



OCTOBER 2022

## IMPORTANT DACA **FAQ** FOLLOWING THE 5TH CIRCUIT COURT DECISION

On October 5, 2022, the Fifth Circuit Court of Appeals issued a decision in the Texas v United States case. In this case the state of Texas and eight other states argued that the DACA policy was unlawful.

In their decision, the Fifth Circuit agreed with the plaintiff states and found that the DACA policy is unlawful but sent the case back to the Southern District of Texas to consider the recently issued final DACA rule. The Biden administration published a federal rule on DACA on August 30, 2022, that was intended to formalize and protect the program. The Texas court will now revisit the DACA case in light of this new rule. The Fifth Circuit maintained the court order allowing those who are eligible to continue to renew their DACA and apply for advance parole while the case is pending.

More changes and updates are expected around the DACA policy as we wait for a decision from the Texas district court around the final DACA rule. Below is a list of frequently asked questions to help community members navigate the changes to DACA.

### **WHAT DOES THE DECISION MEAN FOR CURRENT DACA RECIPIENTS?**

At the moment, this decision does not change the current status of DACA. Current DACA cases and work permits remain valid. Current DACA recipients and people whose DACA expired less than a year ago can continue to renew their cases. At this time, U.S. Citizenship and Immigration Services (USCIS) is not processing DACA requests from individuals who have never had DACA or whose DACA case expired more than a year ago.

### **CAN DACA RECIPIENTS CONTINUE TO REQUEST ADVANCE PAROLE?**

Yes. DACA recipients can continue to request advance parole so long as they meet the requirements. Individuals who are interested in applying for advance parole should reach out to a trusted legal representative to discuss eligibility and assess the risks associated with traveling in light of potential changes to DACA before deciding to travel outside the United States.

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## WHAT HAPPENS TO DACA RECIPIENTS WHO ARE CURRENTLY OUTSIDE OF THE COUNTRY ON ADVANCE PAROLE?

DACA recipients who currently have an unexpired DACA and are outside of the country on Advance Parole should be able to return safely to the United States as scheduled. Further changes to DACA may impact the ability to travel on Advance Parole in the future.

## WHEN SHOULD DACA RECIPIENTS SUBMIT THEIR RENEWAL REQUESTS?

There is concern around when individuals should renew in case DACA is terminated for all, including renewals. While there is a sense of urgency surrounding the future of DACA, when to renew will depend on your own individual needs and should be discussed closely with a trusted legal representative.

**We generally encourage people to renew as follows:**

- ✓ DACA recipients whose DACA expires in the next 6 months, should renew as soon as possible.
- ✓ DACA recipients whose DACA expires 6 months to a year from now, should consult a legal representative to discuss the benefits of renewing early. Note that USCIS will grant a new two-year period of DACA from the day they approve a request, not from the day the current DACA period expires.
- ✓ DACA recipients whose DACA expires more than a year from now, may want to wait to renew at this moment. However, these DACA recipients have the right to apply for renewal if they chose to do so.

Unfortunately, if a DACA case expired more than one year ago the individual is not eligible to renew. Any application they present will be considered an initial application, which are not being processed at this time.

## WHAT IS HAPPENING WITH THE DACA RULE?

The Biden Administration issued a new rule on DACA that is set to go into effect on October 31, 2022. This rule was an attempt by the Biden administration to strengthen and protect DACA. This rule will now be reviewed by the Texas court. While the rule technically allows for both initial and renewal DACA applications, USCIS will not process any initials while the DACA litigation continues. This means that if there is no decision in favor of DACA and the

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current court order continues, USCIS will not approve any DACA initials, even after the rule goes into effect on October 31st.

## **WILL THE LITIGATION PREVENT THE DACA RULE FROM GOING INTO EFFECT?**

We are not sure. As of now, the Fifth Circuit has asked the Texas court to review the DACA rule. We are not sure how this judge will rule but we do know that this judge has already decided against DACA. Also, USCIS has stated that they will not process any initial DACA requests while there is an injunction in place. If there is no decision on this case before October 31st, it is our understanding that no new DACA's will be processed or approved under the new rule.

## **WHAT WILL HAPPEN TO THE DACA REQUESTS THAT WERE SUBMITTED, BUT NOT APPROVED?**

Due to this litigation, USCIS has stated that they will not approve any initial DACA requests. They have stated that it will hold all pending initial DACA requests without rejecting them, even if they cannot approve them. We will not know when or if they will be processed in the coming weeks until there is a decision from the Texas court around the DACA rule. Even after there is a decision, it is possible the DACA litigation will continue and there will be no movement on these cases until that is finalized.

## **WHAT HAPPENS TO THE INFORMATION SUBMITTED WHEN REQUESTING DACA IF THOSE CASES ARE NOW ON HOLD? WILL PERSONS BE AT RISK OF ARREST OR DEPORTATION?**

The Department of Homeland Security (DHS) has stated that DACA requestors are not a priority for deportation or enforcement. While it is currently not clear what will happen with these pending initial DACA requests, current policy prevents DHS from sharing any of the information provided in them with other entities within DHS, like ICE, except in limited circumstances, involving fraud, threat to national security, or public safety concerns.

## **WHAT CAN DACA RECIPIENTS DO NOW?**

DACA recipients should remember that renewals are still being accepted and approved by USCIS. Those who are eligible to renew should do so. Also, DACA recipients and undocumented youth should seek a full immigration consultation to understand their immigration options. Visit <https://ilrc.me/findhelp> to find a free or low-cost trusted legal

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services provider in your area. Lastly, its important to remain informed about future changes to DACA and be engaged in efforts working for permanent and inclusive immigration policies.



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