



FAQ: DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA)

An updated guide on the present state of DACA

and where the current litigation could go

MARCH 2023

In recent months there have been several changes to DACA worth being aware of. Below is a list of frequently asked questions to help community members and DACA recipients navigate these changes.

As explained in detail below, we expect more updates on DACA in the following months as we wait for a court decision on the status of DACA. For this reason, DACA recipients should continue to remain informed since we expect that the decision will impact DACA recipients.

WHAT IS THE STATUS OF DACA?

DACA, or Deferred Action for Childhood Arrivals, was implemented in 2012 through a memorandum issued by the Obama Administration. As discussed below, this memorandum was the subject of litigation, or lawsuits filed in court. Several states, including Texas, argued that the 2012 DACA memorandum was unlawful. In 2022, the Biden administration published a final DACA rule, partially as a way to strengthen the policy. Although this rule did not change the requirements for DACA, it replaced the 2012 Memorandum by codifying DACA into federal regulations.

Unfortunately, although we have the new rule, at the moment, because of pending litigation, DACA is not open for persons who have never had DACA or whose DACA has expired for more than one year. This means that individuals who have DACA or had DACA and their DACA expired for less than a year can continue to submit and receive

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approvals for their renewals from U.S. Citizenship and Immigration Services (USCIS). As we explain later, DACA recipients can also continue to apply for Advance Parole.

WHAT IS THE CURRENT DACA LITIGATION?

Texas v. United States is the current DACA lawsuit, and it is being decided in the Southern District of Texas by Judge Andrew S. Hanen. The court will decide whether the recently published DACA rule is lawful and whether the government should be allowed to continue to approve DACA applications under that rule.

IS THIS THE SAME JUDGE THAT RULED THAT THE 2012 DACA MEMO WAS UNLAWFUL?

Yes, this is the same judge. In October of 2022 the Fifth Circuit issued a decision on the DACA case in Texas v. United States and returned the case back to the Southern District of Texas to decide the legality of the DACA rule. While the Fifth Circuit Court of Appeals ruled the DACA 2012 memorandum is unlawful, the Fifth Circuit felt that they could not decide on the newly issued DACA rule and decided that the District Court in Texas needed to assess the rule's legality.

WHEN WILL WE GET A DECISION FROM THE DISTRICT COURT?

The District Court issued a scheduling order as to when actions must be taken by both parties (attorneys and advocates defending DACA and the states suing the administration over DACA's legality). According to the schedule, parties have a deadline of April 6th to submit arguments. Because of this, it seems that a final decision on the legality of the DACA rule will not happen until April or May. With that said, it is possible that the scheduling might change. DACA recipients should continue to seek information from trusted sources to learn when a decision finally happens.

Even after the District Court issues its decision, it is likely that the decision will be appealed to the Fifth Circuit or directly to the Supreme Court of the United States.

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DO WE KNOW HOW THE DISTRICT COURT WILL RULE?

No, we will not know how the District Court will rule until they issue their decision. It is important to note that while the Court is now deciding on the legality of the DACA rule, this Court has already ruled that the 2012 DACA memorandum is unlawful. Back in July of 2021, Judge Hanen ruled that the administration had overstepped their power and that the DACA memorandum which created the policy was unlawful.

If the District Court rules that the DACA rule is unlawful, the states suing the administration have urged the judge that the administration should wind down the program two years after the decision. If the Biden administration appeals, it is likely that the decision will once again be temporarily halted while litigation continues.

DOES THE DACA RULE CHANGE ANY OF THIS?

The Biden Administration issued a new rule on DACA that went into effect on October 31, 2022, and replaced the 2012 memorandum. While the rule was an attempt by the Biden administration to strengthen and protect DACA, the parties in the lawsuit agreed to temporarily suspend part of the DACA rule while litigation continues. While the rule technically allows for both initial and renewal DACA applications, USCIS will not process any initial applications while the DACA litigation continues. **This means USCIS will only approve DACA renewals.**

WHAT WILL HAPPEN TO THE INITIAL DACA REQUESTS THAT WERE SUBMITTED, BUT NOT APPROVED?

Due to this litigation, USCIS has stated that they will not approve any initial DACA requests. They will hold all pending initial DACA requests without rejecting them, even if they cannot approve them, in case they are allowed to process them in the future. We will not know when or if they will be processed until there is a decision from the Texas court around the DACA rule. Even after there is a decision, it is possible the DACA litigation will continue and there will be no movement on these

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cases until the litigation is finalized.

WHAT HAPPENS TO THE INFORMATION SUBMITTED WHEN REQUESTING DACA IF THOSE CASES ARE NOW ON HOLD? WILL PERSONS BE AT RISK OF ARREST OR DEPORTATION?

The Department of Homeland Security (DHS) has stated that DACA applicants are not a priority for deportation or enforcement. While it is currently not clear what will happen with these pending initial DACA requests, current policy prevents DHS from sharing any of the information provided in them with other entities within DHS, like Immigration and Customs Enforcement (ICE), except in limited circumstances, involving fraud, threat to national security, or public safety concerns.

IS THERE A CHANGE IN THE FEE FOR DACA?

Recently, USCIS changed their policy on how someone should pay their DACA filing fee. While the filing fee continues to be \$495, USCIS is asking DACA applicants to split their payment by submitting one check/money order for \$410 to cover the cost of the I-765 Employment Authorization and one for \$85 to cover the cost of the I-821D Deferred Action.

CAN DACA RECIPIENTS CONTINUE TO REQUEST ADVANCE PAROLE?

Yes. DACA recipients can continue to request Advance Parole so long as they meet the requirements. Individuals who are interested in applying for Advance Parole should reach out to a trusted legal representative to discuss eligibility and assess the risks associated with traveling in light of potential changes to DACA before deciding to travel outside the United States.

WHAT HAPPENS TO DACA RECIPIENTS WHO ARE CURRENTLY OUTSIDE OF THE COUNTRY ON ADVANCE PAROLE?

DACA recipients who currently have an unexpired DACA and are outside of the country

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on Advance Parole should be able to return safely to the United States as scheduled if they are eligible for re-entry. Further changes to DACA may impact the ability to travel on Advance Parole in the future.

WHEN SHOULD DACA RECIPIENTS SUBMIT THEIR RENEWAL REQUESTS?

There is concern around when individuals should renew in case DACA is terminated for all, including renewals. While there is a sense of urgency surrounding the future of DACA, when to renew will depend on your own individual needs and should be discussed closely with a trusted legal representative.

We generally encourage people to renew as follows:

- ▶ DACA recipients whose DACA expires in the next 5 months should renew as soon as possible.
- ▶ DACA recipients whose DACA expires 5 months to a year from now should consult a legal representative to discuss the benefits of renewing early. Note that USCIS will grant a new two-year period of DACA from the day they approve a request, not from the day the current DACA period expires.
- ▶ DACA recipients whose DACA expires more than a year from now, may want to wait to renew at this moment. However, these DACA recipients have the right to apply for renewal if they choose to do so.

Unfortunately, if a person's DACA expired more than one year ago, **the individual is not eligible to renew**. Any application they present will be considered an initial application, which are not being processed at this time.

WHAT CAN DACA RECIPIENTS DO NOW?

DACA recipients should remember that renewals are still being accepted and approved by USCIS. Those who are eligible to renew should do so. Also, DACA recipients and



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undocumented youth should seek a full immigration consultation to understand their immigration options.

Visit <https://ilrc.me/findhelp> to find a free or low-cost trusted legal services provider in your area. Lastly, it's important to remain informed about future changes to DACA and be engaged in efforts working for permanent and inclusive immigration policies.

Are you a California Community College (CCC) or a California State University (CSU) student? If so, you qualify for **FREE** immigration legal services!

FIND OUT MORE

CCC: findyourally.com

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