

Latest DACA development: On September 13, 2023, Texas-based U.S. District Judge Andrew Hanen issued a decision holding that the Biden Administration's 2022 DACA regulation was unlawful. The decision continues to block the Biden administration from approving new DACA applications. DACA renewals may continue for now.

This advisory provides answers to questions about:

- The impact of Texas v. U.S. decision
- The status of Biden's DACA regulation
- The status of DACA renewal and initial applications
- The DACA and employment authorization renewal process

This advisory is not intended as legal advice but rather to provide information on the status of the DACA program. Individuals should seek a legal consultation from a qualified immigration attorney or DOJ accredited representative for a full assessment of their individual case. Please check our [website](#) or NIJC's social media channels for future updates about DACA

## **The impact of Texas v. U.S. decision**

### **1. What did the court decide in Texas v. U.S.?**

On July 16, 2021, the Texas-based U.S. District Judge Andrew Hanen declared that the DACA program, implemented in 2012 through a policy memo, was illegal. He held that the statute did not authorize a DACA program with work authorization; and he found that, in any event, a program such as DACA could only potentially be allowable if it were established through formal regulations. However, he stayed (or delayed) his decision to allow current DACA recipients to renew their DACA status. This decision was appealed to the Fifth Circuit Court of Appeals. Meanwhile, the Biden administration published DACA regulations on August 30, 2022.

On October 5, 2022, the Fifth Circuit Court of Appeals agreed with Judge Hanen's holding that DACA is illegal because the statute does not authorize the Department of Homeland Security to create such a program. However, the appellate court sent the case back to Judge Hanen (the district court) to consider the Biden administration's DACA regulations. The appellate court agreed that a stay (or delay) of its decision remained appropriate. That allowed individuals with DACA to continue renewing their DACA benefits as the case was sent back to the district court.

On September 13, 2023, Judge Hanen issued the latest decision in this litigation. Judge Hanen declared that the DACA program, implemented through the DACA regulation, was illegal. Judge Hanen found that the DACA regulation did not remedy the substantive defects found by the District Court and the Fifth Circuit concerning the 2012 DACA Memo, which the courts previously held to be illegal.

Importantly, Judge Hanen issued a supplemental order permitting DACA renewals to continue while the case is on appeal. The Department of Justice has indicated it will appeal this decision to the Fifth Circuit Court of Appeals.

The bottom line is that litigation will likely continue for some months, but it is unknown how long the window to renew DACA benefits will remain open. As such, we highly recommend that, if eligible, you submit your application to renew your DACA benefits as soon as possible.

2. What will happen next in Texas v. U.S.? Will it go to the Supreme Court?

The Department of Justice has indicated it will appeal Judge Hanen's decision to the Fifth Circuit Court of Appeals. Since the Fifth Circuit has repeatedly affirmed District Court decisions finding the DACA program unlawful, it is safe to assume the Fifth Circuit is likely to affirm the decision of the District Court. If that occurs, the Department of Justice will likely appeal to the United States Supreme Court, which could issue a final decision on the DACA program. That process, however, is likely to take many months – if not years – to reach resolution. It is unclear, however, whether the Fifth Circuit and/or the Supreme Court will continue to allow DACA renewals while the appeal process continues.

### The status of Biden's DACA regulation

3. How does this most recent decision affect the Biden administration's final regulation?

Judge Hanen found that the DACA regulation was illegal. Judge Hanen's decision enjoins (or stops) the Department of Homeland Security from implementing the DACA regulation. This injunction will remain in place unless the Fifth Circuit Court of Appeals or the Supreme Court lift the injunction or otherwise enters an order rendering it moot.

### The Status of DACA renewal and initial applications

4. I have a pending application for initial DACA benefits. How does the recent decision affect my pending application?

The government cannot process your initial DACA application. The processing of your application will remain on pause.

This pause will continue until either the litigation resolves (either in favor or against processing new DACA applications) or Congress passes legislation to protect DACA. Unfortunately, there is nothing to do on your case at this time.

If you have a pending initial DACA application at NIJC and you have further questions, please contact the phone number for the team handling your case. If NIJC is not representing you, please follow our [social media channels](#) or [website](#) for updated information regarding the status of the DACA program.

5. I am eligible for initial DACA, but never applied; what can I do right now?

You may want to use this time to gather all of the evidence necessary to support an initial DACA application in the event that a filing window opens for this benefit.

If you have never had a legal consultation, we recommend that you speak to a licensed attorney or Department of Justice accredited representative to learn more about all of your possible options under our current immigration laws and policies. To schedule a consultation with our office, please call (312) 660-1370.

6. I have a pending application to renew my DACA benefits. How does the latest decision affect my renewal?

The government will continue to adjudicate all properly filed DACA renewal requests. This is true as long as a judicial stay remains in place.

If your request has been pending for more than 105 days, you or your legal representative can submit a status inquiry via phone by calling 1-800-375-5283.

If that does not solve your case, you or your legal representative may wish to consider seeking congressional assistance. In Illinois, Senators [Duckworth](#) and [Durbin](#) each have the request process located on their congressional website.

7. My DACA has expired or is close to expiring; can I still apply to renew my DACA?

Yes. The government will continue to adjudicate all properly filed DACA renewal requests. This is true as long as a judicial stay remains in place. It is unknown how long the judicial stay will remain in place, so you should renew your DACA benefits as soon as possible.

If you currently have DACA or your DACA has been expired for less than one year, you can submit a DACA renewal application. If you are interested in attending one of NIJC's upcoming, free DACA renewal clinics, you can register [here](#). We are updating the calendar frequently with new clinic offerings.

If your DACA expired more than one year ago or it was previously terminated, you must submit an initial DACA application. However, because of Judge Hanen's ruling, the government will not be able to process your case due to the indefinite pause on all initial DACA applications. If you are in this position, please schedule a DACA consultation with NIJC by calling 312-660-1370.

### **The DACA and employment authorization renewal process**

8. How much will it cost to apply for DACA benefits?

The cost to file your DACA application is \$495.00.

9. My DACA is expired; will USCIS refer my case to ICE for enforcement purposes (like detention or deportation proceedings)?

The Department of Homeland Security, through a policy memo issued on September 30, 2021, has indicated that they will prioritize their enforcement efforts on individuals who are a threat to (1) national security, (2) public safety, or (3) border security. Current or former DACA recipients are unlikely to be enforcement priorities unless they meet the criteria outlined in this memo.

If your DACA is expired, we recommend that, if eligible, you apply to renew as soon as possible. If you are interested in attending one of our upcoming, free DACA renewal clinics, you can register [here](#). We are updating the calendar frequently with new clinic offerings.

10. My work permit was lost, stolen or destroyed. Can I request a replacement?

If you are currently in a valid period of DACA, you may apply to replace a lost, stolen, or destroyed EAD/work permit by filing a new Form I-765 and paying the \$495.00 filing fee. If your DACA benefits have expired and you are within the timeframe to renew, you may seek to renew your DACA protection and, within that process, seek a new work permit.

11. Are DACA recipients still be able to apply for special permission to travel (“advance parole”)?

Yes, for the time being. You may qualify for advance parole if you currently have DACA and you can establish that your travel abroad is for employment, educational, or humanitarian purposes.

Traveling on advance parole comes with some risks. U.S. Customs and Border Protection retains the authority to refuse entry to an individual – even someone who has an approved advance parole document. Individuals who are interested in advance parole should speak to a qualified legal representative to assess their individual case and fully understand the potential risks associated with travel.

Keep in mind there may be a subsequent court decision that affects a DACA recipient’s ability to apply for and travel on advance parole.

If you would like to explore advance parole, we strongly recommend that you schedule a consultation with a licensed attorney or DOJ recognized organization to see if advance parole is a safe and available option for you to pursue. To schedule a legal consultation with NIJC, please can call 312.660.1370.

12. I have or had DACA but I also have another application for an immigration benefit pending with the government. How does this most recent update affect my pending application for other immigration benefits?

The government will continue to process your pending application for other immigration benefits. If you have a legal representative, speak to them about whether you are eligible for a work permit based on your pending application or whether you should renew your DACA benefits and seek a work permit via those means.

There may be other reasons to maintain DACA benefits, even as you seek other immigration status. For example, it is possible future laws will recognize people with DACA as eligible for permanent status, or the other immigration status you seek may not be certain, in which case retaining DACA may be advantageous. To discuss this further, we recommend that you schedule a consultation with a licensed attorney or DOJ recognized organization. To schedule a legal consultation with NIJC, individuals can call 312.660.1370.

13. Even though I have DACA, I am afraid I might one day be forced to return to my home country, where I fear harm. What can I do?

U.S. immigration laws offer certain protection-based immigration benefits. For example, if you are afraid to return to your home country because you believe you will be harmed (“persecuted”) based on your race, religion, nationality, membership in a particular social group or political opinion, you may be eligible for asylum or another protection-based immigration benefit. This is a complex area of the law and requires an in-depth analysis of your specific fear of return. If you are afraid to return to your home country, we recommend that you schedule a consultation with a licensed attorney or DOJ recognized organization.

14. Does the Social Security Number (SSN) I received belong to me forever?

The SSN that you received after to your initial DACA grant will belong to you for life. You can continue using your SSN for various matters (banking, housing, education, etc.). In order to accept employment, you may need to present a valid EAD/work permit in order to use your SSN for employment.

15. My work permit expires soon; do I have to tell my employer?

If your DACA is close to expiring, we recommend that, if eligible, you apply to renew as soon as possible. If you are interested in attending one of our upcoming, free DACA renewal clinics, you can register [here](#). We are updating the calendar frequently with new clinic offerings.

You are not legally obligated to notify your employer that your work permit is expiring. Your employer is obligated to make sure they are employing individuals who are authorized to work. If your employer asks you for a new work permit, you have until your current work permit expires to produce a new one. If you do not produce a new work permit when your current work permit expires, your employer can terminate your employment. However, the employer has to give you the opportunity to present a new work permit and cannot take negative action against you (i.e. terminate your employment) until your current work permit expires.

16. What can I do now?

We encourage you to consult with a legal service provider about the possibility of filing an application for initial or renewal DACA benefits. We also encourage you and your family members to seek a legal consultation to explore other potential forms of immigration relief. NIJC has found that 14.3% of individuals screened for DACA eligibility were potentially eligible for more permanent forms of immigration relief. To schedule a legal consultation with NIJC, individuals can call 312.660.1370.