—challenged the policies announced in the November 20, 2014 memorandum in the U.S. District Court for the Southern District of Texas. In an order issued on February 16, 2015, the district court preliminarily enjoined the policies nationwide.<sup>[2]</sup><sup>(# ftn2)</sup> The district court held that the plaintiff states were likely to succeed on their claim that the DAPA program did not comply with relevant authorities.

The United States Court of Appeals for the Fifth Circuit affirmed, holding that Texas and the other states had demonstrated a substantial likelihood of success on the merits and satisfied the other requirements for a preliminary injunction.<sup>[3]</sup><sup>(# ftn3)</sup> The Fifth Circuit concluded that the Department's DAPA policy conflicted with the discretion authorized by Congress. In considering the DAPA program, the court noted that the Immigration and Nationality Act “flatly does not permit the reclassification of millions of illegal aliens as lawfully present and thereby make them newly eligible for a host of federal and state benefits, including work authorization.” According to the court, “DAPA is foreclosed by Congress’s careful plan; the program is ‘manifestly contrary to the statute’ and therefore was properly enjoined.”

Although the original DACA policy was not challenged in the lawsuit, both the district and appellate court decisions relied on factual findings about the implementation of the 2012 DACA memorandum. The Fifth Circuit agreed with the lower court that DACA decisions were not truly discretionary,<sup>[4]</sup><sup>(# ftn4)</sup> and that DAPA and expanded DACA would be substantially similar in execution. Both the district court and the Fifth Circuit concluded that implementation of the program did not comply with the Administrative Procedure Act because the Department did not implement it through notice-and-comment rulemaking.

The Supreme Court affirmed the Fifth Circuit’s ruling by equally divided vote (4-4).<sup>[5]</sup><sup>(# ftn5)</sup> The evenly divided ruling resulted in the Fifth Circuit order being affirmed. The preliminary injunction therefore remains in place today. In October 2016, the Supreme Court denied a request from DHS to rehear the case upon the appointment of a new Justice. After the 2016 election, both parties agreed to a stay in litigation to allow the new administration to review these issues.

On January 25, 2017, President Trump issued Executive Order No. 13,768, “Enhancing Public Safety in the Interior of the United States.” In that Order, the President directed federal agencies to “[e]nsure the faithful execution of the immigration laws . . . against all removable aliens,” and established new immigration enforcement priorities. On February 20, 2017, then Secretary of Homeland Security John F. Kelly issued an implementing memorandum, stating “the Department no longer will exempt classes or categories of removable aliens from potential enforcement,” except as provided in the Department’s June 15, 2012 memorandum

establishing DACA,<sup>[6]</sup><sup>(# fn6)</sup> and the November 20, 2014 memorandum establishing DAPA and expanding DACA.<sup>[7]</sup><sup>(# fn7)</sup>

On June 15, 2017, after consulting with the Attorney General, and considering the likelihood of success on the merits of the ongoing litigation, then Secretary John F. Kelly issued a memorandum rescinding DAPA and the expansion of DACA—but temporarily left in place the June 15, 2012 memorandum that initially created the DACA program.

Then, on June 29, 2017, Texas, along with several other states, sent a letter to Attorney General Sessions asserting that the original 2012 DACA memorandum is unlawful for the same reasons stated in the Fifth Circuit and district court opinions regarding DAPA and expanded DACA. The letter notes that if DHS does not rescind the DACA memo by September 5, 2017, the States will seek to amend the DAPA lawsuit to include a challenge to DACA.

The Attorney General sent a letter to the Department on September 4, 2017, articulating his legal determination that DACA “was effectuated by the previous administration through executive action, without proper statutory authority and with no established end-date, after Congress’ repeated rejection of proposed legislation that would have accomplished a similar result. Such an open-ended circumvention of immigration laws was an unconstitutional exercise of authority by the Executive Branch.” The letter further stated that because DACA “has the same legal and constitutional defects that the courts recognized as to DAPA, it is likely that potentially imminent litigation would yield similar results with respect to DACA.” Nevertheless, in light of the administrative complexities associated with ending the program, he recommended that the Department wind it down in an efficient and orderly fashion, and his office has reviewed the terms on which our Department will do so.

## Rescission of the June 15, 2012 DACA Memorandum

Taking into consideration the Supreme Court’s and the Fifth Circuit’s rulings in the ongoing litigation, and the September 4, 2017 letter from the Attorney General, it is clear that the June 15, 2012 DACA program should be terminated. In the exercise of my authority in establishing national immigration policies and priorities, except for the purposes explicitly identified below, I hereby rescind the June 15, 2012 memorandum.

Recognizing the complexities associated with winding down the program, the Department will provide a limited window in which it will adjudicate certain requests for DACA and associated applications meeting certain parameters specified below. Accordingly, effective immediately, the Department:

- Will adjudicate—on an individual, case-by-case basis—properly filed pending DACA initial requests and associated applications for Employment Authorization Documents

that have been accepted by the Department as of the date of this memorandum.

- Will reject all DACA initial requests and associated applications for Employment Authorization Documents filed after the date of this memorandum.
- Will adjudicate—on an individual, case by case basis—properly filed pending DACA renewal requests and associated applications for Employment Authorization Documents from current beneficiaries that have been accepted by the Department as of the date of this memorandum, and from current beneficiaries whose benefits will expire between the date of this memorandum and March 5, 2018 that have been accepted by the Department as of October 5, 2017.
- Will reject all DACA renewal requests and associated applications for Employment Authorization Documents filed outside of the parameters specified above.
- Will not terminate the grants of previously issued deferred action or revoke Employment Authorization Documents solely based on the directives in this memorandum for the remaining duration of their validity periods.
- Will not approve any new Form I-131 applications for advance parole under standards associated with the DACA program, although it will generally honor the stated validity period for previously approved applications for advance parole. Notwithstanding the continued validity of advance parole approvals previously granted, CBP will—of course—retain the authority it has always had and exercised in determining the admissibility of any person presenting at the border and the eligibility of such persons for parole. Further, USCIS will—of course—retain the authority to revoke or terminate an advance parole document at any time.
- Will administratively close all pending Form I-131 applications for advance parole filed under standards associated with the DACA program, and will refund all associated fees.
- Will continue to exercise its discretionary authority to terminate or deny deferred action at any time when immigration officials determine termination or denial of deferred action is appropriate.

This document is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter. Likewise, no limitations are placed by this guidance on the otherwise lawful enforcement or litigation prerogatives of DHS.

[1] (#\_ftnref1) Significantly, while the DACA denial notice indicates the decision to deny is made in the unreviewable discretion of USCIS, USCIS has not been able to identify specific denial cases where an applicant appeared to satisfy the programmatic categorical criteria as

outlined in the June 15, 2012 memorandum, but still had his or her application denied based solely upon discretion.

[2].(# ftnref2) *Texas v. United States*, 86 F. Supp. 3d 591 (S.D. Tex. 2015).

[3].(# ftnref3) *Texas v. United States*, 809 F.3d 134 (5th Cir. 2015).

[4].(# ftnref4) *Id.*

[5].(# ftnref5) *United States v. Texas*, 136 S. Ct. 2271 (2016) (per curiam).

[6].(# ftnref6) Memorandum from Janet Napolitano, Secretary, DHS to David Aguilar, Acting Comm'r, CBP, et al., "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children" (June 15, 2012).

[7].(# ftnref7) Memorandum from Jeh Johnson, Secretary, DHS, to Leon Rodriguez, Dir., USCIS, et al., "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Whose Parents are U.S. Citizens or Permanent Residents" (Nov. 20, 2014).

Topics: [Border Security \(/topics/border-security\)](/topics/border-security)

Keywords: [Deferred Action for Childhood Arrivals \(DACA\) \(/keywords/daca\)](/keywords/daca)

Last Published Date: September 5, 2017

# Introduction Form

By a Member of the Board of Supervisors or Mayor

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO

2019 DEC 10 PM 4:44  
Time stamp  
or meeting date

BY *R*

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance; Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor [redacted] inquiries"
- 5. City Attorney Request.
- 6. Call File No. [redacted] from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No. [redacted]
- 9. Reactivate File No. [redacted]
- 10. Topic submitted for Mayoral Appearance before the BOS on [redacted]

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

**Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.**

Sponsor(s):

Fewer, Ronen, Walton, Peskin, Mar, Brown, Mandelman, Haney, Stefani

Subject:

Urging the United States Congress to Pass Legislation Providing and Expanding Family Support Visas

The text is listed:

Resolution calling upon the United States Congress to pass legislation providing and expanding family support visas to undocumented or Temporary Protected Status (TPS) recipient parents of U.S. citizen children or Deferred Action for Childhood Arrivals (DACA) eligible children, to allow them and their children to stay and work in the United States with a path to citizenship.

Signature of Sponsoring Supervisor:

*Fardon Lee Fewer*

Clerk's Use Only

