



EXPLAINER

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The Fate of DACA: A Review of Texas v. United States

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Author:

*Ricardo Pacheco, Senior Legislative Affairs Associate
(ricardo@progressivecaucuscenter.org)*

Background

In [June of 2012](#), then-President Barack Obama announced the Deferred Action for Childhood Arrivals (DACA) program. Under the program, young migrants who came to the U.S. under the age of 16 and met certain criteria were provided with temporary relief from deportation and given work authorizations. However, the program did not provide legal status to these young people nor a pathway to adjust their status. Instead, recipients must reapply every two years and pay \$495 to maintain their DACA protections, a burdensome process.

Since DACA's inception, more than [830,000](#) young adults have been granted DACA status and given the opportunity to legally work, attend school, and start families without the constant threat of deportation. DACA recipients—often referred to as “dreamers”—accordingly saw considerable improvements to their economic well being and overall quality of life. A [2019 survey](#) of DACA recipients found that the program had allowed many dreamers to move to better-paying jobs, earn their degrees, and more. Ninety-three percent of survey respondents said that, because of DACA, they were able to pursue educational opportunities that were previously not afforded to them. Furthermore, more than [300,000 U.S.-born children](#) have one or more parents with DACA status. More than three-quarters of DACA recipients [work in essential jobs](#), including 45,000 health care workers and 20,000 educators. In addition, DACA recipients pay more than [\\$9.4 billion](#) in local, state and federal taxes each year. Currently, there are more than [590,000](#) active DACA recipients.

DACA recipients receive broad support from people across the country. In fact, a [2020 poll](#) found that 74% of Americans favor a law that would provide permanent legal status to immigrants who came to the U.S. as children. A [different poll](#) conducted the same year also found that 65% of Americans believe that eliminating DACA would be bad for the country as it would result in the loss of jobs and the possible deportation of hundreds of thousands of people.

Despite the wide support DACA receives and the positive impact it has had on young people and our communities, the program has been the target of many politically motivated attacks. Most recently, the Republican attorney general for the State of Texas filed suit challenging the Obama Administration's authority to use

prosecutorial discretion to implement the DACA program in 2012. In July of 2021, a federal judge for the Southern District of Texas found that the Obama Administration did not have the authority to implement DACA in 2012 and blocked the government from approving new requests from young people seeking DACA status. The ruling was appealed to the U.S. Court of Appeals for the Fifth Circuit, which affirmed the lower court's ruling on October 5, 2022.

This explainer examines the timeline of the 2018 legal challenge brought by Texas and other Republican attorneys general, which resulted in the aforementioned October 2022 decision. This case—and the fate of DACA—could be decided by the U.S. Supreme Court this term, with the lives and livelihoods of DACA recipients and their families in the balance.

The Origins of *Texas v. United States*

In May of 2018, the Attorney General of Texas, along with the Republican attorneys general of eight other states, filed suit in the United States District Court for the Southern District of Texas, seeking an end to the DACA program. The Texas lawsuit came after the Trump Administration's [failed attempt to rescind the program](#) in 2017. In their suit, Texas and the other states argued that the Obama Administration's original creation of the DACA program violated federal law, did not follow the proper rulemaking procedures, and imposed costs on the states.

At the same time that *Texas v. United States* was being litigated at the district court level, cases challenging the Trump Administration's attempt to end the DACA program made their way to the U.S. Supreme Court. In November 2019, the federal judge overseeing *Texas v. United States* granted a motion to stay the case until the Supreme Court issued a ruling on the other DACA cases. These cases were merged into a single case: *Department of Homeland Security v. Regents of the University of California*. In June 2020, the Supreme Court ruled in a [5-4 decision](#) that the Trump Administration's attempt to rescind DACA in 2017 was "arbitrary and capricious," violated the Administrative Procedure Act (APA), and failed to address how the move would impact DACA recipients or their "legitimate reliance" on the program. **The Supreme Court, however, did not address the legality of the underlying program and made clear that the executive branch retains the authority to end DACA, as long as the rescission is well-reasoned and proper procedures are followed.**

After the Supreme Court's decision in *Department of Homeland Security v. Regents of the University of California* allowed DACA to remain in place, the *Texas v. United States* lawsuit resumed. In December of 2020, the federal judge overseeing the case heard arguments regarding competing motions for summary judgments that would end the case before heading to trial. The Republican states, led by Texas, argued that DACA violated the APA and that then-President Obama exceeded his authority in creating the program. The attorneys defending the program argued that DACA was legal and that the states had not shown injury resulting from DACA's implementation.

In July of 2021, the judge sided with Texas and [ruled](#) that the 2012 memo creating DACA exceeded the executive branch’s authority and violated the APA, rendering the program unlawful. However, the judge did *not* strike the program down entirely: the judge allowed individuals with DACA to continue to renew their status, while barring the Department of Homeland Security from approving new applications for DACA status. In September of 2021, the Biden Administration appealed the judge’s ruling to the U.S. Court of Appeals for the Fifth Circuit.

The Current Status of *Texas v. United States*

On July 6, 2022, the State of Texas and the U.S. Department of Justice (DOJ) presented oral arguments before the U.S. Court of Appeals for the Fifth Circuit. Texas contended that DACA harms states financially and that the proper administrative and legal procedures, such as a public notice and comment period, were not followed when the program was first implemented in 2012. The Biden Administration maintained that DACA is a straightforward application of the federal government’s power to prioritize immigration enforcement. The Administration also argued that the states did not have standing to challenge the program because of the spurious nature of their “evidence” of financial harm, their disregard of DACA recipients’ financial contributions to the state, and the fact that the states speculated as to how the end of DACA would influence recipients’ decisions.

On August 24, 2022, the Biden Administration issued a [final rule](#) codifying the DACA program. The final rule maintains the existing DACA eligibility guidelines and policies outlined in the 2012 memo that created the program, even though the rule technically replaces the memo. The final rule, however, applies only to DACA renewal requests and not to new DACA applications. **Importantly, the final rule is intended to make DACA harder to challenge in court because the Biden Administration issued it following the proper rulemaking procedures under the APA and the policy is now included in the Code of Federal Regulations.** The final rule will go into effect on October 31, 2022.

On September 1, 2022, the Justice Department filed a new brief with the U.S. Court of Appeals for the Fifth Circuit in response to the final rule. In their brief, DOJ argued that because the federal government followed the proper rule-making procedures when creating the new final rule—which supplants the 2012 memo—the Court should toss out Texas’ argument that the Administration failed to follow the APA when creating DACA. DOJ also argued that the Court should address the validity of the final rule at the same time that it reviews the district court’s injunction, since the final rule replaces the 2012 memo. Texas, however, maintained that the final rule is as unlawful as the 2012 memo and that it results in the same financial harm and burden on the states. They also pointed out that the final rule takes effect on October 31, 2022 and the Court should thus decide the case based on the 2012 memo, not the final rule that has yet to take effect.

On October 5, 2022, the U.S. Court of Appeals for the Fifth Circuit [sided with Texas](#) and partially affirmed the district court’s ruling finding DACA unlawful. The Court did, however, continue to allow current recipients to renew their status. The Appeals

Court also remanded the case back to the district court to fully consider the Biden Administration's final rule.

The Appeals Court had to consider a few essential questions to make their ruling. The first was whether DACA had in fact harmed Texas (and the other states party to the lawsuit) and, accordingly, whether they had standing to file suit. The second was whether DACA is a legitimate exercise of the federal government's power to prioritize immigration enforcement. Lastly, the Appeals Court had to consider whether the APA was properly followed when creating DACA.

In their ruling, the Appeals Court agreed that Texas had demonstrated injury by having to spend millions of dollars providing services, such as emergency Medicaid, to undocumented immigrants, including DACA recipients. As such, they affirmed Texas' standing to file suit. They also rejected DOJ's argument that DACA is a straightforward application of prosecutorial discretion in immigration enforcement and found no "clear congressional authorization" for creating a program like DACA. Finally, the Court agreed with Texas that in creating the program, the Obama Administration violated procedural APA requirements, including a notice and comment period.

The Biden Administration is expected to appeal the decision to the U.S. Supreme Court. If the Supreme Court decides to take up *Texas v. United States*, a ruling could come before the end of the Supreme Court's term next summer.

Conclusion

Hundreds of thousands of families depend on DACA and the final outcome of *Texas v. United States*. **Without DACA, hundreds of thousands young adults could lose their work authorization and employment and would face the possibility of deportation from the only country many of them have ever called home.** While DACA survived a major legal battle in *Department of Homeland Security v. Regents of the University of California* in 2020, the program's fate is again in jeopardy due to *Texas v. United States*.

DACA remains a temporary fix to a larger issue that Congress has refused to address. For over ten years, lawmakers have used the lives of DACA recipients as bargaining chips, but have failed to meaningfully reform the immigration system responsible for the legal limbo recipients find themselves in. While the House of Representatives has passed [H.R. 6, the American Dream and Promise Act](#), which would provide a pathway to citizenship for many immigrants—including DACA recipients—the Senate has yet to act. Even if DACA's legality is affirmed by the Supreme Court, any future administration can roll back the program as long as the rescission is well-reasoned and proper procedures are followed. **Congress is the only branch of government that can provide stability and ensure that young immigrants who were brought to the U.S. as children can continue to live in this country without fear and continue to contribute to their communities.**

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