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DACA Update

The Deferred Action for Childhood Arrivals (DACA) program was first created in 2012 to provide limited protection from deportation and access to legal work authorization for certain undocumented immigrants who came to the United States as children, commonly known as “Dreamers”. Since then, the legality of DACA has been considered in several lawsuits. In one of these cases, *Texas v. United States*, DACA was ruled to be unlawful. However, under the court’s order, those already receiving protection under DACA when the ruling was issued have been able to continue receiving protection and work authorization, and U.S. Citizenship and Immigration Services (USCIS) has continued to process renewal requests for these individuals. The case remains pending, and further court action is anticipated in the near future.

What is the status of *Texas v. United States*?

Most recently, in January 2025, the U.S. Court of Appeals for the Fifth Circuit reviewed the earlier ruling of the U.S. District Court for the Southern District of Texas in *Texas v. United States*. While largely affirming the lower court’s ruling, the Fifth Circuit narrowed the ruling to apply only to Texas. It also separated the issues of protection from deportation and work authorization. The case was returned to the lower court for implementation of the Fifth Circuit’s order, and further guidance from the district court is expected soon.

What is the impact of the Fifth Circuit’s decision?

In theory, the Fifth Circuit’s January 2025 order allows:

- DACA’s protection from deportation to be available nationwide for current and initial (new) DACA recipients;
- The ability to request work authorization for current and initial (new) DACA recipients, with the possible exception of those residing in Texas; and
- Those who are eligible for DACA, but do not currently have DACA, could apply and be approved for the program.

Importantly, the Fifth Circuit’s decision does not explicitly require the federal government to process initial (new) DACA requests, and relief through DACA (as well as any accompanying work authorization) is expected to remain a matter of full discretion for the government.

How are Texas residents expected to be impacted differently?

Depending on how the Fifth Circuit’s order is implemented, it is expected that people who receive DACA and live in Texas would be treated differently than people living in other states. Texas DACA recipients would likely:

1. Receive “forbearance from removal”—in other words, the government would not pursue deportation against the person—**but they would not be considered lawfully present** (see below for further information on the importance of lawful presence); and
2. Not be eligible to request and receive a legal work permit (i.e., an Employment Authorization Document) as part of their DACA.

As a result of these distinctions, anyone who has DACA or is eligible to receive it would need to consider the implications of moving to or from Texas. For example, a DACA recipient who moved from Oklahoma to Texas would theoretically lose lawful presence and any work permit he or she received through DACA, though the person would generally still be protected from deportation. All DACA recipients, no matter where they live, would continue to be legally required to report a change of address to USCIS within 10 days of moving.

As of June 2025, there were about 90,000 DACA recipients living in Texas, second only to California with nearly 145,000 DACA recipients.

What does it mean to be “lawfully present”?

In U.S. immigration law, “lawful presence” refers to someone’s legal permission to be in the United States. Therefore, someone who is lawfully present in the United States has legal authorization to be in the country. An “undocumented immigrant” is generally considered someone who is unlawfully present, either because the person entered the country without authorization or remained beyond the point he or she was authorized.

Lawful presence is not the same as “forbearance from removal”, which means the government has chosen not to pursue deportation against someone (also known as “deferred action”). Up to this point, everyone who received DACA has been granted forbearance from removal and has also been considered lawfully present at the same time. However, that is now likely to change going forward for certain recipients of DACA due to *Texas v. United States*.

There are many different consequences of being lawfully present—or not—in the United States. It can impact someone’s ability to qualify for certain public programs, in-state tuition, a driver’s license, and more. It can also impact someone’s ability to qualify for different immigration statuses or other benefits in the future.

One of the most important factors related to lawful presence is the application of the three- and ten-year bars. Essentially, someone who accrues more than six months but less than one year of unlawful presence in the United States and leaves the country is generally banned from reentering for three years; someone who accrues more than one year is generally banned from reentering for ten years.

Who is eligible to apply for DACA today?

At this time, USCIS is accepting but not processing initial (new) requests for DACA. Only those who already have DACA or whose DACA expired less than one year ago can apply to renew their protection and accompanying work authorization.

Based on the criteria put in place when it was created, DACA is only available to those who came to the United States before the age of 16 who have resided continuously in the country since June 15, 2007, and were under the age of 31 on June 15, 2012.

Where can I learn more about the eligibility criteria for DACA?

The current eligibility criteria for DACA, including the documentation and fees required, can be found at uscis.gov/DACA.

What's next for *Texas v. United States*?

On September 29, 2025, the U.S. government outlined for the district court how it proposes the Fifth Circuit's order to be implemented. Next, the district court will issue an official implementation order. Briefing by the parties has been scheduled through November 24, 2025, so the district court's order is expected at some point after that.

If the Fifth Circuit's order is implemented in the way the U.S. government has proposed, DACA recipients living in Texas who have work authorization would be given 15 days' notice that their employment authorization is being revoked. Similarly, those with a work permit based on DACA who lived in other states and moved to Texas would be given that same 15 days' notice going forward. However, the district court may introduce a different timeline for any changes to take effect. Similarly, it's unclear when USCIS might begin processing initial (new) DACA applications again, though the agency currently has a backlog for applications that have been received but not processed since 2016.