



May 8, 2026

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Policy Alert

SUBJECT: Deferred Action as an Extraordinary Use of Prosecutorial Discretion

Purpose

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the [USCIS Policy Manual](#) to reaffirm deferred action as an extraordinary use of prosecutorial discretion.

Background

Federal law grants the Secretary of Homeland Security prosecutorial discretion in matters presented before the Department of Homeland Security (DHS).¹ Prosecutorial discretion is used by immigration authorities, including USCIS, to prioritize the enforcement of immigration laws in a manner that aligns with public safety and national security, U.S. national interests, and humanitarian concerns. Deferred action is the formal documenting of a decision to exercise prosecutorial discretion not to pursue removal action or deportation against an alien who is removable, for a limited period of time.²

However, in the past DHS has made deferred action available to large populations of aliens, without detailed case-by-case scrutiny or review.³ Generally, USCIS only exercises prosecutorial discretion not to enforce the full scope of the Immigration and Nationality Act (INA) in compelling or extraordinary circumstances unless required by law or regulation. In accordance with the INA, USCIS rigorously enforces our nation's immigration laws unless a unique case merits an extraordinary exercise of prosecutorial discretion through deferred action.

This guidance, contained in Volume 1 of the Policy Manual, is effective immediately and applies to requests pending or filed on or after the publication date.⁴ This policy update supersedes the guidance found in Chapter 40.9.2(b)(3)(J) of the Adjudicator's Field Manual (AFM), related AFM appendices, and related policy memoranda. The guidance contained in the Policy Manual is controlling and supersedes any related prior USCIS guidance.

¹ See [INA 103](#).

² See [8 CFR 274a.12\(c\)\(14\)](#).

³ See *Texas v. United States*, 549 F.Supp.3d 572, 602 (S.D. Tex. 2021) citing *Am Bus Ass'n v. United States*, 627 F.2d 525, 530 (D.C. Cir. 1980). The court found [Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children](#), DHS Memorandum, issued June 15, 2012, clearly narrowly limits administrative discretion.

⁴ For pending Special Immigrant Juvenile deferred action requests, please see Special Immigrant Juvenile Classification and Deferred Action, PM-602-0198, issued April 10, 2026, which is effective May 10, 2026.

Policy Highlights

- Describes how prosecutorial discretion should be exercised when considering a request for deferred action.
- Provides that, unless mandated by law or regulation, deferred action is only considered on an individual case-by-case basis and is an extraordinary use of prosecutorial discretion.
- Clarifies that unless specifically required by law or regulation, USCIS does not grant deferred action to categories or groups. Rather, deferred action is considered in extraordinary circumstances only based on detailed case-by-case scrutiny.

Summary of Changes

Affected Section: Volume 1, General Policies and Procedures

- Adds new Part I, Deferred Action

Affected Section: Volume 3, Humanitarian Protection and Parole

- Removes Part H, Deferred Action

USCIS may also make other minor technical, stylistic, and conforming changes consistent with this update.

Citation

Volume 1: General Policies and Procedures, Part I, Deferred Action [[1 USCIS-PM I](#)].

Additional Considerations

USCIS is providing clarification and explaining how USCIS reviews requests for deferred action through applicable law or regulation. This addition to the Policy Manual is the first publicly facing policy related to the exercise of prosecutorial discretion. Specifically, it clarifies that deferred action is an extraordinary use of prosecutorial discretion and should not be used to circumvent Congressional authority by granting large populations of aliens, without proper case-by-case scrutiny, deferred action.

An alien who is subject to removal may request deferred action. By matter of the alien's situation, they are removable unless the Department exercises prosecutorial discretion favorably to forego removal. A demonstration of general hardship alone, common to all aliens facing removal, is insufficient for USCIS to favorably exercise prosecutorial discretion.

Many of the aliens impacted by the guidance to the shift from a categorical approach to a true individual case-by-case basis for deferred action may be considered populations without other recourse. These populations may expect to be granted deferred action based on his or her situation for which he or she is applying for an underlying benefit request. However, an underlying benefit

request alone is not sufficient for USCIS to consider requests not supported by any existing statute or regulation. Prosecutorial discretion must always be exercised only in compelling cases after a determination if discretion is warranted in the totality of the circumstances. USCIS has the authority to not consider deferred action requests that are not supported by statute or regulation and in compliance with the Administrative Procedure Act.⁵

Reliance Interest Analysis:

USCIS has considered serious reliance interests and alternatives to this policy. Deferred action has always been used by DHS as a temporary relief of last resort to forego an alien's removal from the United States. While temporary in nature and wholly at DHS's discretion, DHS recognizes that aliens who have been granted deferred action or may have an expectation of deferred action in the future may have led to reliance interests, including but not limited to obtaining housing, employment authorization, pursuing an education, acquiring a means of transportation or other material objects, and perhaps commenced the process of building societal and community connections within America. USCIS, in its public notices, has consistently stated a grant of deferred action is temporary and discretionary in nature and those granted are made aware that deferred action is not intended to provide long-term or permanent relief from removal. Therefore, by its very nature deferred action is inherently temporary and diminishes any long-term expectations and interests in those granted or seeking deferred action.

Accordingly, DHS has taken the temporary nature of deferred action and an alien's knowledge of deferred action and its temporary nature into consideration when weighing any reliance interests that may have engendered against the interests of the government, while noting that deferred action is still available under the appropriate circumstances. USCIS has determined that any reliance interests that may have been a result of previous USCIS policies concerning deferred action are outweighed by the U.S. government's strong interest in ensuring the integrity of legal immigration system, national security, and public safety. Also, USCIS could not identify any alternatives to this policy update that would ensure the integrity of the legal immigration system, safeguard national security, and public safety consistent with statutes, regulations, and executive orders.

⁵ See *Department of Homeland Security et al. v Regents*, 591 U.S. 1 (2020).