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## **Texas Federal Court Decision on DACA: Frequently Asked Questions**

*This fact sheet is current as of September 13, 2023.*

[On September 13, 2023, Judge Andrew Hanen, a federal district court judge in Texas, decided that the Deferred Action for Childhood Arrivals \(DACA\) program violates U.S. immigration law.](#) The court did not order the Biden administration to shut down the DACA program or stop processing renewal applications.

### **Hasn't Judge Hanen ruled that the DACA program was illegal before? Why was he deciding this issue again?**

Yes, Judge Hanen declared DACA illegal in July 2021. The reason he was deciding the issue again is a bit complicated.

Judge Hanen first decided that the DACA program was unlawful in July 2021. His decision was appealed to the Fifth Circuit Court of Appeals. The appellate court decided that Judge Hanen's decision was correct, but they noted a very important development that occurred between Judge Hanen's decision in July 2021 and the appellate court's decision in October 2022.

Specifically, in the summer of 2022, the Department of Homeland Security (DHS) for the first time issued formal regulations for the DACA program. These regulations took the place of the memorandum that established the DACA program in 2012. DHS argued that, by going through this process and formalizing the program, it had fixed any supposed legal problems identified by the district court judge. The appellate court stated that Judge Hanen should have the first chance to decide whether the regulations did, in fact, fix the supposed legal problems.

This is why Judge Hanen had to once again decide whether the DACA program was legal.

### **What did Judge Hanen decide on September 13, 2023?**

Judge Hanen decided that:

- (1) The states that challenged the DACA program had the right to do so;
- (2) The regulations did not fix the supposed legal problems with the DACA program; and
- (3) There was no way to uphold some parts of the DACA program and not others.

Judge Hanen also agreed that, while the case goes through the appeals process, DHS can continue to accept approve DACA renewal applications.

### **Is there a possibility that the court's decision could be overturned?**

Yes. Most likely, the Biden administration will appeal to the Fifth Circuit Court of Appeals. In a prior decision, this appellate court agreed with Judge Hanen decision that DACA is illegal, and there is a good chance they could agree with Judge Hanen's latest decision. Regardless of what the appellate court decides, the losing party will most likely appeal the case to the U.S. Supreme Court.

The U.S. Supreme Court would likely agree to hear the case because of its significance. Hopefully, the U.S. Supreme Court will keep DACA in place, just as it did in 2018. However, two of the justices who

voted in favor of DACA are no longer on the court, and one of them (Justice Ruth Bader Ginsburg) was replaced by a judge (Justice Amy Coney Barrett) who has voted very differently from the justice she replaced.

For the latest information in this case, please check [www.ilcm.org](http://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, U.S. Citizenship and Immigration Services (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 specifically decide whether Advance Parole is or is not available at this time, but Judge Hanen is very skeptical about certain reasons Advance Parole has been granted to DACA holders. 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 during our intake hours for assistance.

- Mondays 10 a.m. – 1 p.m.
- Tuesdays 1 – 4 p.m.
- Wednesdays 10 a.m. – 1 p.m.
- Thursdays 3 – 6 p.m.

**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](http://www.ilcm.org) for further DACA updates.