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Legal Sidebar

Deferred Action for Childhood Arrivals (DACA): Litigation Status Update

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The Deferred Action for Childhood Arrivals (DACA) policy, established in 2012 by the Obama Administration, allows individuals without legal immigration status who meet certain requirements to be deemed by the Department of Homeland Security (DHS) not to be a priority for removal from the United States and to be deemed eligible to remain and work for renewable two-year periods.

Efforts by the Obama Administration to expand the program to a broader population, by the first Trump Administration to rescind the initiative, and by the Biden Administration to "fortify" DACA were all subject to legal challenge. The crux of the dispute regarding the legality of the DACA initiative is the scope of the executive branch's statutory and constitutional discretion to engage in a practice of non-enforcement of federal immigration laws with respect to some categories of individuals. In particular, the litigation centers on whether the initiative is consistent with the Immigration and Nationality Act (INA), the comprehensive statutory framework governing immigration policy; the Administrative Procedure Act (APA), which sets forth procedural requirements for rulemaking by most federal agencies; and the Take Care Clause of the U.S. Constitution, which designates the President with responsibility to make sure federal laws are faithfully executed. Additionally, without addressing the underlying legality of DACA, the Supreme Court has recognized that a rescission of the program must comport with APA requirements.

The former Biden Administration's attempt to "fortify" DACA has been litigated since 2021, with the introduction of a federal rule referred to in this Sidebar as the DACA Final Rule. Most recently, in January 2025, the U.S. Court of Appeals for the Fifth Circuit (Fifth Circuit) held that DACA and the DACA Final Rule are unlawful, but that the policy could continue so long as it was "severed" from the process of granting work authorization. Additionally, the Fifth Circuit limited the previously-granted nationwide injunction blocking implementation of the DACA program to Texas and continued a temporary stay of that injunction as it applies to *current* DACA recipients nationwide. This means that current DACA recipients, including those in Texas, can continue to have DACA for now and would-be DACA applicants in Texas would no longer qualify for work authorization. The case was remanded "for further proceedings as the district court may find appropriate." A modified order from the district court reflecting this update has not yet been issued. There is still some uncertainty as to what the narrowing of the injunction means for *prospective* DACA applicants. According to DHS's most recent guidance from January 2025, current DACA recipients can still apply for and renew their DACA status nationwide. This Legal Sidebar provides an overview of DACA, a summary of litigation regarding the policy's validity to

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date, and an update of where DACA currently stands. This Sidebar also identifies several considerations for Congress. For further background on the policy regarding DACA, see this CRS Report.

DACA Framework

In 2012, DHS Secretary Janet Napolitano issued a memorandum announcing the implementation of the DACA initiative. The memorandum stated that "certain young people who were brought to this country as children and know only this country as home" would be considered for deferred action if they met specified criteria. The memorandum maintained that it "confer[red] no substantive right, immigration status or pathway to citizenship" to any individual who met the criteria and that only Congress had the power to do so through legislative action. In support of DACA, the then-DHS Secretary explained that the executive branch has authority to "set forth policy for the exercise of discretion within the framework of the existing law."

To qualify for DACA, an individual must have:

- entered the United States before turning 16 years old;
- continuously resided in the United States since June 15, 2007;
- been under 31 years old as of June 15, 2012 (meaning his or her date of birth is on or after June 16, 1981);
- been physically present in the United States on June 15, 2012, and had no lawful status on that date;
- been currently enrolled in school, either graduated from high school or obtained a General Education Development certificate, or honorably discharged from the U.S. armed forces; and
- not been convicted of a felony, "significant misdemeanor," or more than three misdemeanors (of any kind) and not posed a threat to national security or public safety.

Federal regulations further set forth the requirements and procedures for obtaining DACA. Given the program's specific temporal requirements, which have not changed, the pool of individuals who satisfy the criteria for DACA relief will diminish over time. For example, some individuals who were eligible for DACA relief when the program began may have passed away, departed the United States, or committed a criminal offense rendering them ineligible for relief. At the same time, individuals who were not physically present in the United States on June 15, 2012, including those who entered the United States as children after that date, and lacked lawful status at that time, would not quality for DACA relief.

The memorandum also instructed Immigration and Customs Enforcement to "exercise prosecutorial discretion" for individuals who met the specified criteria by deferring action against these individuals for a period of two years, subject to renewal. The memorandum directed U.S. Citizenship and Immigration Services (USCIS) (an agency within DHS) to "accept applications to determine whether these individuals may qualify for work authorization during this period of deferred action." It has been reported that in 2024, there were over 500,000 DACA recipients. Because DACA was established through executive action and is not codified in statute, any subsequent administration could choose to rescind the policy, and this occurred in 2017.

DACA Litigation Summary

2012-2020: Challenges to Attempted Expansion and Rescission of DACA

In the years immediately following DACA's implementation, a small number of lawsuits were filed challenging DACA, but were dismissed on standing or other procedural grounds. In 2014, the Obama Administration announced an expansion of the DACA program and the creation of a new similar policy known as Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), which would have granted similar relief to certain parents of U.S. citizens or lawful permanent residents who had been in the United States since January 1, 2010. Twenty-six states filed suit in a federal district court in Texas, arguing that both the DAPA and the DACA expansion violated the Constitution (the Executive's duty under the Take Care Clause), the INA, and the APA's notice and comment requirements. The district court entered a nationwide preliminary injunction barring implementation of both the DAPA and the DACA expansion policies, finding that the plaintiff states were likely to succeed on the merits of at least one of their claims. In 2015, the Fifth Circuit affirmed the district court's order, holding that DAPA and the DACA expansion likely violated federal law because DHS did not comply with the APA's notice and comment requirements and because these policies conflicted with "the INA's intricate system of immigration classifications and employment eligibility." The Supreme Court affirmed the Fifth Circuit on June 23, 2016, by an equally divided vote in a per curiam decision. This case did not address the DACA program's legality.

In 2017, the first Trump Administration issued a memorandum that rescinded DACA and executed "a wind-down of the program." As justification, the Trump Administration determined that DACA was "an unconstitutional exercise of authority by the Executive Branch." This action caused DACA recipients and other parties to file lawsuits in various federal district courts asserting, among other things, that the rescission violated the APA. The lawsuits resulted in nationwide preliminary injunctions that were eventually consolidated before the Supreme Court. The lawsuits also resulted in rulings by district court judges finding that the decision to rescind DACA was arbitrary and capricious in violation of the APA and infringed the equal protection guarantee of the Fifth Amendment's Due Process Clause. Some courts, in their analysis that the rescission was arbitrary and capricious, more specifically held that DACA itself was a lawful exercise of executive discretion under federal immigration law and that the decision to rescind it was "based on the erroneous legal conclusion that DACA is [] unconstitutional." Separately, in 2018, Texas and other states filed a lawsuit challenging DACA's legality arguing, among other things, that it violates the Constitution's Take Care Clause, the APA, and federal immigration laws. In August 2018, the federal district court denied the states' motion for a preliminary injunction but found that the states would likely succeed on the merits of their claims.

In 2020, the Supreme Court, after granting the government's request to consolidate cases and granting certiorari before judgments by circuit courts in the cases that entered nationwide injunctions, rejected the plaintiffs' equal protection challenge but struck down the Trump Administration's decision to rescind DACA because it was arbitrary and capricious under the APA. In *Department of Homeland Security v. Regents of the University of California*, the Court held that the rescission was reviewable under the APA because it was more than a non-enforcement policy. The rescission was also "arbitrary and capricious," according to the Court, because DHS did not properly explain why it was rescinding DACA and did not properly consider the reliance DACA recipients have on the policy. Essentially, the Court held that the *way* the first Trump Administration rescinded DACA was unlawful, but did not rule on whether DACA *itself* was lawful. The Court also rejected the plaintiffs' equal protection argument, concluding that the plaintiffs had not plausibly alleged that the rescission was motivated by an "invidious discriminatory purpose," as required to state an equal protection claim. Justices Thomas, Alito, and Gorsuch dissented

and argued that DACA was illegal because DHS does not have authority to "grant relief from removal out of whole cloth" to a large category of individuals.

2021-2025: Challenges to Legality of DACA and the 2021 DACA Final Rule

In January 2021, the Biden Administration issued a presidential memorandum directing the DHS Secretary "to preserve and fortify DACA." In the interim, a federal district court in Texas (from the 2018 Texas-led lawsuit discussed earlier), deciding cross-parties' motions for summary judgment, vacated DACA in July 2021. It held that the states had standing to bring the case; that DHS established DACA without using the formal rulemaking process in violation of the APA's procedural provisions; and that DACA exceeded DHS's statutory authority and violated immigration law, in violation of the APA's substantive provisions which state that courts can "hold unlawful and set aside agency action, findings, and conclusions found to be in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." The court issued a nationwide injunction preventing DHS from approving any new DACA applications. Consequently, DHS halted the processing of initial or new DACA applications. The district court also issued a temporary stay of the injunction permitting current DACA recipients at the time of the ruling to renew every two years while the case was pending. The ruling was appealed to the Fifth Circuit.

In September 2021, DHS published a notice of proposed rulemaking to "preserve and fortify DHS's DACA policy." The rule (DACA Final Rule), which mirrored the 2012 memorandum except that it also included a severability provision, was set to go into effect on October 31, 2022. Meanwhile, on October 5, 2022, the Fifth Circuit agreed with the federal district court's July 2021 decision that DACA was unlawful because its establishment violated the APA's procedural and substantive requirements. The Fifth Circuit declined to consider the new DACA Final Rule and remanded the case back to the district court to consider its legality. On September 13, 2023, the district court ruled that the DACA Final Rule was unlawful because it "suffer[ed] from the same legal impediments" as the 2012 DACA memorandum and "there [were] no material differences between the two programs." The district court, "[i]nstead of repeating the entirety of its analysis" focused on two issues with the DACA Final Rule. First, the district court held that the expansion of the application of advance parole for DACA recipients was unlawful (e.g., allowing educational and employment opportunities as bases to grant advance parole despite Congress allowing advance parole for only very limited circumstances). Second, the district court held that DHS's intention to not terminate DACA until Congress acts seized "the power of the Legislature" and that only Congress has authority to permanently implement DACA.

Several parties appealed the federal district court's 2023 ruling and, on January 17, 2025, the Fifth Circuit mostly affirmed the district court with a few exceptions. The Fifth Circuit spent a majority of the opinion affirming the district court's finding that Texas had standing to bring the case. The Fifth Circuit explained that it had already held that Texas had standing in its October 5, 2022, decision and that standing "is controlled by [the] rule of orderliness, absent an intervening and unequivocal change in standing doctrine." According to the rule of orderliness, the Fifth Circuit is "bound to follow [a prior] holding absent an intervening change in the law." The federal government had argued that the rule of orderliness did not apply here because *United States v. Texas*, a 2023 Supreme Court case that held Texas and Louisiana did not have standing to challenge DHS's prosecutorial enforcement guidelines, overruled a prior Fifth Circuit decision finding standing. The Fifth Circuit disagreed, explaining that a Supreme Court ruling would change existing Fifth Circuit precedent only if it unequivocally overruled prior precedent. The court held that in this case, the Supreme Court's decision in *Texas* had not unequivocally overruled precedent and the state could still show injury that was sufficiently traceable to DACA to establish standing.

Turning to the merits of the case, the Fifth Circuit held that the DACA Final Rule was almost identical to the 2012 DACA memorandum and was therefore unlawful as violating the INA. Nevertheless, the Fifth Circuit held that the deferred action portions of the DACA Final Rule could be severed from the work authorization provisions because, under the severability analysis (i.e., a rule's severability depends on the agency's intention and whether the rest of the rule could still function without the stricken provision), DHS had shown that it "intended the [work authorization benefits and deferred action] aspects of DACA to be severable and to function independently from one another." Further, the Fifth Circuit held that a nationwide injunction was too broad and should be limited to Texas. The Fifth Circuit allowed the stay to continue as to existing DACA recipients. The case was remanded "for further proceedings as the district court may find appropriate." On March 11, 2025, the Fifth Circuit issued a mandate, formally implementing the January ruling and making that ruling final.

Current Status of DACA

The Fifth Circuit limited its March 11, 2025, mandate to Texas and held that the DACA Final Rule could be severed, meaning that the deferred action portions could be separated from the work authorization portions. In practice, this means that someone with DACA in Texas would still be protected from removal but would no longer qualify to receive work authorization. The Fifth Circuit also allowed the stay on the judgment to continue for current DACA recipients because of "the immense reliance interests that DACA has created." This means that DACA recipients, including those in Texas, can continue to have DACA and work authorization for now and renew it every two years. The next step is for the district court to modify its order so that would-be DACA applicants in Texas can continue to get DACA but without work authorization. On July 22, 2025, the district court issued an order asking the parties to submit briefs on a variety of issues—including the effect (if any) the *Trump v. CASA, Inc.* case may have on this matter or any constitutional concerns regarding differential treatment of Texas versus non-Texas DACA recipients—by August 29, 2025. On August 15, 2025, the district court granted a motion to extend the filing deadlines. As of publication, the matter remains pending.

Considerations for Congress

In summary, following the courts' rulings in Texas, nothing changes for current DACA recipients for now, including those in Texas, and USCIS will continue to process and renew DACA applications and grant work authorization. According to an organization that is representing some of the parties in the litigation, USCIS should also "begin to accept and process initial DACA applications from residents of all 50 states ... and should grant DACA with work authorization in 49 states, and without work authorization in Texas." On June 11, 2025, a group of U.S. Senators sent USCIS a letter urging the agency "to resume processing initial applications for" DACA because, according to their understanding, the March 11, 2025, mandate gave "USCIS the authority to start processing initial DACA applications from states other than Texas."

As of the date of this Sidebar, USCIS has not issued any updated guidance since the Fifth Circuit's January 17, 2025, ruling. According to the USCIS website, which was last reviewed or updated on May 30, 2025,

> USCIS will continue to accept and process DACA renewal requests and accompanying applications for employment authorization under the DACA regulations.... **USCIS will continue to accept initial requests but will not process initial DACA requests at this time.** Current grants of DACA and related Employment Authorization Documents remain valid until they expire, unless individually terminated. [Emphasis added.]

In July 2025, a DHS official was quoted saying that DACA recipients "are not automatically protected from deportations" and encouraged them to self-deport. On June 25, 2025, the Department of Health and Human Services finalized a rule that makes DACA recipients no longer eligible for the Affordable Care Act Marketplace. On July 23, 2025, the Department of Education issued a statement that it was opening up national origin investigations against five universities to determine, among other things, if they "are granting scholarships only for [DACA] or 'undocumented' students, in violation of Title VI of the Civil Rights Act of 1964."

Congress has plenary power over immigration and has authority to enact legislation related to the DACA policy, including by either statutorily creating or dismantling the DACA program. Some Members of Congress have introduced legislation that codifies DACA, like the BRIDGE Act (H.R. 496), which was introduced in the 115th Congress. Alternatively, legislation like the Dream Act of 2023 (S. 365), the American Dream and Promise Act of 2025 (H.R. 1589), and the DIGNITY Act of 2025 (H.R. 4393), which would grant DACA recipients permanent statutory relief like a pathway to lawful permanent resident status, have been introduced in various Congresses. At the same time, Congress has proposed to defund the DACA program, such as with H. Amendment 136 to H.R. 2217 in 2013, which was passed, but the Senate ultimately never acted on the bill. Legislation that indirectly affects DACA recipients has also been introduced in the 119th Congress, like the America First Act (H.R. 746/S. 62), which would limit healthcare coverage for individuals with DACA, or the Protect DREAMer Confidentiality Act (S. 2350), which would prohibit DHS from disclosing information included in a DACA application for purposes other than implementation of the DACA program.

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