



January 2022

# IMMIGRATION

## Information on Deferred Action for Childhood Arrivals

Accessible Version

# GAO Highlights

Highlights of [GAO-22-104734](#), a report to congressional requesters

## Why GAO Did This Study

In June 2012, DHS established the DACA initiative. Under DACA, DHS has the discretion to provide temporary protection from removal from the U.S. (or, deferred action) for certain noncitizens who came to the U.S. before age 16. DACA recipients are neither granted lawful immigration status nor put on a pathway to lawful status. Rather, they are considered to be lawfully present in the U.S. during the 2-year period of deferred action. USCIS has granted DACA to more than 800,000 noncitizens. In July 2021, a federal court ruled that USCIS may not approve first-time DACA requests but temporarily permitted USCIS to continue to approve renewals of previously approved requests.

GAO was asked to review the extent to which USCIS shares information on DACA requestors and recipients with immigration enforcement agencies. This report describes (1) the circumstances under which USCIS shares information on DACA requestors with immigration enforcement agencies and (2) how CBP and ICE have applied DHS's immigration enforcement priorities to DACA recipients and those who may have potentially qualified for DACA since 2012. GAO analyzed USCIS, CBP, and ICE policies and guidance; analyzed USCIS data on adjudication outcomes and the circumstances under which USCIS shared information on DACA requestors with ICE from June 2012 through June 2021; and interviewed relevant headquarters and field officials.

View [GAO-22-104734](#). For more information, contact Rebecca Gambler at (202) 512-8777 or [gambler@gao.gov](mailto:gambler@gao.gov).

January 2022

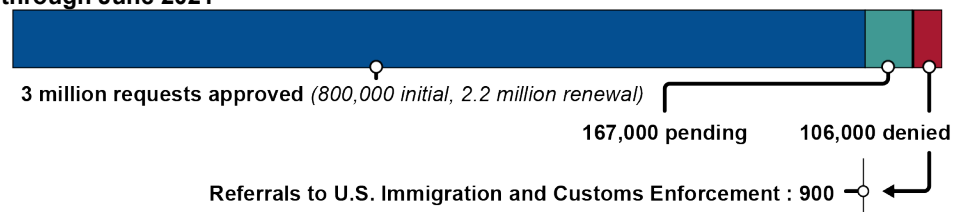
## IMMIGRATION

### Information on Deferred Action for Childhood Arrivals

## What GAO Found

In 2012, U.S. Citizenship and Immigration Services (USCIS) published guidance explaining that it would not proactively provide information from Deferred Action for Childhood Arrivals (DACA) requests to immigration enforcement agencies for the purpose of immigration enforcement, unless the DACA requestor met certain criteria. For example, USCIS may refer certain DACA cases to U.S. Immigration and Customs Enforcement (ICE) for a possible criminal investigation if the requestor represents a potential public safety risk based on the individual's criminal history or to identify fraudulent claims. USCIS has shared information with ICE for immigration enforcement purposes on a small number of DACA requestors and recipients who engaged in activities that disqualified them from DACA. Specifically, of the 106,000 DACA requests that USCIS denied, it referred fewer than 900 cases (less than 1 percent) to ICE (see fig.).

#### Outcomes for Deferred Action for Childhood Arrivals Requests and Approximate Number of Referrals to U.S. Immigration and Customs Enforcement, June 2012 through June 2021



Source: GAO analysis of U.S. Citizenship and Immigration Services information. | GAO-22-104734

#### Text of Outcomes for Deferred Action for Childhood Arrivals Requests and Approximate Number of Referrals to U.S. Immigration and Customs Enforcement, June 2012 through June 2021

- 3 million requests approved (800,000 initial, 2.2 million renewal)
- 167,000 pending
- 106,000 denied
  - 900 referrals to U.S. Immigration and Customs enforcement.

Source: GAO analysis of U.S. Citizenship and Immigration Services Information. | GAO-22-104734

Since 2012, U.S. Customs and Border Protection (CBP) and ICE enforcement practices related to DACA recipients and individuals who might qualify for DACA have generally aligned with the Department of Homeland Security's (DHS) immigration enforcement priorities. While DHS's immigration enforcement priorities have varied since 2012, the department has generally not considered DACA recipients to be immigration enforcement priorities unless they met specific criteria, such as having engaged in certain types of fraud or activities that posed a threat to national security or public safety. While DACA recipients are to

be provided temporary protection from removal, individuals who might qualify to receive DACA but who have not yet submitted a request, or are awaiting approval, do not have such protection. However, CBP and ICE officials stated that they have generally extended prosecutorial discretion considerations to individuals who may have potentially qualified for DACA as long as they had not engaged in activities that would disqualify them from a favorable exercise of such discretion.

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**Abbreviations**

CBP	U.S. Customs and Border Protection
DACA	Deferred Action for Childhood Arrivals
DHS	Department of Homeland Security
FDNS	Fraud Detection and National Security Directorate
ICE	U.S. Immigration and Customs Enforcement
USCIS	U.S. Citizenship and Immigration Services

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January 12, 2022

The Honorable Jerrold Nadler  
Chairman  
Committee on the Judiciary  
House of Representatives

The Honorable Zoe Lofgren  
Chair  
Subcommittee on Immigration and Citizenship  
Committee on the Judiciary  
House of Representatives

In June 2012, the Department of Homeland Security (DHS) established the Deferred Action for Childhood Arrivals (DACA) initiative. Under DACA, DHS has the discretion to provide temporary protection from removal from the U.S. (or, deferred action) for noncitizens who came to the country as children.<sup>1</sup> DHS's U.S. Citizenship and Immigration Services (USCIS) adjudicates initial requests for deferred action, as well as renewals, both of which are valid for 2 years. DACA recipients are neither granted lawful immigration status nor put on a pathway to lawful immigration status. Rather, they are considered to be lawfully present in the U.S. during the period of deferred action.<sup>2</sup> Individuals who have been granted deferred action under DACA may also receive employment authorization for the period of deferred action, provided they can demonstrate "an economic necessity for employment."<sup>3</sup> USCIS has granted DACA to more than 800,000 noncitizens since 2012.

Following various federal court rulings related to DACA,<sup>4</sup> a January 20, 2021, presidential memorandum directed the Secretary of Homeland Security, in consultation with the Attorney General, to take all action

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<sup>1</sup>Specifically, to qualify for DACA, children must have arrived in the U.S. before age 16.

<sup>2</sup>Certain categories of noncitizens who have not been granted lawful immigration status, including noncitizens currently granted deferred action, may be considered "lawfully present" for the purposes of applying for certain federal benefits. See 8 C.F.R. § 1.3(a)(vi).

<sup>3</sup>USCIS adjudicates employment authorization applications, which must be submitted as part of the DACA request. See 8 C.F.R. §§ 274a.12(c)(14); 274a.13.

<sup>4</sup>See, e.g., Dep't of Homeland Security v. Regents of the Univ. of Cal., 140 S. Ct. 1891 (2020); Batalla Vidal v. Wolf, No. 16-CV-04756 (E.D.N.Y. Dec. 4, 2020) (opinion).

deemed appropriate, consistent with applicable law, to “preserve and fortify” DACA.<sup>5</sup> However, in July 2021, a federal court ruled that USCIS may no longer approve initial DACA requests, but temporarily permitted USCIS to continue to grant renewals of previously approved requests.<sup>6</sup>

USCIS’s long-standing guidance states that USCIS may share information on DACA requestors with national security and law enforcement agencies if the requestor poses a risk to national security or public safety, or for assistance with the adjudication process. Members of Congress have raised concerns about U.S. Immigration and Customs Enforcement’s (ICE) and U.S. Customs and Border Protection’s (CBP) access to DACA requestors’ personal information. In particular, such concerns include whether personal information could be used for enforcement purposes should DACA be terminated or DHS’s immigration enforcement priorities change, given that DACA requestors and recipients do not have lawful status in the U.S.

You asked us to review the extent to which USCIS shares information on DACA requestors and recipients with immigration enforcement agencies and for what purpose. This report describes (1) the circumstances under which USCIS shares information on DACA requestors with immigration enforcement agencies and (2) how CBP and ICE have applied DHS’s immigration enforcement priorities since 2012 to DACA recipients and those who may have potentially qualified for DACA.

To address our first objective, we analyzed USCIS documentation, including DACA request forms, policy memos, guidance documents, standard operating procedures, and training materials. These describe the information USCIS collects and uses to adjudicate DACA requests and may share with immigration enforcement agencies during the adjudication process. Further, we analyzed DHS-wide policies on information sharing, as well as CBP and ICE documentation describing

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<sup>5</sup>On September 28, 2021, DHS published a notice of proposed rulemaking for DACA, to fortify immigration protections for DACA recipients, which included a 60-day period for public comment. 86 Fed. Reg. 53,736 (Sept. 28, 2021).

<sup>6</sup>Texas v. United States, No. 18-CV-00068 (S.D. Tex. July 16, 2021) (opinion). Among other motions, the government sought a stay of proceedings pending the completion of the proposed rulemaking for DACA, which was denied by the court on October 15, 2021. See Texas v. United States, No. 21-40680 (5th Cir. Oct. 4, 2021 and Oct. 15, 2021) (opposed motion of defendants-appellants to place appeal in abeyance pending completion of rulemaking); (court order). As of January 2022, this litigation was ongoing and on appeal to the Court of Appeals for the Fifth Circuit.



the nature of their respective access to USCIS databases containing information on DACA requestors and recipients.

In addition, we analyzed USCIS summary-level data from DACA's inception in June 2012 through June 2021—the most recent available data during the period of our review. Specifically, we analyzed USCIS data to determine adjudication outcomes, as well as the circumstances under which USCIS shared information on DACA requestors with immigration enforcement agencies, particularly ICE. To assess the reliability of these data, we reviewed them for reasonableness, accuracy, and consistency. We also interviewed USCIS officials responsible for maintaining the relevant data systems about the steps they took to ensure the quality and reliability of these data.<sup>7</sup> We determined these data were sufficiently reliable to describe the outcomes (e.g., approvals and denials) of initial DACA requests and renewals and the number of DACA-related cases USCIS referred to ICE due to national security, public safety, or fraud concerns.

Further, we interviewed headquarters officials from USCIS's Service Center Operations Directorate, which is responsible for overseeing DACA adjudications at four of USCIS's five service centers nationwide. We also interviewed USCIS officers at the Nebraska Service Center, including those from the center's background check unit.<sup>8</sup> We interviewed headquarters officials from USCIS's Fraud Detection and National Security Directorate, which is responsible for investigating potential immigration benefit fraud. We also interviewed officials from the ICE headquarters office that receives referrals from USCIS for potential investigation on suspected cases of fraud or national security and public safety concerns.

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<sup>7</sup>DACA-related referrals to ICE are an estimate. According to USCIS officials, USCIS data systems track whether a referral to ICE has a DACA request form associated with it, even if the subject of the referral is not a DACA requestor. For example, USCIS may refer a case to ICE if an attorney has prepared fraudulent documents in support of multiple DACA requests. In such cases, even though the attorney is the subject of the referral, each of those DACA request forms would be associated with the referral to ICE, and ICE may have access to these requestors information.

<sup>8</sup>We selected the Nebraska Service Center because its officers have had responsibility for adjudicating both initial DACA requests and renewals. The other three service centers that have had responsibility for adjudicating DACA requests are in California, Texas, and Vermont.

To address our second objective, we analyzed agency documentation, including executive orders, DHS policy memos, CBP and ICE memorandums, and guidance documents on DHS's enforcement priorities. We analyzed CBP and ICE policies and guidance documents governing encounters with DACA requestors and recipients, including those who might qualify for deferred action. We also analyzed DHS and USCIS documentation on CBP's and ICE's access to and use of USCIS databases to verify the immigration status of noncitizens encountered at the border and interior checkpoints.<sup>9</sup> Such documentation included privacy impact assessments and user guides for each data system. We interviewed CBP and ICE headquarters officials to obtain their perspectives on agency policies and practices related to encounters with individuals who potentially qualified for, had requested, or had received DACA under various immigration enforcement priorities since DACA's inception in 2012. We also interviewed USCIS, CBP, and ICE headquarters officials to discuss CBP and ICE access to and use of USCIS databases containing information on DACA requestors and recipients.

In addition, we analyzed summary-level CBP and ICE data on DACA requestors, recipients, and potentially qualified individuals who were apprehended, detained, and subsequently released from custody. Specifically:

- Regarding ICE, we analyzed summary data from November 2014 to November 2019. In November 2014, ICE's Enforcement and Removal Operations began tracking in its case management system data on individuals whom ICE released from custody because they potentially qualified for, had requested, or had received DACA.<sup>10</sup> However, ICE

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<sup>9</sup>U.S. Border Patrol (Border Patrol) deploys agents to immigration checkpoints that are generally located on highways 25 to 100 miles from the southwest border. At checkpoints, Border Patrol agents screen vehicles for noncitizens who were able to illegally cross the border undetected at or between U.S. ports of entry. Border Patrol checkpoints are located on major U.S. highways and secondary roads. This permits checkpoints to be far enough inland to detect and apprehend noncitizens in violation of U.S. immigration law, smugglers, and potential terrorists attempting to travel farther into the interior of the U.S. on ingress routes after evading detection or otherwise avoiding required inspection at the border. See GAO, *Border Patrol: Issues Related to Agency Deployment Strategy and Immigration Checkpoints*, [GAO-18-50](#) (Washington, D.C.: Nov. 8, 2017).

<sup>10</sup>ICE's Enforcement and Removal Operations is responsible for managing all aspects of the immigration enforcement process, including identification and arrest, detention, removal. ICE's data field did not distinguish between DACA recipients and those who might qualify for DACA.

removed DACA from its system as a release reason in November 2019, according to ICE officials. To assess the reliability of these data, we interviewed agency officials responsible for maintaining these data about the steps they took to ensure their quality and reliability. We determined that these data were sufficiently reliable to describe the approximate number of ICE's DACA-related releases from November 2014 to November 2019.

- Regarding CBP, we analyzed summary-level U.S. Border Patrol (Border Patrol) data from June 2012 to October 2017.<sup>11</sup> We selected this period because officials told us that Border Patrol ceased tracking releases of potentially DACA-qualified individuals from its custody after this date, due to DACA's temporary rescission.<sup>12</sup> To assess the reliability of these data, we reviewed the data for obvious errors and interviewed agency officials responsible for maintaining these data about the steps they took to ensure their quality and reliability. According to Border Patrol's data, there was a significant increase in DACA-related releases over a 2-month period in one sector in Texas. Because Border Patrol officials could not determine whether this increase reflected actual releases or were data entry errors, we excluded this sector's data for these 2 months and report the number of DACA-related releases from June 2012 to October 2017 as a minimum.

We conducted this performance audit from January 2021 to January 2022 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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<sup>11</sup>Within CBP, Border Patrol apprehends individuals at U.S. borders between ports of entry, and the Office of Field Operations encounters individuals who arrive at ports of entry. We included only Border Patrol data in our analysis because CBP's Office of Field Operations officials told us that CBP officers rarely encounter DACA recipients or requestors at U.S. ports of entry and that they do not collect or maintain data specific to DACA in its automated data system.

<sup>12</sup>In September 2017, DHS issued a memorandum rescinding DACA and directing USCIS to stop accepting initial DACA requests. This rescission of DACA was in place until June 2020.

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## Background

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### Deferred Action for Childhood Arrivals (DACA) Qualification Guidelines

To be considered for an initial grant of DACA, noncitizens must establish through documentation that they

- arrived in the U.S. before age 16;
- were age 30 or younger and had no legal immigration status on June 15, 2012;
- have continuously resided in the U.S. since June 15, 2007, up to the date of filing;<sup>13</sup>
- were physically present in the U.S. on June 15, 2012, and at the time of the DACA request;
- are in school, graduated from school, or have obtained a certificate of completion from high school, or have a discharge under honorable conditions from the military; and
- have not been convicted of a felony, significant misdemeanor, or three or more other misdemeanors and do not otherwise pose a threat to national security or public safety.

To be considered for DACA renewal, recipients must establish through documentation that they

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<sup>13</sup>According to the instructions for the DACA request form, any brief, casual, and innocent departures from the U.S. made on or after June 15, 2007, and before August 15, 2012, will not interrupt continuous residence if the absence was not the result of a removal order, the purpose of the absence was not contrary to law, and the duration of the absence was reasonable to accomplish the purpose for the absence.

- did not depart the U.S. on or after August 15, 2012, without advance parole;<sup>14</sup>
- have continuously resided in the U.S. since receiving their approval for DACA; and
- have not been convicted of a felony, significant misdemeanor, three or more misdemeanors, and do not otherwise pose a threat to national security or public safety.

According to USCIS officials, USCIS retains the discretion to determine whether deferred action is appropriate in any given case, even if these guidelines are met.

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## Prosecutorial Discretion and Immigration Enforcement Priorities

USCIS defines deferred action as a type of prosecutorial discretion that allows an individual to remain in the U.S. for a set period, unless the deferred action is terminated.<sup>15</sup> Prosecutorial discretion is the longstanding authority of an agency to decide where to focus its resources and how to enforce the law against an individual. We have previously reported that, due to limited resources, DHS cannot respond to all immigration violations or remove all individuals who are determined to be in the U.S. without lawful immigration status.<sup>16</sup> Therefore, DHS has exercised prosecutorial discretion in the enforcement of the law. Current and prior administrations have developed various priorities for the

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<sup>14</sup>Advance parole allows an otherwise inadmissible noncitizen to enter the U.S. under certain safeguards and controls without applying for a visa. Generally, USCIS may grant advance parole to DACA recipients for employment, education, or humanitarian (medical, funerals, and visiting family) purposes. Travel outside the U.S. without first receiving advance parole automatically terminates deferred action under DACA.

<sup>15</sup>Such terminations may result, for example, if an individual no longer qualifies for deferred action or if the exercise of such prosecutorial discretion is no longer consistent with DHS's immigration enforcement priorities.

<sup>16</sup>GAO, *Immigration Enforcement: Arrests, Detentions, and Removals, and Issues Related to Selected Populations*, [GAO-20-36](#) (Washington, D.C.: Dec. 5, 2019).

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enforcement of civil immigration laws, as well as for the exercise of prosecutorial discretion.<sup>17</sup>

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## Time Line of DACA Legal Challenges and Key Events

Since the creation of DACA, legal challenges and evolving administration priorities have affected noncitizens' access to DACA. In June 2012, DHS issued a memorandum establishing DACA. In September 2017, DHS issued a memorandum rescinding DACA and directing USCIS to stop accepting initial requests, and providing a limited timeframe for accepting renewal requests.<sup>18</sup> This prompted legal challenges resulting in a series of California and New York federal district court rulings throughout 2018 requiring DHS to continue accepting DACA renewal requests, but not initial requests.<sup>19</sup> In June 2020, the Supreme Court held that the September 2017 rescission of DACA was invalid, thereby keeping DACA in place.<sup>20</sup>

In July 2020, DHS directed USCIS to reduce the period of deferred action and related employment authorization from 2 years to 1 year and not to

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<sup>17</sup>Civil immigration enforcement actions include administrative arrests, detentions, and removals of noncitizens determined to be in the U.S. without lawful immigration status. In September 2021, DHS finalized the immigration enforcement priorities set forth in Executive Order 13993, *Revision of Civil Immigration Enforcement Policies and Priorities*, 86 Fed. Reg. 7051 (issued Jan. 20, 2021), effective November 29, 2021. The memorandums governing these priorities were partially enjoined in an August 2021 Texas federal district court order, although the implementation of this order was temporarily stayed by the same court. See *Texas v. United States*, No. 21-CV-00016 (S.D. Tex. Aug. 19, 2021) (memorandum opinion and order). The Fifth Circuit Court of Appeals then granted a partial stay of the district court order on September 15, 2021, keeping the majority of the memorandums in place. See *Texas v. United States*, No. 21-40618 (5th Cir. Sept. 15, 2021) (order). As of January 2022, litigation related to these memorandums is ongoing.

<sup>18</sup>The September 2017 memorandum stated that DHS would adjudicate on a case-by-case basis properly filed pending renewal requests accepted as of the date of the memorandum and from current beneficiaries whose benefits would expire between the date of the memorandum and March 5, 2018 that have been accepted by the Department as of October 5, 2017.

<sup>19</sup>See *Regents of the Univ. of Cal. v. Dep't of Homeland Security*, 279 F. Supp. 3d 1011 (N.D. Cal. Jan. 9, 2018); *Batalla Vidal v. Nielsen*, 279 F. Supp. 3d 401 (E.D.N.Y. Feb. 8, 2018).

<sup>20</sup>*Dep't of Homeland Security v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891 (2020) (finding that the Department of Homeland Security violated the Administrative Procedure Act in rescinding DACA).

grant advance parole, absent exceptional circumstances. In December 2020, following a New York federal district court ruling that directed DHS to take a number of actions, including posting a public notice that it would be accepting first-time requests for DACA, USCIS resumed accepting initial DACA requests and granting deferred action and related employment authorization for a period of 2 years.<sup>21</sup> In July 2021, following a Texas federal district court ruling, USCIS may accept but no longer approve initial DACA requests and may temporarily continue approving renewals of previously approved requests.<sup>22</sup> Most recently, in September 2021, DHS published a notice of proposed rulemaking for DACA, which reinforces that DACA recipients should not be a priority for removal.<sup>23</sup> See figure 1 for a time line of key events related to DACA.

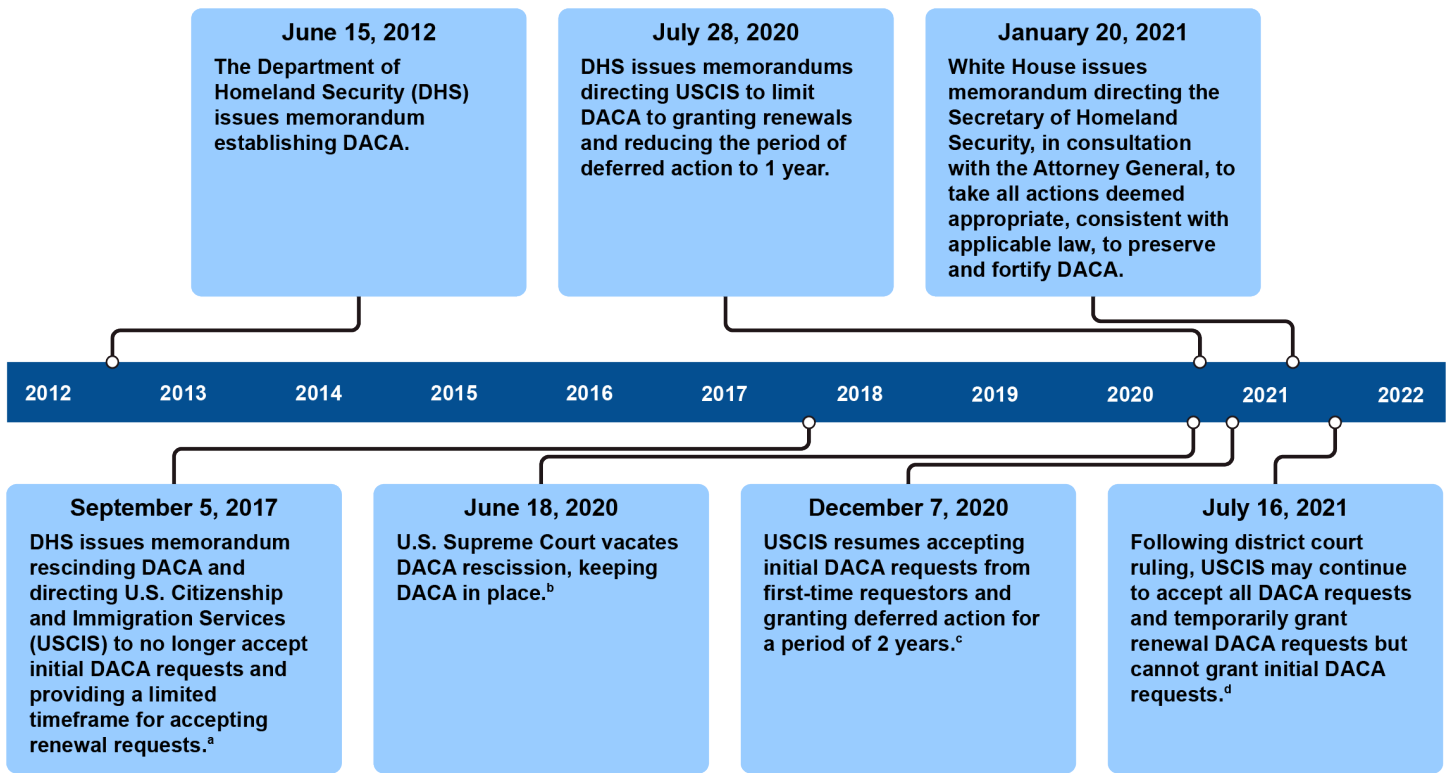
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<sup>21</sup>Batalla Vidal v. Wolf, No. 16-CV-04756 (E.D.N.Y. Dec. 4, 2020) (opinion).

<sup>22</sup>Texas v. United States, No. 18-CV-00068 (S.D. Tex. July 16, 2021) (opinion). Among other motions, the government sought a stay of proceedings pending the completion of the proposed rulemaking for DACA, which was denied by the court on October 15, 2021. See Texas v. United States, No. 21-40680 (5th Cir. Oct. 4, 2021 and Oct. 15, 2021) (opposed motion of defendants-appellants to place appeal in abeyance pending completion of rulemaking); (court order). As of January 2022, this litigation was ongoing and on appeal to the Court of Appeals for the Fifth Circuit.

<sup>23</sup>86 Fed. Reg. 53,736 (Sept. 28, 2021). The notice of proposed rulemaking provides that, if finalized, the rule would include a number of provisions of the existing DACA policy and longstanding USCIS practice as well as make specific changes such as creating a DACA-specific regulatory provision regarding qualifying for employment authorization for DACA deferred action recipients. See 86 Fed. Reg. at 53,739-40.

**Figure 1: Time Line of Key Deferred Action for Childhood Arrivals (DACA) Legal Challenges and Events**



Source: GAO analysis of White House and DHS policy memorandums. | GAO-22-104734

**Text of Figure 1: Time Line of Key Deferred Action for Childhood Arrivals (DACA) Legal Challenges and Events**

- June 15, 2012: The Department of Homeland Security (DHS) issues memorandum establishing DACA.
- Sept. 5, 2017: DHS issues memorandum rescinding DACA and directing U.S. Citizenship and Immigration Services (USCIS) to no longer accept initial DACA requests.
- June 18, 2020: U.S. Supreme Court vacates DACA rescission, keeping DACA in place./a/
- July 28, 2020: DHS issues memorandums directing USCIS to limit DACA to granting renewals and reducing the period of deferred action to 1 year.
- Dec. 7, 2020: USCIS resumes accepting initial DACA requests from first-time requestors and granting deferred action for a period of 2 years./b/



- Jan. 20, 2021: White House issues memorandum directing the Secretary of Homeland Security, in consultation with the Attorney General, to take all actions deemed appropriate, consistent with applicable law, to preserve and fortify DACA.
- July 16, 2021: Following district court ruling, USCIS may continue to accept all DACA requests and grant renewal DACA requests but cannot grant initial DACA requests./c/

Note: In September 2021, DHS published a notice of proposed rulemaking for DACA, to fortify immigration protections for DACA recipients, which included a 60-day period for public comment. 86 Fed. Reg. 53,736 (Sept. 28, 2021).

<sup>a</sup>The September 2017 memorandum stated that DHS would adjudicate on a case-by-case basis properly filed pending renewal requests accepted as of the date of the memorandum and from current beneficiaries whose benefits would expire between the date of the memorandum and March 5, 2018 that have been accepted by the Department as of October 5, 2017.

<sup>b</sup>Dep't of Homeland Security v. Regents of the Univ. of Cal., 140 S. Ct. 1891 (2020).

<sup>c</sup>See also *Batalla Vidal v. Wolf*, No. 16-CV-04756 (E.D.N.Y. Dec. 4, 2020) (opinion).

<sup>d</sup>*Texas v. United States*, No. 18-CV-00068 (S.D. Tex. July 16, 2021) (opinion).

Source: GAO analysis of White House and DHS policy memorandums. | GAO-22-104734

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## Agency Roles and Responsibilities

**USCIS.** USCIS service centers are responsible for adjudicating DACA requests. USCIS officers at the service centers adjudicate DACA requests by determining whether requestors meet established DACA guidelines. USCIS's Fraud Detection and National Security Directorate (FDNS) is responsible for researching and verifying information related to fraud concerns. Within USCIS's service centers, officers are to refer requests with fraud-related concerns to FDNS's Center Fraud Detection Operations (fraud detection units) for resolution. Also within the service centers, the Background Check Unit is responsible for reviewing and resolving any criminal, national security, or public safety concerns identified by comparing DACA requestors' information against law enforcement databases. USCIS is also generally responsible for issuing notices to appear for cases, including DACA requests, with substantiated findings of immigration fraud.<sup>24</sup>

**ICE.** ICE agents and officers are responsible for identifying, apprehending, detaining, litigating charges of removability against, and removing noncitizens who are in the U.S. in violation of U.S. immigration

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<sup>24</sup>A notice to appear is a document issued to a noncitizen instructing them to appear before an immigration court on a certain date. DHS is to file the notice to appear with the immigration courts, thereby initiating removal proceedings against the noncitizen. See 8 C.F.R. §§ 208.30(f), 1239.1(a).

law. ICE's Homeland Security Investigations is responsible for conducting criminal investigations to prevent unauthorized noncitizens from obtaining fraudulent identity documents and immigration benefits. ICE's Enforcement and Removal Operations conducts civil immigration enforcement actions, which includes administrative arrests, detentions, and removals. In addition to arresting noncitizens for administrative violations of immigration law, it also conducts criminal arrests and assists with prosecutions related to such criminal activity. ICE is also responsible for issuing notices to appear, including those based on public safety and national security concerns related to DACA requestors and recipients. ICE officials stated they may encounter DACA recipients during routine immigration enforcement operations and that noncitizens who are already in ICE custody may sometimes self-identify as potentially qualified for DACA.<sup>25</sup>

**CBP.** Within CBP, Border Patrol is responsible for securing U.S. borders and apprehending individuals arriving at the border between U.S. ports of entry. Also within CBP, Office of Field Operations is responsible for inspecting travelers and cargo seeking to enter the U.S. through ports of entry and encounters individuals determined to be inadmissible to the country. Regarding DACA, for example, Border Patrol officials may encounter DACA recipients or individuals who may qualify for DACA at interior immigration checkpoints.

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## DACA Adjudication Outcomes

Since 2012, USCIS has approved more than 3 million DACA requests and denied nearly 106,000 DACA requests, as shown in figure 2.<sup>26</sup> Of

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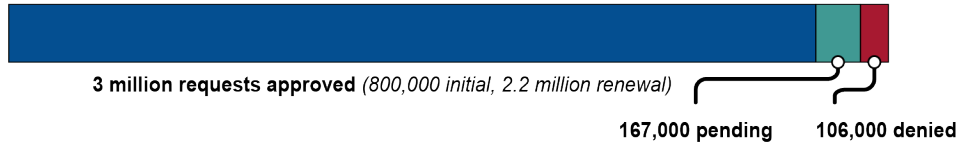
<sup>25</sup>According to USCIS guidance, individuals who believe they qualify for DACA, including those in removal proceedings, with a final removal order, or with a voluntary departure order (and not in immigration detention), may affirmatively request consideration of DACA from USCIS, subject to relevant court orders currently in effect. Individuals who are currently in immigration detention and believe they meet the guidelines may not request consideration of deferred action from USCIS but may identify themselves to their ICE case officer.

<sup>26</sup>A DACA request includes a DACA request form, an employment authorization form, and supporting evidence establishing that the requestor has met the guidelines. Upon receipt of a DACA request, USCIS determines whether DACA requests are complete, accepting complete requests for adjudication and rejecting incomplete requests. Since June 2012, USCIS has accepted for adjudication nearly all requests it received. Specifically, USCIS accepted 3.3 million of 3.5 million (93 percent) requests received through June 2021, including about 1 million initial and 2.5 million renewal requests. Approvals and denials do not total 100 percent, due to pending cases. As of June 2021, about 83,000 initial requests and 84,000 renewal requests were pending.

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these, more than 800,000 were initial requests, and nearly 2.2 million were requests for renewal.

**Figure 2: Deferred Action for Childhood Arrivals (DACA) Request Adjudication Outcomes, June 2012 through June 2021**



Source: GAO analysis of U.S. Citizenship and Immigration Services (USCIS) information. | GAO-22-104734

**Text of Figure 2: Deferred Action for Childhood Arrivals (DACA) Request Adjudication Outcomes, June 2012 through June 2021**

- 3 million requests approved (800,000 initial, 2.2 million renewal)
- 167,000 pending
- 106,000 denied
  - 900 referrals to U.S. Immigration and Customs enforcement.

Source: GAO analysis of U.S. Citizenship and Immigration Services Information. | GAO-22-104734

Notes: Approving or denying a request refers to whether USCIS grants deferred action for the requestor. Pending requests are requests that have been accepted and are awaiting or undergoing adjudication by USCIS. As of June 2021, about 83,000 initial requests and 84,000 renewal requests were pending, according to USCIS data.

Numbers are rounded to the nearest thousand.

While USCIS has historically approved most DACA requests, multiple factors may result in USCIS denying a DACA request. For example, USCIS may deny a DACA request based on indications of criminality or fraud.<sup>27</sup> Criminal offenses associated with DACA denials include nonnegligent criminality, such as driving-related offenses, immigration-related offenses, drug-related offenses, theft, and assault, among other offenses, according to a 2019 USCIS report.<sup>28</sup> Egregious public safety

<sup>27</sup>According to USCIS's standard operating procedures, the decision whether to defer action in a particular case is individualized and discretionary, taking into account the nature and severity of the underlying criminal, national security, or public safety concerns. By their very nature, felonies, significant misdemeanors, a history of other misdemeanors, and activities compromising national security and public safety are particularly serious and carry considerable weight in the totality of the circumstances analysis. As a result, it would take an exceptional circumstance to overcome the underlying criminal, national security, and public safety grounds that would otherwise result in not considering an individual for DACA, which would be rare, according to USCIS's procedures.

<sup>28</sup>U.S. Citizenship and Immigration Services, *DACA Requestors with an IDENT Response* (Washington, D.C.: 2019).

offenses include, among other offenses, murder, rape, and sexual abuse of a minor, according to USCIS guidance. USCIS may also deny a DACA request on the basis of administrative reasons, such as the abandonment of a request, multiple failures to appear for an appointment to collect biometric information, or failure to respond to a request for evidence or a notice of intent to deny a request, according to USCIS's standard operating procedures.<sup>29</sup> USCIS also may deny a request if it finds a requestor's response to a request for evidence, or notice of intent to deny, is not sufficient to establish that the requestor meets the guidelines for DACA. Table 1 shows the number of initial and renewal requests that USCIS approved and denied from June 2012 through June 2021.

**Table 1: Adjudication Outcomes of Requests for Deferred Action for Childhood Arrivals (DACA), by Fiscal Year, June 2012 through June 2021**

Fiscal year	Initial requests approved	Renewal requests approved	Total requests approved	Initial requests denied	Renewal requests denied	Total requests denied <sup>a</sup>
June –Sept. 2012	1,684	0	<b>1,684</b>	0	0	0
2013	470,598	0	<b>470,598</b>	11,019	0	<b>11,019</b>
2014	135,921	22,234	<b>158,155</b>	21,068	3	<b>21,071</b>
2015	90,827	419,502	<b>510,329</b>	19,088	2,351	<b>21,439</b>
2016	52,992	145,821	<b>198,813</b>	11,526	3,026	<b>14,552</b>
2017	47,132	414,777	<b>461,909</b>	9,165	4,031	<b>13,196</b>
2018	24,381	294,960	<b>319,341</b>	8,248	4,287	<b>12,535</b>
2019	1,775	385,670	<b>387,445</b>	1,605	3,343	<b>4,948</b>
2020	1,792	292,916	<b>294,708</b>	716	3,285	<b>4,001</b>
2021 (through June)	5,779	217,626	<b>223,405</b>	982	1,923	<b>2,905</b>
<b>Total</b>	<b>832,881</b>	<b>2,193,506</b>	<b>3,026,387</b>	<b>83,417</b>	<b>22,249</b>	<b>105,666</b>

<sup>29</sup>After receiving a DACA request, USCIS schedules an appointment to collect the requestor's biometrics, such as fingerprints, a photograph, and a signature. According to USCIS's standard operating procedures, USCIS is not to deny a DACA request solely because the requestor failed to submit sufficient evidence with the request, unless there is sufficient evidence to support a denial. Instead, USCIS is to issue a request for evidence to obtain the information needed to adjudicate the request, or a notice of intent to deny, which provides the requestor an opportunity to rebut derogatory information obtained during a background check or to address reasons for not meeting the guidelines. According to USCIS officials, USCIS may waive biometrics collection under certain circumstances such as when a requestor is unable to attend an appointment in person. In such cases, if biometrics are available, USCIS may use biometrics that were previously collected, according to USCIS officials.

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Source: U.S. Citizenship and Immigration Services (USCIS). | GAO-22-104734

Note: Since USCIS began approving DACA requests in 2012 and approves DACA for 2 years, renewals did not begin until fiscal year 2014. According to USCIS data, from June 2012 through June 2021, about 176,000 approved DACA requests expired and were not renewed.

<sup>a</sup>USCIS data on denials includes the number of requests that were denied, terminated, or withdrawn. According to USCIS's standard operating procedures, a DACA request may be denied if the requestor does not establish that they qualify for DACA or if they have engaged in disqualifying activity, such as having a felony criminal conviction. USCIS may also terminate an individual's previously approved DACA for disqualifying actions committed after the request was approved.

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## USCIS Rarely Shares Information on DACA Requestors with Immigration Enforcement Agencies

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### USCIS Uses Information from DACA Requestors and Law Enforcement Databases to Adjudicate Requests

USCIS uses information and documentation collected from DACA requestors, along with information contained in various law enforcement databases, to adjudicate requests. According to USCIS's standard operating procedures, DACA requestors are to establish by a preponderance of the evidence that they meet the criteria for deferred action.<sup>30</sup> Under this standard, requestors must demonstrate that it is more likely than not that they meet the qualification guidelines. Adjudication decisions are based on the sufficiency of the evidence provided. For example, to meet the evidence standard for the education criteria, requestors may provide documentation showing that they are currently in school; or have graduated or obtained a certificate of completion from a U.S. high school, college, or university. Further, to demonstrate that they were present in the U.S. on June 15, 2012, requestors may provide employment records (such as pay stubs or tax returns); receipts (such utility bills or rent receipts); school records (such as a transcript or report card); or medical records, according to the standard operating procedures.

In addition, USCIS officers conduct background and security checks against various law enforcement databases, including those owned by

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<sup>30</sup>The "preponderance of the evidence" is an evidentiary legal standard. It is the burden of proof in most civil trials, in which the jury is instructed to find for the party that, on the whole, has the stronger evidence, however slight the edge may be. See Black's Law Dictionary, 11th ed. (2019) (defining "preponderance of the evidence").

immigration enforcement agencies such as CBP and ICE, to determine whether requestors have criminal records that would disqualify them from being qualified.<sup>31</sup> As part of the adjudication process, USCIS officers may contact law enforcement agencies such as ICE or CBP, for example, to resolve questions related to a DACA requestor who is a positive match to a record in a database. USCIS officials stated that, generally, when their agency contacts ICE or CBP regarding a record match to a DACA requestor, the individual is already known, and USCIS is not disclosing new information. For example, they said that USCIS officers may determine through the background and security check process that a record in a database indicates that a DACA requestor is potentially associated with a criminal gang. USCIS officers may need additional information about the record to adjudicate a DACA request, which ICE may be able to access and provide to the adjudicating officers. In such cases, USCIS officials stated that USCIS would provide ICE or CBP with sufficient biographical information on the DACA requestors to confirm the individuals' identity and obtain the information necessary to continue with adjudication.

In addition, a record in a law enforcement database may indicate that there is an open investigation involving a DACA requestor. In such cases, USCIS officials may reach out to an investigating agency, such as ICE, to ensure that an adjudicative decision on the DACA request would not negatively affect the ongoing investigation, according to USCIS officials. Specifically, USCIS adjudicators may seek information from the investigating agency to determine whether the information is likely to result in the arrest of a requestor or whether investigators have obtained additional derogatory information on the requestor.

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<sup>31</sup>These law enforcement databases include CBP's TECS (not an acronym) and the Federal Bureau of Investigation's Integrated Automated Fingerprint Identification System. TECS is an automated enforcement and inspection lookout system maintained by CBP that combines information from multiple agencies and databases to compile data relating to national security risks, public safety issues, current or past targets of investigations, and other law enforcement concerns. The Integrated Automated Fingerprint Identification System provides a summary of an individual's administrative or criminal record within the U.S. For the purposes of this report, we focused on USCIS's coordination and information sharing with immigration enforcement agencies—namely, CBP and ICE.

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## USCIS Has Shared Information with ICE on a Small Number of DACA Requestors for Enforcement Purposes

Since 2012, USCIS has shared information with ICE, for immigration enforcement purposes, on a small number of DACA requestors and recipients who engaged in activities that disqualified them from DACA. In 2012, USCIS published guidance stating that it would not provide information from DACA requests to CBP and ICE for the purpose of immigration enforcement, unless the requestor met certain criteria.<sup>32</sup> For example, consistent with DHS's information-sharing policy, USCIS may refer a case to ICE if the requestor represents a potential public safety risk based on the individual's criminal history. The guidance also states that USCIS may share information with national security and law enforcement agencies, such as ICE, for purposes other than removal. This may include for assistance with adjudication, to identify or prevent fraudulent claims, for national security purposes, or for the investigation or prosecution of a crime. However, under these circumstances, USCIS is not to provide information on family members of DACA requestors to ICE for enforcement purposes, according to the guidance.<sup>33</sup>

When USCIS officers encounter derogatory information about a requestor during the adjudication process, they may undertake various actions, depending on the nature of such information. In particular, consistent with USCIS guidance, officers may take action if the DACA request involves (1) confirmed or suspected fraud or (2) criminality that raises concerns that an individual may pose an egregious threat to public safety. In addition, if, after approval, USCIS subsequently determines that DACA recipients no longer meet the guidelines, USCIS may terminate their

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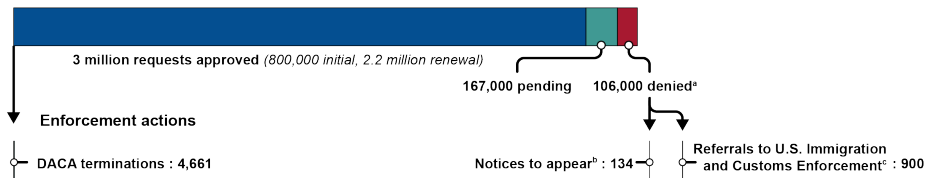
<sup>32</sup>Such criteria are outlined in U.S. Citizenship and Immigration Services, *Revised Guidance for the Referral of Cases and Issuance of Notices to Appear in Cases Involving Inadmissible and Removable Aliens* (Nov. 7, 2011). Further, according to DHS policy, information shall be shared within DHS whenever the requesting officer or employee has an authorized purpose for accessing the information for the performance of their duties, possesses the requisite security clearance, and assures adequate safeguarding and protection of the information. Therefore, according to the policy, DHS personnel must have timely access to all relevant information they need to successfully perform their duties while providing appropriate privacy, civil rights, and civil liberties protections.

<sup>33</sup>USCIS includes this information-sharing policy in the DACA request form instructions and in the DACA Frequently Asked Questions section on its website. See <https://www.uscis.gov/humanitarian/consideration-of-deferred-action-for-childhood-arrivals-daca/frequently-asked-questions>.



deferred action.<sup>34</sup> Since 2012, of the 106,000 DACA requests that USCIS denied, USCIS referred fewer than 900 cases (less than 1 percent) to ICE (see fig. 3).<sup>35</sup>

**Figure 3: Outcomes for Deferred Action for Childhood Arrivals (DACA) Requests and Approximate Numbers of Enforcement Actions, June 2012 through June 2021**



Source: GAO analysis of USCIS information | GAO-22-104734

**Text of Figure 3: Outcomes for Deferred Action for Childhood Arrivals (DACA) Requests and Approximate Numbers of Enforcement Actions, June 2012 through June 2021**

- 3 million requests approved (800,000 initial, 2.2 million renewal)
- 167,000 pending
- 106,000 denied /a/
  - 4,661 DACA terminations.
  - 134 notices to appear /b/
  - 900 referrals to U.S. Immigration and Customs Enforcement

Source: GAO analysis of USCIS information . | GAO-22-104734

Note: DACA-related referrals to U.S. Immigration and Customs Enforcement (ICE) are rounded to the nearest hundred. Other numbers are rounded to the nearest thousand.

<sup>a</sup>According to U.S. Citizenship and Immigration Services' (USCIS) standard operating procedures, requests involving issues of criminality that do not meet guidelines for DACA consideration will be denied. However, USCIS may approve cases where a requestor demonstrates through documentation that an exception is warranted.

<sup>34</sup>Termination reasons may include USCIS determining that a requestor did not meet the qualification guidelines at the time DACA was granted.

<sup>35</sup>DACA-related referrals to ICE are an estimate. According to USCIS officials, USCIS data systems track whether a referral to ICE has a DACA request form associated with it, even if the subject of the referral is not a DACA requestor. For example, USCIS may refer a case to ICE if an attorney has prepared fraudulent documents in support of multiple DACA requests. In such cases, even though the attorney is the subject of the referral, each of those DACA request forms would be associated with the referral to ICE, and ICE may have access to these requestors information.

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<sup>b</sup>A notice to appear is a document issued to a noncitizen instructing them to appear before an immigration court on a certain date. DHS is to file the notice to appear with the immigration courts, thereby initiating removal proceedings against the noncitizen. See 8 C.F.R. §§ 208.30(f), 1239.1(a).

<sup>c</sup>DACA-related referrals to ICE are an estimate. According to USCIS officials, USCIS data systems track whether a referral to ICE has a DACA request form associated with it, even if the subject of the referral is not a DACA requestor. For example, USCIS may refer a case to ICE if an attorney has prepared fraudulent documents in support of multiple DACA requests. In such cases, even though the attorney is the subject of the referral, each of those DACA request forms would be associated with the referral to ICE, and ICE may have access to these requestors information.

**DACA requests involving fraud.** According to USCIS's standard operating procedures, when USCIS finds that an individual requestor committed fraud in connection with a DACA request, adjudicators are to deny the request and may issue the requestor a notice to appear before an immigration court.<sup>36</sup> Common document fraud includes altered or fraudulent documents, such as fraudulent educational credentials, according to USCIS officials. However, USCIS may also refer certain types of fraud cases to ICE's National Lead Development Center for a possible criminal investigation.<sup>37</sup> In particular, USCIS is to refer cases involving large-scale immigration fraud schemes, corruption involving government officials, or other aggravating circumstances.<sup>38</sup>

When USCIS refers a case to ICE for investigation due to fraud-related concerns, officers are to suspend other action on the DACA request, including adjudication decisions, for a period of at least 60 days while ICE

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<sup>36</sup>USCIS may determine that issuing a notice to appear is not appropriate if the requestor is already in removal proceedings or has already been removed from the U.S., according to USCIS officials.

<sup>37</sup>According to USCIS and ICE officials, USCIS grants a small number of CBP and ICE agents and officers read-only access to its fraud case management system with a need to know this information, based on their daily responsibilities and to assist with fraud investigations. The Fraud Detection and National Security Database is USCIS's primary case management system to record requests and case determinations involving immigration benefit fraud, public safety, and national security concerns. According to USCIS officials, as of May 2021, 37 ICE officers have access to FDNS's database nationally. Three USCIS officers are embedded with ICE at the National Lead Development Center, according to ICE officials. Therefore, ICE personnel at the National Lead Development Center who need additional information about a USCIS referral to ICE typically direct requests to these embedded USCIS officers to obtain the needed information rather than directly accessing FDNS's database, according to USCIS officials. As of May 2021, no CBP personnel had access to this database because they did not have a need for this information, according to USCIS officials.

<sup>38</sup>Criteria for USCIS referring suspected fraud to ICE include a conspiracy or large-scale fraud scheme; corruption of a government employee; particularly egregious cases, such as those involving human trafficking; and cases that otherwise may meet USCIS referral guidelines, such as public safety or national security concerns.

determines how to proceed in response to the referral.<sup>39</sup> ICE may accept or decline USCIS's request for an investigation.<sup>40</sup> If ICE accepts and concludes its investigation with a finding of fraud and determines that the requestor is removable from the U.S., USCIS may initiate removal proceedings by issuing the requestor a notice to appear. If ICE declines a USCIS referral or does not provide a timely response to the referral, USCIS may continue adjudication on the DACA request, or FDNS may conduct further administrative investigation into the fraud concerns. USCIS procedures indicate that when such an investigation results in a legally sustainable finding of fraud, USCIS is to deny the DACA request and may issue the requestor a notice to appear if ICE has not already done so.

According to USCIS data, denials due to fraud are not common and, in most cases, according to USCIS officials, denial of a DACA request does not result in USCIS issuing a notice to appear. USCIS issued 134 notices to appear related to DACA from June 2012 through June 2021, all of which USCIS data indicate were for confirmed findings of fraud.<sup>41</sup> Further, the vast majority of these 134 notices to appear were connected to a single, major fraud scheme in fiscal year 2018 associated with a fraudulent document preparer, according to USCIS officials.

**DACA requests involving public safety concerns.** According to USCIS guidance, when USCIS finds indications of criminality in connection with a DACA request, the case is categorized as either an egregious public safety case or a nonegregious public safety case, depending on the type

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<sup>39</sup>Typically, the National Lead Development Center receives referrals from USCIS and distributes them to ICE Special Agent-in-Charge local offices for further investigation. ICE's Homeland Security Investigations established the National Lead Development Center in August 2017 to streamline and standardize the lead referral process between USCIS and ICE. Prior to August 2017, ICE Benefit Fraud Units were co-located with USCIS's service centers.

<sup>40</sup>According to a 2020 memorandum of understanding between USCIS and ICE, ICE has 60 days to provide a response to a pending referral and 120 days to provide a response for an accepted referral. ICE may also request additional time in writing, if it needs more time to complete an investigation.

<sup>41</sup>In October 2021, USCIS officials told us that issuances of notices to appear by USCIS for fraud were on hold while USCIS works to align its policy for issuing notices to appear with updated DHS enforcement priorities. In September 2021, DHS issued updated immigration enforcement priorities, which took effect in November 2021.

of criminality.<sup>42</sup> For requests that raise egregious public safety concerns, USCIS officers are to refer the case to ICE's National Criminal Analysis and Targeting Center to determine the appropriate course of action.<sup>43</sup> USCIS officers are to suspend adjudication for 60 days but may proceed with adjudication sooner, if ICE provides notification of its action on the case. After ICE completes its review and determines whether to accept or decline the referral for additional investigation, USCIS is to continue adjudicating the DACA request. When appropriate, USCIS is to deny the request on the basis of confirmed criminality constituting an egregious public safety case, consistent with USCIS's standard operating procedures.<sup>44</sup>

For nonegregious public safety cases, USCIS's Background Check Unit evaluates the potentially disqualifying criminality to determine whether an exception was present that would enable the requestor to overcome the disqualifying factor. For example, where the requestor has been arrested for a potentially disqualifying criminal offense, but the court disposition is not yet available because the criminal proceedings are pending, USCIS officers may request additional information about the criminal proceedings, such as whether the charges were resolved. If the charges were resolved, USCIS officers are to evaluate the case based on the totality of the circumstances. If the charges were not resolved and are not expected to be resolved quickly, USCIS is to deny the request, according to USCIS officials. According to USCIS officials, USCIS does not refer nonegregious public safety cases to ICE that involve DACA requests.

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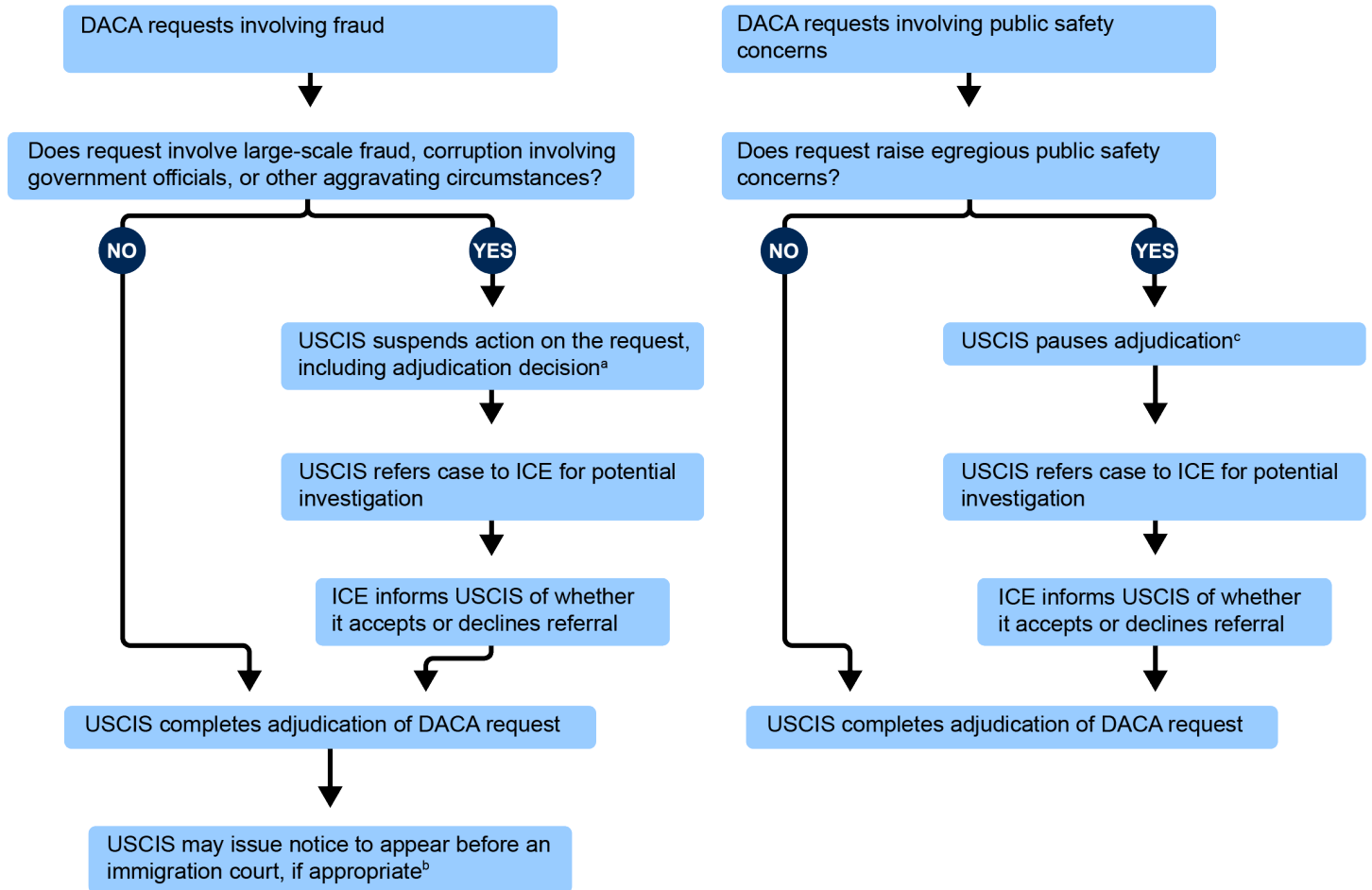
<sup>42</sup>Examples of egregious public safety threats include murder, rape, sexual abuse of a minor, human or firearms trafficking, and violent crimes that carry a prison term of at least 1 year.

<sup>43</sup>ICE's National Criminal Analysis and Targeting Center, within Enforcement and Removal Operations, is responsible for analyzing data across law enforcement and immigration databases, developing lead and information referrals, and disseminating them to ICE field offices for follow-up enforcement action. ICE field offices use such information to locate and arrest noncitizens who pose a threat to public safety, including gang members, felons, and child predators. For certain public safety cases, including human right violators and known or suspected gang members, USCIS is to refer the case to ICE's National Lead Development Center instead of to Enforcement and Removal Operations.

<sup>44</sup>According to USCIS's standard operating procedures, requests involving issues of criminality that normally would not meet the guidelines for consideration of deferred action will be denied, unless the requestor is claiming that consideration is warranted due to exceptional circumstances and fully documents such claim. USCIS headquarters must review and concur with such an exception.

Figure 4 outlines the DACA adjudication process and possible USCIS actions for cases involving public safety and fraud concerns.

**Figure 4: U.S. Citizenship and Immigration Services (USCIS) Referrals to U.S. Immigration and Customs Enforcement (ICE) Involving Deferred Action for Childhood Arrivals (DACA) Requests**



Source: GAO analysis of USCIS documentation. | GAO-22-104734

**Text of Figure 4: U.S. Citizenship and Immigration Services (USCIS) Referrals to U.S. Immigration and Customs Enforcement (ICE) Involving Deferred Action for Childhood Arrivals (DACA) Requests**

- 1) DACA requests involving fraud
- 2) Does request involve large-scale fraud, corruption involving government officials, or other aggravating circumstances?

a) Yes

- i) USCIS suspends action on the request, including adjudication decision/a/
- ii) USCIS refers case to ICE for potential investigation
- iii) ICE informs USCIS of whether it accepts or declines referral

b) No

- i) USCIS completes adjudication of DACA request
- ii) USCIS may issue notice to appear before an immigration court, if appropriate/b/

1) DACA requests involving public safety concerns

a) Yes

- i) USCIS pauses adjudication/c/
- ii) USCIS refers case to ICE for potential investigation
- iii) CE informs USCIS of whether it accepts or declines referral

b) No

- i) USCIS completes adjudication of DACA request

<sup>a</sup>When USCIS refers a case to ICE for investigation due to fraud-related concerns, officers are to suspend action while ICE determines how to proceed. USCIS may continue with adjudication or conduct further investigation, if ICE declines the referral or does not provide a response within 60 days for a pending referral or 120 days for an accepted referral. ICE may also request additional time, if it needs more time to complete an investigation.

<sup>b</sup>If ICE declines a fraud-related referral from USCIS, USCIS may continue its administrative investigation to determine if a notice to appear is warranted. Generally, only DACA denials due to fraud result in USCIS issuing a notice to appear, according to USCIS officials.

<sup>c</sup>USCIS officers are to suspend adjudication for 60 days but may proceed with adjudication sooner, if ICE provides notification of its action on the case.

Source: GAO analysis of USCIS documentation. | GAO-22-104734

**DACA terminations.** USCIS may terminate DACA for recipients who no longer meet qualification guidelines, such as by traveling outside the U.S. without advance parole or engaging in disqualifying criminal activity,

according to USCIS guidance.<sup>45</sup> Such activity may include terrorism; espionage; felony convictions; multiple misdemeanors; or a serious misdemeanor conviction, such as drug trafficking. For disqualifying criminal offenses or public safety concerns that arise after USCIS has granted DACA, USCIS is to refer the case to ICE. If ICE accepts the case and issues a notice to appear, USCIS is to terminate the recipient's DACA, which also results in the termination of their employment authorization.<sup>46</sup> If ICE does not accept the case, USCIS is to issue a notice of intent to terminate, which begins the termination process while giving the DACA recipient a chance to contest the termination.<sup>47</sup> Similarly, if it comes to USCIS's attention that a DACA recipient committed fraud in seeking DACA, USCIS is to issue a notice of intent to terminate. From June 2012 through June 2021, USCIS terminated nearly 4,700 DACA requests from individuals to whom it previously had granted deferred action.

Overall, referrals to ICE involving DACA requestors have been rare. In general, ICE officials explained that USCIS has referred a small number of cases to ICE because most do not meet ICE's acceptance criteria. Specifically, the officials said that ICE does not have the resources to investigate every referral and that its criteria for accepting referrals prioritize high-impact, complex, large-scale criminal cases, often involving large international or criminal organizations. ICE officials stated that ICE typically does not accept referrals involving a single person, unless there are aggravating factors. Such factors could include a person who poses an egregious public safety threat, such as a war criminal or a sex offender, or who has abused a position of public trust. USCIS and ICE officials explained that, due to their limited resources, they generally seek to resolve lower-level fraud cases with an administrative action, such as USCIS denying the DACA request. Of the approximately 900 referrals to

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<sup>45</sup>Termination reasons may also include USCIS determining that a requestor did not meet the guidelines at the time DACA was granted.

<sup>46</sup>Issuance of a notice to appear by CBP also terminates an individual's deferred action.

<sup>47</sup>A February 2018 court ruling in *Inland Empire – Immigration Youth Collective v. Nielsen* certified a class of certain DACA recipients, who, after January 19, 2017, have had or will have their DACA grant and employment terminated without notice or an opportunity to respond, with certain exceptions. See *Inland Empire v. Nielsen*, No. 17-CV-2048 (C.D. Cal. Feb. 26, 2018). This decision further held that, for class members, USCIS cannot treat DACA and DACA-related work authorizations as automatically terminated based on notice to appear issuance and further cannot terminate either DACA or DACA-related work authorization without providing advance notice and an opportunity to respond, and a reasoned explanation.

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ICE from June 2012 through June 2021, USCIS data indicate that about 820 involved public safety concerns, and about 80 involved fraud.

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## DACA Recipients Have Not Been an Enforcement Priority, and CBP and ICE Practices for Those Potentially Qualified Have Aligned with DHS Priorities

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### DHS Has Not Considered DACA Recipients to Be an Immigration Enforcement Priority

DHS has generally not considered DACA recipients to be immigration enforcement priorities unless they met certain criteria, such as having engaged in certain types of fraud or activities that posed a threat to national security or public safety, as previously discussed. The specific criteria that constitute DHS's immigration enforcement priorities have varied throughout the period DACA has been in effect (see table 2). From DACA's inception in 2012 to 2017, DHS policy prioritized immigration enforcement for suspected terrorists, national security threats, and individuals charged with or convicted of certain crimes for removal from the U.S. In 2017, Executive Order 13768 instructed DHS to ensure that U.S. immigration law was enforced against all removable individuals without exempting classes or categories. In accordance with this executive order and DHS implementing memorandums, although noncitizens with criminal histories were prioritized for enforcement action, the department was authorized to take action against any removable noncitizen encountered during operations. In January 2021, Executive Order 13993 revoked Executive Order 13768, and DHS issued interim civil immigration enforcement guidelines setting forth enforcement



priorities similar to those that were in effect from 2011 to 2017.<sup>48</sup> On September 30, 2021, DHS finalized its *Guidelines for the Enforcement of Civil Immigration Law*, which took effect on November 29, 2021.

**Table 2: Department of Homeland Security (DHS) Immigration Enforcement Priorities from March 2011 through September 2021**

Date	Implementing program or order	Immigration enforcement priorities
Mar. 2, 2011- Jan. 5, 2015	Civil Immigration Enforcement Priorities <sup>a</sup>	<p>Civil Immigration Enforcement Priorities prioritized noncitizens for removal who posed a danger to national security or a risk to public safety over individuals who obstructed immigration controls.</p> <ul style="list-style-type: none"> <li>• Priority one (highest priority) focused on noncitizens who pose a danger to national security or public safety, such as those who are engaged in, or suspected of, terrorism or convicted of violent crimes.</li> <li>• Priority two consisted of recent unlawful entrants.</li> <li>• Priority three (lowest priority) consisted of fugitive noncitizens, such as those who fail to follow an order to depart.</li> </ul>
Jan. 5, 2015 – Feb. 20, 2017	Priority Enforcement Program <sup>b</sup>	<ul style="list-style-type: none"> <li>• Priority one (the highest priority) focused on threats to national security, border security, and public safety, directing DHS to prioritize the apprehension, detention, and removal of noncitizens who engaged in or were suspected of terrorism or espionage, or who otherwise posed a threat to national security; as well as noncitizens apprehended while attempting to unlawfully enter the United States, and noncitizens with certain serious criminal convictions (such as felonies).</li> <li>• Priority two focused on misdemeanor crimes and new immigration violators, including noncitizens with three or more prior misdemeanor convictions (or a significant misdemeanor, such as domestic violence or drug trafficking) and those who were apprehended after unlawful entry or who have abused the visa or visa waiver programs.</li> <li>• Priority three (the lowest priority) focused on other immigration violations that did not fall under the first two priorities.</li> </ul>

<sup>48</sup>See Executive Order 13993, *Revision of Civil Immigration Enforcement Policies and Priorities*, 86 Fed. Reg. 7051 (issued Jan. 20, 2021); and DHS, *Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and Priorities* (January 20, 2021). DHS characterized these enforcement guidelines as “interim” while it finalized its new enforcement priorities. The memorandums outlining these priorities were partially enjoined in an August 2021 Texas federal district court order, although the implementation of this order was temporarily stayed by the same court. See *Texas v. United States*, No. 21-CV-00016 (S.D. Tex. Aug. 19, 2021) (memorandum opinion and order). The Fifth Circuit Court of Appeals then granted a partial stay of the district court order on September 15, 2021, keeping the majority of the memorandums in place. See *Texas v. United States*, No. 21-40618 (5th Cir. Sept. 15, 2021). As of January 2022, litigation related to these memorandums is ongoing.

Date	Implementing program or order	Immigration enforcement priorities
Feb. 20, 2017 – Jan. 20, 2021	Executive Order 13768c	Executive Order 13768 articulated broad enforcement priorities with equal consideration of potential enforcement for all classes and categories of removable individuals. It also terminated the Priority Enforcement Program and reinstated Secure Communities, allowing U.S. Immigration and Customs Enforcement to issue detainers for removable individuals charged with criminal offenses who had not yet been convicted and for individuals subject to a final order of removal whether or not they had a criminal history.
Issued Sept. 30, 2021	Guidelines for the Enforcement of Civil Immigration Law <sup>d</sup>	<p>Guidelines for the Enforcement of Civil Immigration Law prioritizes noncitizens for removal who pose threats to national security, public safety, and border security—specifically</p> <ul style="list-style-type: none"> <li>• threats to national security, such as noncitizens who have engaged in terrorism or espionage;</li> <li>• threats to public safety, such as noncitizens involved in serious criminal conduct; and</li> <li>• threats to border security, such as noncitizens apprehended at a border or port of entry while attempting to unlawfully enter the U.S. or apprehended in the U.S. after unlawfully entering after November 1, 2020.</li> </ul>

Source: DHS documentation. | GAO-22-104734

<sup>a</sup>U.S. Immigration and Customs Enforcement, *Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens* (Mar. 2, 2011).

<sup>b</sup>The Secretary of Homeland Security established the Priority Enforcement Program in a November 2014 memorandum and it went into effect on January 5, 2015. See Department of Homeland Security, *Secure Communities* (Nov. 20, 2014).

<sup>c</sup>Executive Order No. 13768, §§ 5, 7, 8, 9, 82 Fed. Reg. at 8800-8801 (issued Jan. 25, 2017). The Secretary of Homeland Security subsequently issued a memorandum establishing policy and providing guidance related to Executive Order 13768. See Department of Homeland Security, *Enforcement of the Immigration Laws to Serve the National Interest* (Feb. 20, 2017).

<sup>d</sup>Department of Homeland Security, *Guidelines for the Enforcement of Civil Immigration Law* (Sept. 30, 2021). These guidelines took effect on November 29, 2021. Before issuing these immigration enforcement priorities, DHS issued similar interim civil immigration enforcement priorities on January 20, 2021 (see Department of Homeland Security, *Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and Priorities* (Jan. 20, 2021)).

## CBP and ICE Enforcement Practices for DACA Recipients and Potentially Qualified Individuals Have Aligned with DHS Immigration Enforcement Priorities

Since 2012, CBP and ICE enforcement practices related to DACA recipients and individuals who might qualify for DACA have generally aligned with DHS’s immigration enforcement priorities. Specifically, CBP and ICE issued policy memorandums implementing changes in their respective enforcement practices, which included guidance on how each component was to implement the priorities. Under each set of immigration enforcement priorities, agency guidance generally directed agents and officers to release DACA recipients they encountered, once they verified

that the individual was approved for DACA. However, under this guidance, CBP and ICE retained the discretion to take an appropriate enforcement action against DACA recipients if there was derogatory information or evidence of criminal activity that would make them an enforcement priority. For example, felony convictions or serious misdemeanors, such as drug trafficking or domestic violence, would likely result in a termination of DACA. CBP and ICE officials stated that they would likely release a DACA recipient whom they encountered in the case of a lower-priority offense, such as a traffic violation, if the individual did not present a threat to public safety, consistent with long-standing agency practice.

According to DHS officials, to verify whether an individual has DACA, CBP and ICE agents and officers may examine the recipients' documentation, such as their employment authorization documents, or they may access USCIS data systems to confirm the status of any requests the individual has filed.<sup>49</sup> These may include a pending DACA request awaiting adjudication, an approval or denial of the request, or a termination of a previously approved request. In particular, CBP and ICE agents and officers may obtain read-only access to a USCIS data system that aggregates an individual's immigration history from multiple immigration-related data systems, including USCIS's case management system for adjudicating DACA requests.<sup>50</sup>

While DACA recipients are to be provided temporary protection from removal, individuals who might qualify to receive DACA but who have not yet submitted a request or are awaiting approval do not have such

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<sup>49</sup>To protect DACA requestors' personal information from unauthorized use, USCIS has implemented multiple safeguards on the access and use of this information. Specifically, CBP and ICE users must request access to USCIS systems. Such requests are reviewed by supervisors and must be renewed on a recurring basis. According to USCIS officials, each approved user is then granted a specific access level, based on their role and need to know specific information to perform their duties. Officials said that USCIS also monitors the activities of non-USCIS users of its data systems to determine when to revoke access for inactive users and to detect unauthorized use of the information.

<sup>50</sup>USCIS uses several data systems to store immigration-related information. The Person Centric Query System is a read-only data application that pulls information from multiple other systems—including the Computer Linked Application Information Management System and the Electronic Immigration Information System—to provide a single, consolidated history of a noncitizen's immigration interactions with the Department of Homeland Security. The Computer Linked Application Information Management System stores casework documentation for several types of immigration benefit requests. The Electronic Immigration Information System is a case management system used for processing benefit request forms and adjudicating immigration benefits, including DACA.

protection. However, officials stated that they have generally extended prosecutorial discretion considerations to those who may have potentially qualified for DACA as long as they had not committed a removable offense that would disqualify them from a favorable exercise of such discretion, in accordance with existing immigration enforcement priorities.

**CBP practices.** According to Border Patrol officials, agents encountering DACA recipients at interior immigration checkpoints who have not committed any criminal offenses are not to take them into custody or enter them into removal proceedings. However, consistent with policy, Border Patrol agents are to apprehend and refer to ICE for removal a DACA recipient who is allegedly involved in human smuggling or smuggling drugs through an immigration checkpoint, according to Border Patrol officials. CBP's Office of Field Operations officials stated that Office of Field Operations officers rarely encounter DACA recipients, and that such encounters may involve a DACA recipient attempting to reenter the U.S. at a port of entry without having obtained advance parole. For DACA recipients who have engaged in these types of disqualifying activities, Border Patrol agents and Office of Field Operations officers are to issue a notice to appear and transfer the individual to ICE custody, as appropriate.

From June 2012 through October 2017, according to Border Patrol officials, agents were to exercise prosecutorial discretion when encountering individuals who were potentially qualified for DACA by collecting information to determine whether apprehended individuals met USCIS's DACA qualification guidelines. Border Patrol officials said that in accordance with DHS immigration priorities and prosecutorial discretion policies, agents were directed to release individuals from custody who met the qualification guidelines and instruct them to contact USCIS to apply for DACA. During this period, Border Patrol data indicate that agents apprehended and subsequently released at least 800 individuals who might have potentially qualified for DACA, mostly along the southern border, as an exercise of prosecutorial discretion.<sup>51</sup>

After DHS temporarily rescinded DACA in September 2017, Border Patrol no longer extended prosecutorial discretion considerations to such

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<sup>51</sup>According to Border Patrol's data, there was a significant increase in DACA-related releases over a 2-month period in one sector. Because Border Patrol officials could not determine whether this increase reflected actual releases or were data entry errors, we excluded this sector's data for these 2 months and report the number of DACA-related releases from June 2012 to October 2017 as a minimum.

individuals, according to Border Patrol officials. Rather, Border Patrol processed these individuals as a standard apprehension or arrest and issued them a notice to appear, as appropriate, thereby entering them into removal proceedings. Specifically, Border Patrol policy stated that individuals who may have previously qualified for DACA but did not have a DACA request on file with DHS as of September 6, 2017, should be processed according to normal procedures. Officials stated that CBP implemented this policy because USCIS was no longer accepting new DACA requests. However, agents were directed to continue releasing verified DACA recipients, per existing prosecutorial discretion policy.<sup>52</sup> In January 2021, DHS rescinded the policy, and in September 2021, it issued *Guidelines for the Enforcement of Civil Immigration Law*, which took effect in late November 2021, as previously noted.

**ICE practices.** According to ICE officials, beginning with DACA's inception in 2012, encounters with DACA recipients and individuals who may have potentially qualified for DACA were initially governed by a 2011 ICE memorandum on exercising prosecutorial discretion. This memorandum stated that when weighing whether an exercise of prosecutorial discretion may be warranted, ICE agents and officers were to consider all relevant factors, including the agency's civil immigration enforcement priorities; the individual's length of presence in the U.S.; and the circumstances of their arrival, particularly if the individual came to the U.S. as a young child. Moreover, although this memorandum predated DACA, it specifically instructed ICE officers and agents to consider exercising prosecutorial discretion for individuals who were present in the U.S. since childhood.<sup>53</sup> For example, ICE's Homeland Security Investigations agents who encountered DACA recipients with approved work authorization documents during worksite enforcement operations were not to take an enforcement action against the DACA recipient, according to ICE Homeland Security Investigations officials.<sup>54</sup> Likewise, ICE Enforcement and Removal Operations agents taking custody of individuals apprehended by Border Patrol were to release them upon verification of their approved DACA, according to officials. Consistent with

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<sup>52</sup>U.S. Customs and Border Protection, *Guidance on the Acting Secretary's Rescission of the Memorandum of June 15, 2012, Establishing DACA* (Sept. 6, 2017).

<sup>53</sup>U.S. Immigration and Customs Enforcement, *Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens* (June 17, 2011).

<sup>54</sup>ICE's Homeland Security Investigations conducts worksite enforcement operations, which include the criminal arrest of employers and the administrative arrest of unauthorized workers.

policy, ICE officials stated that agents may arrest and initiate removal proceedings for any DACA recipients found to have committed removable offenses—such as drug trafficking—after being approved for DACA.

Since 2012, ICE agents have used a checklist to determine whether encountered individuals potentially met USCIS's DACA qualification guidelines, according to ICE officials. The checklist notes that anyone who might qualify for DACA should not be removed or issued a notice to appear. Officials stated that individuals who meet the qualification guidelines outlined in the checklist and who have not committed an offense that would disqualify them from a favorable exercise of prosecutorial discretion have generally been released from ICE custody and advised to contact USCIS for instructions about initiating a DACA request. From November 2014 through November 2019, ICE data indicate that ICE detained and subsequently released approximately 270 individuals who were either DACA recipients or who might have qualified for DACA.<sup>55</sup>

In 2017, Executive Order 13768 directed DHS to ensure that U.S. immigration law was enforced against all removal individuals without exempting classes or categories. In addition, the 2017 DHS and ICE memorandums that implemented this executive order stated that ICE was to revise or rescind any policies that conflicted with the executive order. However, the 2012 DACA memorandum was exempted from this effort and remained in effect, without modification. After DHS temporarily rescinded DACA in September 2017, ICE also temporarily suspended its practice of extending prosecutorial discretion considerations to individuals who may have potentially qualified for DACA, according to ICE officials. In addition, following the December 2020 reinstatement of DACA for initial requests,<sup>56</sup> ICE resumed its practice of extending prosecutorial discretion considerations to those who may have potentially qualified for DACA, as long as they had not committed a removable offense that would disqualify them from a favorable exercise of such discretion. Further, DHS's September 2021 *Guidelines for the Enforcement of Civil Immigration Law*,

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<sup>55</sup>ICE's Enforcement and Removal Operations began tracking DACA releases in its system in November 2014. DACA was removed from this system as a release reason in 2019, according to ICE officials. ICE data do not distinguish between DACA recipients and those who might have qualified for DACA.

<sup>56</sup>See *Batalla Vidal v. Wolf*, No. 16-CV-04756 (E.D.N.Y. Dec. 4, 2020) (opinion).

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which took effect in late November 2021, set forth enforcement priorities similar to those that were in effect from 2011 to 2017.

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## Agency Comments

We provided a draft of this report to DHS for review and comment. The department did not provide formal written comments, but did provide technical comments on the draft, which we incorporated as appropriate.

We are sending copies of this report to the appropriate congressional committees, the Secretary of Homeland Security, and other interested parties. In addition, the report is available at no charge on the GAO website at <https://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-8777 or [gablerr@gao.gov](mailto:gablerr@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix I.



Rebecca S. Gambler  
Director, Homeland Security and Justice

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# Appendix I: GAO Contact and Staff Acknowledgments

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## GAO Contact

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## Staff Acknowledgments

In addition to the contact name above, Kathryn Bernet (Assistant Director), Carissa Bryant (Analyst-in-Charge), Benjamin Crossley, Michele Fejfar, Daniel Kuhn, Ben Nelson, Heidi Nielson, and Kevin Reeves made key contributions to this report.



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