



# DACA UPDATE – SEPT 14, 2023

The future of DACA is still being litigated in federal courts. Texas and other conservative states are suing the government and arguing that DACA is unlawful and should end; several parties, including the federal government and MALDEF, are defending DACA and arguing it is lawful and should continue.

## What is the latest?

On September 13, 2023, Judge Hanen in Texas found the new DACA regulation (published in 2022) unlawful for the same reasons that he had previously held the original version of DACA unlawful. But he again paused his own decision to allow current DACA recipients to continue to renew while his decision is appealed to higher courts. This result is disappointing but expected. Now we expect another appeal to the Fifth Circuit to follow.

## Can people with DACA continue to renew? What about advance parole?

Yes. Even after Judge Hanen's latest decision, **DACA renewals and access to advance parole will continue**. In addition, DACA holders remain eligible for any benefits they currently qualify for under state or federal law. ***It is important that you do not let your DACA status lapse for more than one year as you will not be able to renew if it does.*** Also, you should consult with a trusted legal representative before traveling with advance parole.

## How much longer can people with DACA keep renewing?

This is hard to predict. The threat to DACA has not gone away. Based on prior decisions, it is likely that the Fifth Circuit will find the current version of DACA unlawful, just as they found the 2012 version unlawful. Based on past experience, that may take up to a year. After that, an appeal to the Supreme Court is likely to follow. Either of these courts could decide to halt DACA renewals. We hope that will not happen until the summer of 2024 at the earliest.

## How does this impact people who do not have DACA currently but are eligible?

### A. If you already applied in 2020-2021 and never got a decision–

When DACA was reopened to first-time applicants from December 2020 to July 2021, over 80,000 people applied. The checks mailed with those applications were cashed, but the applications have been stuck in limbo. This decision does not change the status of these applications – they continue to be stuck in limbo until there is a further court decision.

### B. If you are eligible but did not apply in 2020-2021–

While it is still possible to submit a new first-time DACA application, it will not be adjudicated. If submitted, the application will be accepted; a receipt notice issued; and the payment for \$495 cashed, but no action will be taken on the application–i.e. it will not be granted or denied. People eligible to apply should speak with a trusted legal representative before they apply.

Visit <https://maketheroadny.org/> or [NYDACA.org](https://NYDACA.org) for more information!

### **How does this impact young people who don't meet the requirements for DACA?**

Unfortunately, many young people today do not qualify for DACA because applicants must show physical presence in the United States since June 15, 2007. This is unlikely to change until Congress takes action. Nothing in the new decision or the regulation makes it possible for these young people to qualify for DACA. Many others were unable to apply because of the court decisions halting first-time applications. That leaves many of our members and clients without access.

### **Could any of this change?**

Yes. For now, although courts have ruled DACA is illegal, they have also allowed those with DACA to retain their DACA and continue renewing. That is a testament to the power of the DACAmented youth and their allies who have organized and shared their stories. But in the long term, the appellate court or the Supreme Court could decide to halt renewals for people with DACA. That is why we need Congress to act now!