

Latest DACA development: On August 30, 2022, the Biden administration [published the final rule](#) for the deferred action for childhood arrivals (DACA) program. This final rule replaces the 2012 DACA policy memo and sets forth a regulation governing who may benefit from DACA and how they may apply.

This advisory is not intended as legal advice but rather to provide information on the status of the DACA program. Individuals should seek a legal consultation from a qualified immigration attorney or DOJ accredited representative for a full assessment of their individual case. Please check our [website](#) or NIJC's social media channels for future updates about DACA.

This advisory provides answers to questions about:

- The impact of Biden's rule on the DACA program
- The impact of the ongoing *Texas v. U.S.* litigation
- The DACA and employment authorization renewal process

The impact of Biden's rule on the DACA program

1. Does the final rule change the DACA program?

No. The final rule keeps the same DACA eligibility requirements that have been in place since the beginning of the program in 2012. The final rule does not change the date and age by which one must have arrived in the U.S. to qualify for DACA or the evidentiary requirements necessary to prove eligibility.

2. When does the final rule go into effect?

This rule will go into effect on Monday, October 31, 2022. Once the rule is in effect, it will replace the 2012 Janet Napolitano memorandum that created the DACA program.

The impact of the ongoing *Texas v. U.S.* litigation

3. How does the final rule relate to the July 16, 2021 decision from the federal court in Texas that found the DACA program was unlawful?

While the final rule will go into effect on October 31, 2022, the government is still prohibited from granting initial DACA requests due to an injunction issued in the *Texas v. U.S.* lawsuit.

In the lawsuit *Texas v. U.S.*, Judge Hanen found the DACA program to be unlawful. His judgment vacates (or cancels) the DACA program. However, the judge also issued a [preliminary injunction](#) which stays (or delays) the judgment for DACA renewals. This means that even though the judge found DACA to be unlawful in its entirety, people who already had DACA prior to the ruling can continue renewing DACA for the time being.

The Biden administration appealed Judge Hanen's decision to the 5th Circuit Court of Appeals, which heard oral arguments on the case on July 6, 2022. We are waiting for a decision from the appellate court. Until a decision is issued, the following remains true:

- a. USCIS can accept but cannot process new, initial DACA applications. This means that USCIS will not reject initial DACA applications, but USCIS cannot issue a decision on them.
- b. USCIS can accept and process DACA renewal applications for the time being. This is true as long as Judge Hanen's stay remains in place.

4. I am eligible for initial DACA, but never applied; what can I do right now?

You may want to use this time to gather all of the evidence necessary to support an initial DACA application in the event that a filing window opens for this benefit.

If you have never had a legal consultation, we recommend that you speak to a licensed attorney or DOJ accredited representative to learn more about all of your possible options under our current immigration laws and policies. To schedule a consultation with our office, please call (312) 660- 1370.

5. I have a pending application for initial DACA benefits with USCIS. How does the final rule affect my pending application?

Even with the final rule, USCIS cannot process your initial DACA application because of the ongoing litigation in *Texas v. U.S.*

This pause will continue until either the litigation resolves (either in favor or against processing new DACA applications) or Congress passes legislation to protect DACA. Unfortunately, there is nothing to do on your case at this time.

If you have a pending initial DACA application at NIJC and you have further questions, please contact the phone number for the team handling your case. If NIJC is not representing you, please follow our [social media channels](#) or [website](#) for updated information regarding the status of the DACA program.

6. I have a pending application to renew my DACA benefits with USCIS. How does the final rule affect my pending application?

USCIS will continue to adjudicate all properly filed DACA renewal requests. This is true so long as Judge Hanen's stay remains in place.

If your request has been pending for more than 105 days, you or your legal representative can submit a status inquiry via phone by calling 1-800-375-5283.

If that does not solve your case, you or your legal representative may wish to consider seeking congressional assistance. In Illinois, Senators [Duckworth](#) and [Durbin](#) each have the request process located on their congressional website.

7. My DACA has expired or is close to expiring; can I still apply to renew my DACA?

Yes. USCIS will continue to adjudicate all properly filed DACA renewal requests. This is true so long as Judge Hanen's stay remains in place.

If you currently have DACA or your DACA has been expired for less than one year, you can submit a DACA renewal application. If you are interested in attending one of NIJC's upcoming, free DACA renewal clinics, you can register [here](#). We are updating the calendar frequently with new clinic offerings.

If your DACA expired more than one year ago or it was previously terminated, you must submit an initial DACA application. However, because of Judge Hanen's ruling, USCIS will not be able to process your case due to the indefinite pause on all initial DACA applications. This is a change in USCIS's prior policy. If you are in this position, please schedule a DACA consultation with NIJC by calling 312-660-1370.

The DACA and employment authorization renewal process

8. How much will it cost to apply for DACA benefits under the final rule?

The cost to file your DACA application will remain the same: \$495.00.

9. My DACA is expired; will USCIS refer my case to ICE for enforcement purposes (like detention or deportation proceedings)?

Under the final rule, the Biden administration restricted the use of information gathered through DACA applications to initiate enforcement action against the DACA recipient or their family members. This is consistent with the 2012 Napolitano memo (which the final rule will replace upon its implementation) and the instructions in USCIS's Form I-821D. Absent a criminal offense, fraud, a threat to national security, or public safety concerns, the information shared in a DACA application is shielded from enforcement action.

If your DACA is expired, we recommend that, if eligible, you apply to renew as soon as possible. If you are interested in attending one of our upcoming, free DACA renewal clinics, you can register [here](#). We are updating the calendar frequently with new clinic offerings.

10. My work permit was lost, stolen or destroyed. Can I request a replacement?

If you are currently in a valid period of DACA, you may apply to replace a lost, stolen, or destroyed EAD/work permit by filing a new Form I-765 and paying the \$495.00 filing fee. If your DACA benefits have expired and you are within the timeframe to renew, you may seek to renew your DACA protection and, within that process, seek a new work permit.

11. Will DACA recipients still be able to apply for special permission to travel ("advance parole") under the final rule?

Yes. The final rule continues to allow eligible DACA recipients to apply for advance parole. You may qualify for advance parole if you currently have DACA and you can prove that your travel abroad is for employment, educational, or humanitarian purposes.

Traveling on advance parole may come with some risks. U.S. Customs and Border Protection retains the authority to refuse entry to an individual – even one that has an approved advance parole document. Individuals who are interested in advance parole should speak to a qualified legal representative to assess their individual case and fully understand the potential risks associated with travel.

If you would like to explore advance parole, we strongly recommend that you schedule a consultation with a licensed attorney or DOJ recognized organization to see if advance parole is a safe option for you to pursue. To schedule a legal consultation with NIJC, please can call 312.660.1370.

12. I have or had DACA but I also have another application for an immigration benefit pending with USCIS. How does the final rule affect my pending application for other immigration benefits?

USCIS will continue to process your pending application for other immigration benefits. If you have a legal representative, speak to them about whether you are eligible for a work permit based on your pending application or whether you should renew your DACA benefits and seek a work permit via those means.

There may be other reasons to maintain DACA benefits, even as you seek other immigration status. For example, it is possible future laws will recognize people with DACA as eligible for permanent status, or the other immigration status you seek may not be certain, in which case retaining DACA may be advantageous. To discuss this further, we recommend that you schedule a consultation with a licensed attorney or DOJ recognized organization. To schedule a legal consultation with NIJC, individuals can call 312.660.1370.

13. Even though I have DACA, I am afraid I might one day be forced to return to my home country, where I fear harm. What can I do?

U.S. immigration laws offer certain protection-based immigration benefits. For example, if you are afraid to return to your home country because you believe you will be harmed (“persecuted”) based on your race, religion, nationality, membership in a particular social group or political opinion, then you may be eligible for asylum or another protection-based immigration benefit. This is a complex area of the law and requires an in-depth analysis of your specific fear of return. If you are afraid to return to your home country, we recommend that you schedule a consultation with a licensed attorney or DOJ recognized organization.

14. Does the Social Security Number (SSN) I received belong to me forever?

The SSN that you received after to your initial DACA grant will belong to you for life. You can continue using your SSN for various matters (banking, housing, education, etc.). In order to accept employment, you may need to present a valid EAD/work permit in order to use your SSN for employment.

15. My work permit expires soon; do I have to tell my employer?

If your DACA is close to expiring, we recommend that, if eligible, you apply to renew as soon as possible. If you are interested in attending one of our upcoming, free DACA renewal clinics, you can register [here](#). We are updating the calendar frequently with new clinic offerings.

You are not legally obligated to notify your employer that your work permit is expiring. Your employer is obligated to make sure they are employing individuals who are authorized to work. If your employer asks you for a new work permit, you have until your current work permit expires to produce a new one. If you do not produce a new work permit when your current work permit expires, your employer can terminate your employment. However, the employer has to give you the opportunity to present a new work permit and cannot take negative action against you (i.e. terminate your employment) until your current work permit expires.

16. What can I do now?

We encourage you to consult with a legal service provider about the possibility of filing an application for initial or renewal DACA benefits. We also encourage you and your family members to seek a legal consultation to explore other potential forms of immigration relief. NIJC has found that 14.3% of individuals screened for DACA eligibility were potentially eligible for more permanent forms of immigration relief. To schedule a legal consultation with NIJC, individuals can call 312.660.1370.