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Hawaii Attorney General Joins Latest Effort to Protect Dreamers

HONOLULU – Hawaii Attorney General Clare E. Connors today joined a coalition of 17 attorneys general from the around the nation in continuing the fight against efforts to threaten Dreamers currently registered for the Deferred Action for Childhood Arrivals (DACA) program with deportation. After the U.S. Supreme Court ruled in June that the Trump Administration’s attempts to cancel the DACA program were unlawful, the program was supposed to resume. But, instead of continuing to process new applications, the U.S. Department of Homeland Security (DHS) issued a new memorandum on July 28 by the purported acting secretary of Homeland Security, Chad Wolf, which directed DHS to make interim changes to the program — including declining to accept any new initial DACA applications — while Wolf considered whether to fully rescind DACA. In a [motion for partial summary judgment](#) — filed with the court today against President Donald Trump, the DHS, the purported-Acting Secretary of Homeland Security Chad Wolf, U.S. Citizenship and Immigration Services, and U.S. Immigration and Customs Enforcement — the coalition [amends](#) the initial September 2017 complaint on DACA and asks the court to vacate the Wolf memo immediately on the ground that it is — like the initial Trump Administration policy to rescind DACA — unlawful, and that it should never have been carried out since Wolf is not lawfully serving in the role as acting secretary of Homeland Security.

“The new DHS memorandum, just like the administration’s original attempt to revoke DACA, violates the law,” said Attorney General Connors. “We remain committed to protecting and supporting productive law-abiding members of our community from the actions of those currently steering the DHS ship.”

Dreamers are foreign-born young people who were brought to the United States at a young age and now identify themselves as Americans. Most have no memory of or connection with the country where they were born, and many don’t speak any language other than English. Under immigration law before the DACA program, most of these young people had no way to gain legal residency in the United States, even though they had lived most their lives in U.S. Since 2012, under the Obama Administration, more

than 825,000 young people who were brought to this country at a young age were promised that if they came out of the shadows, they could legally work, study, serve in the military, and raise families in the United States without fear of arrest or deportation.

The societal benefits of DACA are also broad and deep. With legal work authorizations, Dreamers perform a wide variety of critical job functions, including as teachers, health care workers, and information technology specialists, among numerous other professions. Such work allows these DACA recipients to provide vital financial support to their families, and to enhance the economies of their local communities — contributing approximately \$8.7 billion each year in federal, state, and local taxes across the country. In Hawaii alone, DACA recipients contribute an estimated \$3.1 million in state and local taxes. Additionally, many Dreamers are also fighting for their communities in the battle against the coronavirus disease 2019 (COVID-19) public health crisis as essential workers. More than 9,200 Dreamers are serving their communities on the frontlines in health care, education, and food-related jobs alone.

After President Trump ordered his administration to change the policy in 2017 and break the promises made to these Dreamers, a prolonged legal battle began in September 2017 that made its way through multiple courts before landing, in a combined case, at the U.S. Supreme Court in November 2019. This past June, the Supreme Court ruled that the Trump Administration's attempt to cancel the DACA program was arbitrary and capricious, in violation of the Administrative Procedure Act (APA). Additionally, the U.S. Court of Appeals for the Fourth Circuit also ruled against the Trump Administration, finding the rescission of DACA unlawful.

Despite multiple courts ruling against the Trump Administration, the late July memo by Wolf specifically orders DHS to reject all new initial DACA applications, to change the renewal period for current beneficiaries from two years to one year, and to reject all advance parole applications absent exceptional circumstances. The Wolf memo also purports to apply these changes retroactively to all applications submitted after the June 18, 2020 — the date of the Supreme Court decision.

In today's motion — filed in the U.S. District Court for the Eastern District of New York and led by New York Attorney General Letitia James, Massachusetts Attorney General Maura Healey, and Washington Attorney General Bob Ferguson — the coalition argues that these orders, especially the order to reject new applications, fly in the face of both the Supreme Court and the Fourth Circuit's earlier orders that found DHS's efforts to rescind DACA as unlawful.

Further, the coalition argues that court should hold the Wolf memo invalid and vacate the changes it effected to DACA for the same reasons the U.S. Government Accountability Office (GAO) concluded earlier this month when it said Wolf has never lawfully served in the role of acting secretary of Homeland Security because his assumption of that role violated two federal acts related to the succession of power. Wolf assumed the acting secretary position pursuant to a November 2019 revision to DHS's succession order issued by then-Acting Secretary Kevin McAleenan. But McAleenan had no power to make that revision because he assumed the position unlawfully himself following then-Secretary Nielsen's April 2019 resignation. DHS's

operative succession order at the time of Secretary Nielsen's resignation unambiguously provided that the director of the Cybersecurity and Infrastructure Security Agency, not the commissioner of U.S. Customs and Border Protection (the position McAleenan was filling before he succeeded Nielsen), was to succeed the secretary in the event she resigned. With the GAO's finding a few weeks ago, the coalition today makes clear that Wolf did not have the authority to issue the June memo, and continues to have none today — placing DHS's current policies in direct violation of both the Supreme Court and Fourth Circuit orders from June.

The coalition specifically argues that DHS's new memo related to DACA once again violates the Administrative Procedure Act and that its issuance by Chad Wolf is a violation of both the Federal Vacancies Reform Act and the Homeland Security Act, since he has never lawfully served as acting secretary of Homeland Security. The coalition seeks to have the July 28 memo vacated and for the DACA program restored to where it stood before the September 2017 rescission, as the Supreme Court ordered in June.

Joining Attorneys General Connors, James, Healey, and Ferguson in filing this motion are the attorneys general of Colorado, Connecticut, Delaware, Illinois, Iowa, New Mexico, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, and the District of Columbia.

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