

Northwest Immigrant Rights Project - Community Advisory – 10/06/2022 Updated Advisory Regarding Status of DACA Program

Basics: On October 5, 2022, the federal court of appeals for the 5th Circuit upheld the July 2021 decision of the federal district court in Texas (*Texas v. U.S.*) ruling that the DACA program is unlawful, but allowed for the program to stay in place for current DACA recipients. The **important message** after this ruling is that **if you have current DACA status, your DACA status remains valid**, and you can continue to work and to renew your status while anticipated legal processes play out. If you previously had DACA status and your status expired less than one year ago, you also remain eligible to apply for renewal. Please read below for additional information, and continue to check our [website](#) and [Facebook page](#) for updates as we process the 5th Circuit court's decision. Meanwhile, on October 31, 2022, the final DACA rule establishing the DACA regulations goes into effect. This rule is an attempt to "preserve and fortify" the existing DACA program, as explained below.

General Background on DACA: President Obama established the DACA program in 2012, which granted a form of temporary protection from deportation known as "deferred action" to undocumented immigrants who came to the U.S. before the age of 16, resided in the U.S. since June 2007 and met other requirements. On September 5, 2017, the Trump Administration [announced](#) that it would be ending the program, effective March 5, 2018. A number of court challenges were filed that blocked the Administration from terminating the program. Those cases were ultimately appealed to the U.S. Supreme Court, which ruled against the Trump Administration in June 2020. That ruling did not conclusively resolve all of the legal questions around the DACA program. On December 4, 2020 in a separate case, *Batalla Vidal v. Wolf*, a federal judge in New York ordered the Trump Administration to fully restore the DACA program. The *Texas v. U.S.* case, filed in 2018 seeking a ruling that the original 2012 DACA memo was unlawful, remained undecided. That decision was issued on July 16, 2021 ruling the DACA program is unlawful. The 5th Circuit court of appeals upheld the district court's decision in *Texas v. U.S.*, but stayed the existing protections for current DACA recipients and remanded the case back to the district court to review the final DACA rule published on August 30, 2022. The final DACA rule goes into effect on October 31, 2022, establishing formal DACA regulations. However, it is likely that the new DACA rule will also be blocked by the lower court.

What does the decision of the 5th Circuit Court of Appeals mean?

Current DACA Recipients: Although the court of appeals upheld that the DACA program is unlawful, the court allowed for the DACA program to stay in place for current DACA recipients which means that people who already have DACA will not be immediately impacted by this decision. In other words, current DACA recipients will keep their work permits and can continue to renew them while anticipated legal processes play out. Individuals seeking renewal of their DACA status should continue to follow the same procedures for renewal applications, including biometrics appointments. If you have had DACA in the past and your status expired less than one year ago, you can also pursue a renewal application.

Initial DACA Applicants: Similar to the district court's decision in July 2021, the court of appeals' decision means that people who are eligible for DACA but who have not already been approved under the program still cannot be granted DACA. The 5th Circuit court's decision prohibits the Department of Homeland Security (DHS) from approving any new DACA applications, that is, for anyone applying for DACA for the first time. This means that if you have submitted an initial DACA application or wish to submit an initial DACA application, DHS will accept your application but will not be able to approve your application.

Important Update for Individuals Renewing as Initials: The guidance issued by USCIS on July 27, 2021, on how it would implement the district court's decision, remains in place. For individuals who had DACA in the past but who did not renew within one year after their DACA status expired, USCIS required that they submit their renewals as initials. Under the new guidance, USCIS will also treat these applications as initials under the district court's ruling. This means that if you are renewing as an initial, USCIS will accept your application but will not make a decision on your application.

Even if your initial application or your renewal as initial was received by USCIS prior to July 16, 2021, if no decision was made by July 16, 2021, USCIS will continue to hold onto your application, without making a decision.

Additional court actions are expected based on the October 5, 2022 5th Circuit court decision.

I am a current DACA recipient or have had it in the past, what should I do now?

If you are a current DACA recipient and your status is not set to expire within the next six months, you do not have to do anything now.

If you are a current DACA recipient and your DACA status is set to expire in six months or less, or expired less than a year ago, we recommend that you consider filing a renewal of your DACA status, while keeping in mind that USCIS will review renewal requests submitted up to 150 days prior to the expiration date of your current work permit. We always recommend that you consult with an immigration attorney or accredited representative before submitting an immigration application, but especially if you have had any contact with the police or immigration officials, or have left the United States since your last DACA application was approved.

We also recommend that DACA recipients who have not recently consulted with an immigration attorney or accredited representative do so now in order to explore whether they might qualify for an immigration status that has a path to citizenship. It is particularly important for DACA recipients to do this if they:

- Are married to a U.S. citizen or lawful permanent resident;
- Have been the victim of a crime such as domestic violence, sexual assault or others in the U.S.; or
- Are under 21 years of age and not living with one or both of their parents.

I never applied for DACA but think I qualify, what should I do? The 5th Circuit court's decision means that DHS will not issue approvals on applications from individuals applying for DACA for the first time. If you have never applied to the DACA program but you believe you meet [the criteria](#) for the program, our current advice is that you consult with an immigration attorney or accredited representative to understand if you do qualify and to discuss the risks and benefits of submitting an application. You should understand that, at this time, there is still a risk that further legal actions will mean that if DHS is allowed to make decisions on initial applications, they may be rejected. If you decide to proceed with an initial application, there remains a possibility that you may end up losing your application fee. Because of this uncertainty, our organization will not be providing assistance in submitting initial DACA applications unless the person is in removal (deportation) proceedings, at least until the legal issues are resolved.

I have DACA and am currently working, should I tell my employer about my status? You are not required to tell your employer that you have DACA status or when your work permit expires. It is your employer's responsibility to re-verify your work authorization status. Your employer should not take adverse action against you as long as your work permit remains valid. But keep in mind that the fact that you have a valid social security number will not mean that you will have permission to work if your work permit has expired.

I am in removal (deportation) proceedings, what should I do? If you are represented by an attorney, you should contact your attorney. If you do not have an attorney, you should consult an immigration attorney or accredited representative as soon as possible. If you cannot afford an attorney, you can contact NWIRP's offices at the numbers listed below.

I am a current DACA recipient and am considering traveling outside the U.S. under advance parole, what should I do? This ruling did not impact advance parole for current DACA recipients and DHS is still accepting requests for advance parole. However, we urge DACA recipients who are considering international travel to first speak with an attorney or accredited representative. Importantly, keep in mind that if you leave the U.S. without advance parole, you may not be able to return to the U.S. and you will most likely not be eligible to renew your DACA status.

How can community members push back against this decision? This ruling is an urgent reminder that we need Congress to act and to create a path of citizenship not only for DACA recipients but for other undocumented community members. We encourage you to visit the [We Are Home campaign](#) to learn how you can help.

If you cannot afford to have a consultation with a private immigration attorney, please visit www.nwirp.org/daca for resources. NWIRP also offers free monthly DACA clinics to assist individuals seeking to renew their DACA status. Please visit our website for information.

NWIRP offices: Seattle – (206) 587-4009

Tacoma (for those detained at the NWDC Only) – (253) 383-0519

Tacoma (for non-detained) – (206) 816-3893

Yakima Valley (Granger) – (888) 756-3641

Wenatchee – (866) 271-2084

To schedule a virtual appointment for DACA renewals only, please visit www.nwirp.org/daca/register/ or call (855) 313-7326

For a searchable database of private attorneys, please visit <https://www.ailalawyer.com/>