



DACA Update: What You Need to Know

Last Updated: October 7, 2022

- 1. What is DACA?** DACA (Deferred Action for Childhood Arrivals) is a policy implemented by the U.S. Department of Homeland Security (DHS) through a memorandum in 2012 that allows certain noncitizens who entered the United States before the age of sixteen, and who meet educational, residential, and other requirements, to request a form of prosecutorial discretion called “deferred action.” DACA recipients receive a two-year period of protection and can apply for work authorization. More than 825,000 people have received deferred action under DACA.
- 2. Where is DACA in the Courts?** On July 6, 2021, a federal district court in Texas [concluded](#) that DACA likely should have gone through a procedure called “notice and comment rulemaking.” The district court also found that DACA also likely violated substantive law. The case was appealed. During this time, DHS published a Final Rule to codify DACA. On October 5, 2022, the U.S Court of Appeals for the Fifth Circuit [agreed](#) with the district court that DACA was illegal, but sent the case back to the district court in light of the Final Rule published by DHS.
- 3. What does the Fifth Circuit decision mean for the future of DACA?** Although the history and legal foundation for DACA are strong, the ruling by the Texas court and the Fifth Circuit indicate that DACA has a precarious future in the courts. How and when the district court will rule in light of the Final Rule, however, is unclear.
- 4. What does the Fifth Circuit Ruling mean for DACA recipients?** For current DACA recipients and DACA applicants, the status quo remains. For those who already have DACA, the Fifth Circuit decision still allows DACA to continue and renewals to remain open. Current DACA recipients can still apply for advance parole. The 2021 injunction from the Texas district court continues to keep DACA closed to first-time applicants. For those who applied for the first time to DACA but whose applications were frozen due to the injunction, the U.S. Citizenship and Immigration Services (USCIS) still cannot process their applications.
- 5. What is the DACA Final Rule?** On August 30, 2022, the USCIS published a [final rule](#) that codifies the DACA 2012 policy into regulation. The language of the final rule contains the following threshold requirements:

- came to the United States under the age of 16;

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- continuously resided in the United States from June 15, 2007, to the time of filing
- physically present in the United States on both June 15, 2012, and at the time of filing the DACA request;
- unlawful immigration status on June 15, 2012, as well as at the time of request;
- currently in school, have graduated or obtained a certificate of completion from high school, have obtained a general education development (GED) certificate, or are an honorably discharged veteran of the Coast Guard or Armed Forces of the United States; and
- 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.

The Final Rule continues the process that DACA applicants must follow in requesting work authorization and affirms the policy that although DACA is not a lawful status, recipients are considered “lawfully present” in the United States for immigration purposes and will not accrue “unlawful presence” as a DACA recipient. This rule maintains the policy that DACA recipients are not a priority for immigration enforcement.

- 6. When will the Final Rule take effect?** The Final Rule will take effect on October 31, 2022. However, because of an injunction issued by a Texas district court on July 16, 2021, USCIS cannot grant those seeking DACA for the first time. It is not clear whether the district court will rule on DACA in light of the Final Rule before or after it takes effect on October 31.

WHAT YOU NEED TO KNOW ABOUT THE STATUS OF DACA

For DACA recipients and applicants, the status quo remains even after the Fifth Circuit ruling. Below is some information about what you need to know about the status of DACA while this litigation is pending. Please consult with an immigration attorney if you need legal advice.

- 1. Will the USCIS grant DACA to first-time recipients?** No. Because of litigation, the USCIS will not grant DACA to those seeking DACA for the first time.
- 2. I have DACA. Does my status change?** No, current DACA recipients keep their deferred action status and work permits until they expire. DACA recipients need not request DACA anew under the new rule to retain their DACA.
- 3. I have DACA. Can I renew my DACA?** Yes. If you have been granted DACA before, you may submit an application to renew DACA as long as you meet the requirements in the Final Rule.
- 4. My DACA has expired. Can I renew my DACA?** It depends. Based on the current court order, former DACA recipients whose DACA has lapsed for more than one year cannot receive a renewed grant of DACA.

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5. **I have DACA. Can I still apply for advance parole?** Yes. The status quo remains even after the Fifth Circuit ruling – meaning that current DACA recipients may apply for advance parole.
6. **If the USCIS denies my request for DACA under the new rule, will I be placed in removal proceedings?** Generally, no. If the USCIS denies a request for DACA, the USCIS will not issue a Notice to Appear or refer the case to ICE based on the denial, unless it is a case involving denial for fraud, threat to national security, or public safety concerns.
7. **Will information provided in a DACA request be used for immigration enforcement purposes?** Generally, no. Information provided by the requestor about themselves will not be used for immigration enforcement purposes unless DHS is initiating enforcement proceedings due to a criminal offense, fraud, a threat to national security, or public safety concerns. Information related to a requestor’s family members will not be used for immigration enforcement purposes against the family members.

RESOURCES

1. Fifth Circuit Ruling: <https://www.ca5.uscourts.gov/opinions/pub/21/21-40680-CV0.pdf>
2. Statement by DHS Secretary Mayorkas on the Fifth Circuit ruling: <https://www.dhs.gov/news/2022/10/06/statement-secretary-mayorkas-fifth-circuit-ruling-regarding-daca>
3. Final Rule (August 30, 2022): <https://www.govinfo.gov/content/pkg/FR-2022-08-30/pdf/2022-18401.pdf>
4. USCIS DACA Final Rule News Release: <https://www.uscis.gov/newsroom/news-releases/dhs-issues-regulation-to-preserve-and-fortify-daca>
5. Penn State Law’s Center for Immigrants’ Rights Clinic DACA Proposed Rule Fact Sheet: <https://www.presidentsalliance.org/wp-content/uploads/2021/09/2021-09-28-The-Proposed-DACA-Regulation-What-You-Need-to-Know.pdf>
6. [Directory](#) of Presidents’ Alliance Resources to Support DACA, Undocumented Students, and Institutions of Higher Education

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