



Advising DACA Clients in the Wake of the *Texas v. U.S.* Decision

In a long-anticipated decision in *State of Texas, et al., v. The United State of America, et al.*, a federal judge in the Southern District of Texas [ruled](#) on July 16, 2021 that Deferred Action for Childhood Arrivals (DACA) is unlawful under its current terms and vacated the 2012 memorandum that created DACA. The court also issued a [permanent injunction](#) making immediate changes to the implementation of DACA. This resource summarizes the recent ruling and clarifies what the injunction means for current and past DACA recipients as well as those eligible for DACA who had not yet filed initial applications, or had a pending initial application, as of July 16, 2021.

What was the basis of the *Texas v. U.S.* decision?

State of Texas, et al., v. The United State of America, et al. was a lawsuit filed May 1, 2018 by Texas and nine other states challenging the legality of the original 2012 DACA program as created under the Obama Administration. The lawsuit raised several claims, including the allegation that the Department of Homeland Security (DHS) violated substantive and procedural aspects of the Administrative Procedures Act (APA) and the Take Care clause of the Constitution.

In its July 16 decision, the court granted summary judgment based on plaintiffs' APA claims and declined to rule on the constitutional claim. The court vacated the June 15, 2012 DACA memorandum issued by former Secretary of Homeland Security Napolitano; remanded the memorandum to DHS for further consideration; and issued a permanent injunction prohibiting the government's continued administration of DACA and the reimplementation of DACA without compliance with the APA. However, noting the reliance interest of DACA recipients, employers, and others, the court, however, temporarily stayed the portion of its order vacating the DACA memorandum with regard to individuals who had obtained DACA on or before July 16, 2021.

How does the ruling impact current DACA recipients?

Anyone with valid DACA on July 16, 2021 retains their grant of deferred action and related employment authorization document (EAD). These individuals may continue to renew their DACA and EAD as they approach expiration. U.S. Citizenship and Immigration Services (USCIS) recommends submitting renewal requests between 120 and 150 days prior to the current DACA expiration date.

What about those granted DACA in the past whose DACA had expired as of July 16, 2021?

Anyone who had been granted DACA prior to July 16, 2021 may continue to renew both their DACA and EAD. Former DACA recipients whose status expired one year ago or less may request DACA as renewal applicants and should follow the I-821D instructions for renewal requests. Those whose DACA grant expired more than one year ago, or was terminated at any time, must follow the instructions for initial applicants and include supporting evidence to show that they meet the eligibility criteria.

Is advance parole still available for current DACA recipients?

Current DACA recipients may continue to apply for and be granted advance parole if they can show a qualifying educational, employment or humanitarian reason, and may travel with a valid advance parole travel document. See: uscis.gov/news/news-releases/statement-from-uscis-acting-director-tracy-renaud-on-deferred-action-for-childhood-arrivals-daca

What does the decision mean for clients with pending initial applications on July 16, 2021?

DHS is permanently enjoined from granting DACA to new applicants as of July 16, 2021. USCIS may still accept first-time DACA applications but is prohibited from approving any initial applications and accompanying EAD requests, including those that were pending on July 16, 2021. See: uscis.gov/humanitarian/consideration-of-deferred-action-for-childhood-arrivals-daca. First-time DACA applicants who have been scheduled for biometrics appointments may receive notice from USCIS that their appointments have been cancelled.

What will happen next?

The Department of Justice [intends](#) to appeal the court's decision. It is likely to go to the Fifth Circuit Court of Appeals and then to the U.S. Supreme Court.

In the meantime, DHS has [announced](#) it will comply with the *Texas* injunction but the agency also reiterated its intent to engage in a rulemaking process to preserve and fortify DACA. While a final regulation on DACA could resolve some of the APA concerns with the DACA policy raised in the *Texas* decision, ultimately only Congress can create a pathway to citizenship for DACA recipients and Dreamers.