



PRESIDENTS' ALLIANCE | ON HIGHER EDUCATION AND IMMIGRATION

DACA in the Courts

Updated July 19, 2021

What is DACA?

[Deferred Action for Childhood Arrivals](#) (DACA) was announced by former President Barack Obama on June 15, 2012 and implemented by then Secretary of Homeland Security Janet Napolitano. The policy enabled people who came to the United States before the age of 16 to apply for “deferred action,” a form of prosecutorial discretion, and a work permit. The program has protected nearly 800,000 people in the United States. On September 5, 2017, then Attorney General Sessions announced that DACA would be rescinded. Following that announcement, several litigants challenged the rescission in the courts and the cases were consolidated for Supreme Court review. Separately, the state of Texas and other states filed a lawsuit in a federal district court of Texas challenging the legality of DACA.

What did the Supreme Court decide?

On June 18, 2020, the [Supreme Court of the United States](#) held 5-4 that the decision by the U.S. Department of Homeland Security (DHS) to terminate DACA was reviewable in federal court and also “arbitrary and capricious” under the Administrative Procedure Act (APA). On the merits, the Court reasoned that the “agency must defend its actions based on the reasons it gave when it acted” and further that DHS failed to consider “reliance” interests such as a broader renewal period for DACA recipients or a more accommodating termination date. The Court said that while DHS was not required to consider all of the policy alternatives, “it *was* required to assess whether there were reliance interests, determine whether they were significant, and weigh any such interests against competing policy concerns.” The Court remanded all three (consolidated) cases for further proceedings. The Court rejected the claim that the rescission of DACA was motivated by animus in violation of the Equal Protection Clause of the U.S. Constitution.

The decision was authored by Chief Justice Roberts, joined by Justice Ginsburg, Justice Breyer, and Justice Kagan. Justice Sotomayor concurred in the judgement in part, dissenting in part, and finding that the Court “prematurely” rejected the equal protection claim “by overlooking the strength of their complaints.” Justice Thomas, joined by Justice Alito, and Justice Gorsuch, dissented. Justice Kavanaugh issued a separate dissent.

The goal of this document is to provide general information and is not meant to act as a substitute to legal advice from an attorney.

What did the federal district court in Texas decide?

On July 16, 2021, a federal judge in Texas [ruled](#) that DACA is unlawful because it violates the APA. Specifically, the court held that DHS was required to go through notice and comment rulemaking under the APA. The court also identified substantive flaws with DACA under the APA, concluding that DACA falls outside the statutory framework and congressional intent. The court ordered that DHS can continue to process renewals from DACA recipients but may not approve new DACA applications. The decision was authored by Judge Andrew S. Hanen.

What should I do now?

For DACA recipients as of July 16, 2021:

- If you have DACA right now, you can keep it.
- If you have a renewal in place, you can keep renewing until further notice.
- If you have a [granted](#) initial DACA application, it is still good.
- If you have a pending initial application (anything short of fully granted), there is an indefinite freeze on that application.

Where can I find more resources:

[Center for Immigrants' Rights Clinic](#) (Penn State Law): A nationally recognized in-house clinic focused on immigration. The clinic provides a number of resources for the undocumented immigrant community, including DACA recipients.

[Higher Education Toolkit: Supporting a Pathway to Citizenship for Undocumented Students in 2021](#) (Presidents' Alliance and FWD.us): A toolkit for higher education institutions to help support undocumented students. The toolkit includes resources for how institutions and higher education leaders can effectively advocate for a permanent solution and an overview of legislation considered in Congress to protect DACA recipients and other undocumented students.

[Informed Immigrant](#): This resource includes guides and other materials for undocumented students, including DACA recipients, to stay informed on the latest updates related to immigration, including a [new guide](#) on the DACA court decision.

[MALDEF Statement on Texas Federal Court DACA Ruling](#) (MALDEF): This resource includes MALDEF's statement in response to and a number of resources related to the court case, *Texas v. United States*.

[Tools and Resources](#) (United We Dream): This page includes United We Dream's guides, toolkits, research, and publications aimed at helping the undocumented immigrant community stay up-to-date and create meaningful change in their communities.

Additional Resources:

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[Statement By Secretary Mayorkas on DACA Ruling](#) (DHS)

[Statement by President Joe Biden on DACA and Legislation for Dreamers](#) (White House)

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