



The State of DACA after the Fifth Court of Appeals Ruling in
State of Texas v. United States and What it Means for our DACA Clients
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Since the implementation of Deferred Action for Childhood Arrivals (DACA) by the Obama administration in 2012, thousands of DACA recipients have worked in various fields of employment, attended universities, built homes and businesses in the United States. The Center for American Progress estimates that DACA recipients contribute to over 6.2 billion dollars annually in federal taxes alone.² There are at present an estimated 594,120 active DACA recipients in the United States of which 97,970 live in Texas, making Texas the second largest population of DACA recipients next to California.³ The unfortunate reality of the DACA program is that it offers no pathway to U.S. citizenship and its future is uncertain.

The Biden-Harris Administration issued a final regulation codifying the DACA program on August 30, 2022.⁴ The final rule is effective Monday, October 31, 2022, and codifies the existing DACA program and policies with limited changes. However, a district court in Texas issued an injunction in July 2021 that prohibits DHS from granting initial DACA requests.⁵ As a result, DHS is not adjudicating any initial DACA applications.

On October 5, 2022, a three-judge panel for the Fifth Circuit upheld the District Court’s decision that the DACA program is unlawful, but stayed its ruling and remanded the case back to the District Court in light of the Biden-Harris Administration’s publication of the regulation codifying DACA. This means that current DACA recipients are protected from deportation and can continue working and renewing their work permits. However, the stay does not apply to new DACA applications.⁶

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² <https://www.americanprogress.org/article/the-demographic-and-economic-impacts-of-daca-recipients-fall-2021-edition/>

³ U.S. Citizenship and Immigration Services, "Count of Active DACA Recipients, As of June 30, 2021" (Washington: 2021), available at

<https://www.uscis.gov/sites/default/files/document/data/Active%20DACA%20Recipients%20%E2%80%93%20June%2030%202021.pdf>.

⁴ <https://www.federalregister.gov/documents/2022/08/30/2022-18401/deferred-action-for-childhood-arrivals>

⁵ <https://www.uscis.gov/sites/default/files/document/legal-docs/Texas%20II%20Dkt.%20576%20Injunction.pdf>

⁶ <https://www.ca5.uscourts.gov/opinions/pub/21/21-40680-CV0.pdf>

The future of DACA is uncertain at this point. The Biden-Harris administration can seek an en banc review by the Fifth Circuit of the District Court's decision. However, it may first wait for the District Court to rule on the recently published final rule. If the District Court were to strike down the program despite the new regulatory action, the Biden-Harris administration will likely appeal that decision to the Fifth Circuit. Any future decision from the Fifth Circuit will likely be challenged, and the case is widely expected to end up at the U.S. Supreme Court.

The Court's decision continues the status quo, which means that DACA recipients who are currently protected against deportation and are allowed to work can continue to enjoy those protections. The District Court may still strike down the program. However, it may not mean an immediate end of DACA benefits for current recipients. In his original decision, Judge Hanen noted the reliance interests DACA recipients have on the policy's protection as a consideration in determining the "wind down" period of the policy, if the program is struck down.

As we wait for the outcome of this litigation, it will be important for our clients to keep their immigration benefits current, as DHS will continue to renew work permits. We should also re-visit with our clients to gather any information and documentation that may identify any other immigration benefits available to our clients. In addition, we can continue to advocate for the passage of legislation enacting the DACA program into law.