



DACA UPDATE - OCT 5, 2022

On October 5, 2022, the Fifth Circuit issued their long-awaited decision on the DACA program. The court found the 2012 DACA program unlawful. However, it sent the case back down to the lower court in Texas to review the [new rule](#) that was issued recently by the Biden Administration making the DACA program into a regulation, rather than just an executive order. **While the lower court considers the DACA regulation, all those who hold DACA can continue to renew their status. But unfortunately the program remains closed to new applicants.**

What did the Fifth Circuit say?

The Fifth Circuit was reviewing a decision issued by a judge in Texas in July 2021, which found that DACA is unlawful because (among other reasons) Congress has to enact that type of program, not the president or executive branch. The Fifth Circuit agreed and found DACA is unlawful. But while the appeal was pending, the Biden Administration issued a new regulation codifying DACA into a regulation. For that reason, the Fifth Circuit sent the case back to the lower court judge to consider the new regulation.

How does this impact people who currently have DACA?

The Fifth Circuit decision does not have any immediate impact on current DACA holders. The court said that because of the “[p]rofound significance” the program has had for DACA holders, it would allow those with DACA to keep their current status and to keep renewing for now.

That means anyone with DACA can continue to renew their status and those eligible can also apply for advance parole. We recommend you consult with a trusted legal representative before traveling on advance parole.

How much longer can people with DACA keep renewing?

This is hard to predict. The threat to DACA has not gone away. Based on its prior decision, and the Fifth Circuit’s ruling, the Texas court is almost certain to find the *new* DACA regulation is also unlawful. Once the court rules again, the decision will likely be appealed (again) to the Fifth Circuit and after that the Supreme Court. Any of these courts could decide to halt DACA renewals.

How does this impact people who do not have DACA currently but are eligible?

A. If you already applied in 2020-2021 and never got a decision—

When DACA was reopened to first-time applicants from December 2020 to July 2021, over 80,000 people applied. The checks mailed with those applications were cashed, but the applications have been stuck in limbo. This decision does not change the status of these applications – they continue to be stuck in limbo until there is a further court decision.

Visit <https://maketheroadny.org/> or NYDACA.org for more information!

B. If you are eligible but did not apply in 2020-2021–

While it is still possible to submit a new first-time DACA application, it will not be adjudicated. If submitted, the application will be accepted; a receipt notice issued; and the payment for \$495 cashed, but no action will be taken on the application for now–i.e. it will not be granted or denied. People eligible to apply should speak with a trusted legal representative before they apply.

How does this impact young people who don't meet the requirements?

Unfortunately, many young people today do not qualify for DACA because applicants must show physical presence in the United States since June 15, 2007. That leaves many of our members and clients without access. This is unlikely to change until Congress takes action. Nothing in the new decision or the regulation makes it possible for these young people to qualify for DACA.

Could any of this change?

Yes. For now, although courts have ruled DACA is illegal, they have also allowed those with DACA to retain their DACA and continue renewing. That is a testament to the power of the DACAmented youth and their allies who have organized and shared their stories. But in the long term, one of these courts or the Supreme Court could decide to halt even renewals for people with DACA. That is why we need Congress to act now!