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### **March 2025: DACA Decision Update**

This document provides an update about the Fifth Circuit Court of Appeal's decision on DACA, which became effective on March 11, 2025. Below is information about what this means for DACA recipients who are eligible and would like to renew, and what this could mean for people who have a first-time ("initial") DACA application pending with USCIS or would like to apply for the first time.

#### **What does it mean for the Fifth Circuit's decision to "become effective?"**

Although the Fifth Circuit Court of Appeals issued a decision about DACA on January 17, 2025, which allowed the original DACA rule to go into effect nationwide with some limits for DACA recipients in Texas, the decision was not effective (given full force) on that date. This is due to procedural requirements that apply to decisions made by Federal Courts of Appeal. In these cases, the decision will often not become effective (given full force) when the decision is made by the court of appeal, instead, the finality of decision often comes weeks later when the court of appeals issues a "mandate."

A mandate is an official order from the appellate court to the lower court, formally notifying them of the appellate court's decision. The mandate ensures that the lower court can implement the appellate court's decision and that the appellate court no longer has control over the case. Yesterday, the Fifth Circuit issued the mandate on its January DACA decision. This means that the decision made by the Fifth Circuit Court of Appeal in January on DACA should now be sent back to the lower court (to Judge Andrew Hanen) to figure out how to implement the Fifth Circuit's decision.

#### **What happens next?**

The case will now go back to Judge Andrew Hanen to determine how to implement the Fifth Circuit's decision. One of the issues that Judge Hanen will have to figure out is how to sever the protection from deportation that DACA offers from the benefit of a work permit. The Fifth Circuit decided this severance would apply to DACA recipients in Texas only. Importantly, deciding on how to sever the benefit of a work permit from DACA will require a longer process that will not happen immediately. So, for now, nothing immediately changes for DACA recipients in Texas.

**What Does this mean for current DACA recipients?**

For now, DACA recipients can continue to renew and receive the full benefits of DACA (work permit and protection from deportation), *including in Texas*.

At a later point, the benefits of renewing DACA will change for those in Texas only, which unfortunately, will mean that those in Texas will no longer be able to receive employment authorization, but will continue to have protection from deportation. We expect that the process to get to that point will take time, and parties to the case (including intervening DACA recipients) will have an opportunity to weigh in on how that should happen.

**What does this mean for initial DACA applications that are pending?**

Although the Fifth Circuit’s decision means that the Trump Administration should follow the Court’s orders and begin processing initial DACA applications, neither the Trump Administration or USCIS have issued guidance in response to the mandate, so we don’t know yet if USCIS will begin processing initial applications. For now, we have to wait and see how the Trump Administration and USCIS respond to this. Follow us on social media to receive updates.

**What does this mean for people who are eligible for DACA and would like to apply for the first time?**

Although in theory the mandate issued by the Fifth Circuit should open up DACA to first-time applicants, it is unclear if the Trump Administration intends to allow decisions on first-time DACA applications. There are always risk to consider when submitting an immigration application (including sharing information with the federal government), so we suggest that those who believe that they may be eligible to apply for DACA for the first time, speak with a trusted legal services provider before making a decision, in order to fully understand the risks of doing so.

**Does this mean that DACA is no longer at risk?**

Unfortunately, no. There is still a possibility that Texas could seek a decision from the U.S. Supreme Court on the legality of DACA. Additionally, it is possible that the Trump Administration could again try to end DACA by going through a notice and comment process to terminate the regulation.