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Fifth Circuit Court of Appeals Decision on DACA: Frequently Asked Questions

This fact sheet is current as of October 6, 2022.

On October 5, 2022, the [5th Circuit Court of Appeals](#) decided the [Deferred Action for Childhood Arrivals \(DACA\) program violates U.S. immigration law](#). The appeals court did not order the Biden administration to shut down DACA or stop processing renewal applications.

What was the appeals court deciding in this case?

The appeals court was deciding whether a [July 2021 lower court order about the DACA program](#) was correct. The lower court decided that the DACA program was illegal and ordered that the program end but allowed DACA renewals to continue while its decision was appealed.

What did the Fifth Circuit Court of Appeals decide on October 5, 2022?

The appeals court decided that the district court's decision was correct. They agreed that:

- (1) The states that challenged the DACA program had the right to do so; and
- (2) President Obama did not follow the law when he created the DACA program.

For now, the appeals court also agreed that:

- (1) the Department of Homeland Security (DHS) can continue to accept and approve DACA renewal applications; and
- (2) DHS can accept new applications for DACA but cannot make decisions about them.

However, the appeals court also noted a very important development between when the lower court issued its decision in July 2021 and now. When President Obama established DACA in 2012, he did so through a memorandum and did not go through an official process of obtain public feedback outlined in a law called the Administrative Procedures Act (APA). But since the district court's decision in July 2021, DHS went through this process. [DHS issued draft regulations establishing the DACA program](#), went through the official public feedback process, and [issued final regulations](#) at the end of the summer that go into effect on October 31, 2022.

The appeals court acknowledged this development and therefore decided to remand or send the case back to the lower court to review these regulations and decide whether they should change the conclusion that the DACA program is unlawful.

How can the appeals court declare DACA unlawful when the Supreme Court saved DACA in 2020?

This answer is complicated and confusing. In 2020, the Supreme Court was asked to answer one main question: "did President Trump follow the requirements of the law when he ended DACA?" The Supreme Court answered that question "no." the Supreme Court was not asked to answer and did not answer the question: "did President Obama follow the requirements of the law when he created DACA?" This question was asked in the case that was before the appeals court, and the answer from the

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lower court and the appeals court was “no, President Obama did not follow the requirements of the law when he created DACA.”

Is there a possibility that the court’s decision could be put on hold or overturned?

Yes! It is possible that the DHS—which is defending the DACA program—could ask the Supreme Court to weigh in on this case before it is sent back to the lower court. However, even if that does not happen—or the Supreme Court refuses to get involved at this stage—the case will go back to the lower court to review the regulations that go into effect at the end of this month. For the latest information in this case, please check www.ilcm.org and ILCM’s social media.

I already have DACA. How does this decision affect me?

According to the decision, DACA holders still have DACA status and can continue to renew their DACA status for now. Consult with a qualified immigration lawyer about your particular situation.

I am eligible for DACA, but I have not yet submitted my initial application. How does this decision affect me?

According to the decision, USCIS can still accept initial DACA applications, but USCIS cannot approve them. Consult with a qualified immigration lawyer about your particular situation.

I am eligible for DACA, and I submitted my initial application. How does this decision affect me?

Initial DACA applications are on hold. No new DACA first time applications will be approved at this time. The court decision blocked USCIS from approving any new DACA cases. This means that all people who have submitted a DACA initial application, (i.e., those that never had DACA and are applying for the first time) and have not received an approval from USCIS, will have their application held. This applies to all initial cases that were not approved before July 16, 2021.

I had DACA, but my DACA expired. How does this decision affect me?

If you submit a DACA request more than one year since your last grant of DACA expired or after your most recent DACA grant was terminated (at any time), your request is considered an initial request, not a renewal, under USCIS policy.

USCIS can accept initial DACA requests, but it cannot approve them while this court order remains in effect. You will be issued a receipt notice, and your payment will be accepted. However, the request will not be further processed, in compliance with the court order.

Consult with a qualified immigration lawyer about your particular situation.

I have DACA and received Advance Parole. How does this decision affect me?

This decision does not address Advance Parole. Please consult with a qualified immigration lawyer before you decide to leave the U.S.

Where can I call if I have DACA and want to file to renew?

Please call ILCM at 1-800-223-1368 on Mondays 9am-1pm, Tuesdays 1-4pm, Wednesdays 9am -1pm, and Thursdays 3pm-7pm for assistance.

Where can I find mental health support?

United We Dream has created a tool kit to support mental health. Please see this website to review their resources: [Mental Health Toolkit | United We Dream](#)

For counseling services, you can contact the Walk-In Counseling Center for free remote (phone or on-line) services. See their website for information: <https://walkin.org/counseling-services/locations-hours/>
If you want an appointment in Spanish, please call 612-870-0565 x2.

Where can I get more updates about DACA?

You can check our website at www.ilcm.org for further DACA updates.