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DACA Update: What You Need to Know

Last Updated: January 21, 2025

Deferred Action for Childhood Arrivals (DACA) is a policy that was created through executive action by President Obama on June 15, 2012 and implemented through a memorandum from the Secretary of Homeland Security. It allows certain undocumented immigrants who came to the U.S. before the age of sixteen to receive temporary protection from deportation (called "deferred action") and to apply for work authorization. Recipients can renew their DACA status every two years, so long as they continue to meet eligibility requirements. DACA is a temporary reprieve and can be revoked by the federal government. It does not provide a path to citizenship. As of September 2024, 537,730 people benefited from DACA.

Since it was first implemented in 2012, DACA has faced a variety of legal challenges. In 2022, DHS published a federal regulation known as the DACA Final Rule, a regulation that aimed to strengthen DACA. This document provides an overview of the most recent developments in the DACA case. The goal of this guide is to provide a summary of the recent Fifth Circuit decision and what this decision could mean for the future of DACA.

In this document:

Summary of the Case

On July 16, 2021, a federal district court in Texas concluded that DACA likely violated substantive law and should have gone through a procedure called "notice and comment rulemaking," rather than being implemented via a memorandum as it was initially in 2012. This means that the administration should have given the public advance notice before implementing DACA, allowing an opportunity for comments and suggestions to be submitted beforehand. Soon after the 2021 decision, DHS underwent notice and comment and published a Final Rule to codify DACA. The case was then appealed to the Fifth Circuit.

On October 5, 2022, the U.S. Court of Appeals for the Fifth Circuit agreed with the district court that DACA violated administrative law but sent the case back to the district court in light of the Final Rule published by DHS.

On September 13, 2023, the district court held that the Biden administration's Final Rule formalizing DACA was also unlawful, writing that it was not materially different from the 2012 memorandum. The case was once again appealed to the U.S. Court of Appeals for the Fifth Circuit.

The most recent case before the U.S. Court of Appeals for the Fifth Circuit focused on three essential issues:

- **Jurisdiction:** Does the immigration statute limit judicial review of the DACA case?

- **Standing:** Did the State of Texas demonstrate it has suffered or likely will suffer an injury caused by DACA and that the successful outcome of the litigation would remedy the harm?

- **Legality:** Is the DACA Final Rule substantively lawful or consistent with the immigration statute (known as the Immigration and Nationality Act or "INA")?

On January 17, 2025, the Fifth Circuit issued its most recent decision finding major parts of the Biden Administration's DACA rule unlawful and returned the case to the district court. The court found that Texas has standing to challenge the program and that the court has the authority to review DACA. Importantly, the court preserved the stay for existing DACA recipients, recognizing "the immense reliance interests that DACA has created." The decision is stayed (on hold) pending further action from the Fifth Circuit or the U.S. Supreme Court. The court also narrowed the scope of the injunction to Texas. **Existing DACA recipients in Texas and throughout the U.S. can continue to renew their deferred action and work authorization for the time being.**

Key Things to Know About the Fifth Circuit Decision

1. **What Did the Court Say About Jurisdiction?** The court held that it had jurisdiction to review the case and rejected the Biden Administration's argument that the INA limits judicial review in the context of this case only to noncitizens, and thus precludes judicial review under the Administrative Procedure Act (APA). The court reaffirmed that the APA provides a presumption of judicial review for individuals suffering legal harm from agency action,with some limited exceptions. This principle allows review of final agency actions for which no alternative remedy exists.

2. **What Did the Court Say About Standing?** The court ruled that Texas has standing because it has suffered "injury" as a result of DACA, and that "injury" will be remedied if DACA is struck down as unlawful.

   Specifically, the Court held the following:

   - **Financial injury:** Texas argued it spends over $750 million annually on healthcare, education, and other services for DACA recipients. The court considered this a "concrete" and "real" injury, sufficient to meet the legal requirement for standing.

   - **Causation:** The court found that these costs are directly linked to the DACA program because it enables recipients to remain in the state and provides social services to DACA recipients.

   - **Redressability:** The court concluded that if DACA were eliminated, some recipients would leave Texas, reducing the financial burden on the state.

   - **Precedent:** The court's previous decision already determined that Texas has standing to challenge DACA under similar circumstances. The current court followed that precedent because it said no Supreme Court ruling has clearly overturned it.

3. **What Did the Court Say About Substance? (Legality)**

   - In its decision, the Fifth Circuit held that DACA is substantively unlawful under the INA. The court determined that both the 2012 DACA Memorandum and the DHS Final Rule, which is materially identical to the memorandum, violate the INA.

- The court concluded that DACA does not fit within the INA's statutory framework for lawful presence of noncitizens, and therefore is inconsistent with the INA. The court noted that this interpretation is consistent with prior court decisions, and Congress has not amended the INA to authorize DACA

4. **What is the Scope of the Decision?** The court concluded that the decision against DACA was overly broad and therefore narrowed its previous nationwide injunction to Texas, the only state that demonstrated an actual injury. The court emphasized that remedies must be tailored to redress Texas's injury and should not extend beyond what is necessary to provide relief. Specifically:

    - The injury claimed by Texas (social-service-related expenses for DACA recipients) can be fully addressed with an injunction limited to Texas, without imposing broader relief that would affect other states.

    - The court noted that the injury asserted by Texas does not justify a nationwide injunction, especially considering that other states defending DACA would face significant costs if the nationwide injunction were upheld.

5. **What is a Stay of an Injunction and What Does the Court Say About it in the Case?** A stay of an injunction means temporarily pausing or delaying the enforcement of a court order. The court preserved the stay of its injunction as it applies to existing DACA recipients, despite affirming Texas's success on the merits. This means that despite the court finding DACA to be unlawful, the status quo would continue until there is a final decision - i.e., existing DACA recipients can continue renewing their DACA deferred action and work authorization. In deciding to maintain the stay, the court considered the following factors:

    - Likelihood of Success on the Merits: Texas prevailed on demonstrating the substantive illegality of DACA.

    - Irreparable Injury: The court acknowledged the immense reliance interests of current DACA recipients, as the program has provided stability to many individuals over its 12-year existence.

    - Substantial Injury to Other Parties: Ending the stay would cause significant disruption to DACA recipients and others reliant on the program, which outweighs the harm to Texas from maintaining the stay.

    - Public Interest: The court noted the public interest in continuity and stability while the case remains unresolved.

    Given these considerations, the court maintained the stay for current DACA recipients, citing the program's profound significance and the need to avoid unnecessary disruption while legal challenges continue.

6. **What Did the Court Say About DACA's Forbearance Policy and How It Differs From Other Benefits (e.g., Work Authorization)?**

    The court explained that DACA includes two main parts: (1) a forbearance policy, which means the government chooses not to prioritize deportation for certain individuals (i.e., deferred action), and (2) a benefits provision (i.e., work authorization). The court noted that both parts are legally distinct and can function independently.

The court disagreed with the earlier decision to find the entire DACA rule unlawful. Instead, it said that deferred action should remain in place even if the work authorization benefits are invalid. This is because:

- DHS included a rule stating that different parts of DACA could be separated if needed.
- The forbearance policy has value on its own, helping DHS focus on higher-priority immigration cases and reducing enforcement costs. It also provides stability and peace of mind for DACA recipients and their families, even without access to benefits like work authorization.

The court emphasized that deferred action is not the same as lawful presence or work authorization. It simply means the government deprioritizes deportation for certain individuals. Since DHS intended the forbearance policy to work independently, the court ruled that it should not have been eliminated along with the benefits provisions.

Information for DACA Recipients and Prospective DACA Applicants

7. **What Does the Fifth Circuit Decision Mean for Current DACA Recipients?** For now, DACA recipients are able to maintain their status. However, the future of the program is uncertain. DACA recipients should investigate other pathways for moving into lawful status, such as employer or family sponsorship or humanitarian relief.

8. **Can Current DACA Recipients Renew Their DACA?** All current DACA recipients, including those in Texas, can still renew their DACA. Individuals who meet the requirements in the Final Rule can submit an application to renew their status.

9. **Can Eligible Individuals Submit New DACA Applications?** Individuals who are eligible for DACA but have never had it before can submit first-time applications. However, the government will not process initial requests at this time.

10. **What Legislative Solutions are Available to DACA Recipients and Other Dreamers?** Congress has the power to provide a permanent solution for DACA recipients and other Dreamers. Different proposals could facilitate relief for these and other populations. While President Trump has recently expressed interest in helping Dreamers stay and succeed, it remains uncertain whether Congress will act to protect them.

Resources

1. Fifth Circuit Decision
2. A Timeline of the Fight to Protect DACA by MALDEF
3. Statement by MALDEF
4. Beyond DACA: A Directory of Resources for Undocumented Students & Individuals
5. Frequently Asked Questions: Latest DACA Developments. This resource by NILC provides an overview of the current state of the DACA program and what that means for DACA recipients and their loved ones. This resource is frequently updated.
6. American Council on Education, Immigration-Related Campus Concerns Issue brief