

UNITED STATES V. TEXAS

What Does the Supreme Court's Tie Vote Mean for DAPA and Expanded DACA?

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Having voted 4-4 in *United States v. Texas*, the Supreme Court issued its ruling in the case on June 23, 2016. *U.S. v. Texas* is about whether [two of President Obama's immigration relief initiatives](#)—Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) and an *expansion* of Deferred Action for Childhood Arrivals (DACA+)—may be implemented.

The Supreme Court did not reach a majority decision in *U.S. v. Texas*. Instead, when the Court's justices voted on the case, the result was a 4-4 tie (four in favor of the U.S.'s position in the case, four in favor of Texas's position). The tie vote means that decisions by lower courts that temporarily blocked DAPA and DACA+ from being implemented remain in effect.

(NOTE: Usually there are nine Supreme Court justices, but currently there are only eight. Since Justice Antonin Scalia died earlier this year, Senate Republicans have refused to hold confirmation proceedings for Merrick Garland, the man President Obama nominated to fill the vacant position.)

What's the history of this case?

In November 2014, President Obama announced that his administration was expanding the DACA program, which began in 2012 and provides temporary protection from deportation and work permits to certain immigrants who came to the U.S. as children. The president also announced a new initiative—DAPA—to provide protection from deportation and work permits to certain parents of U.S. citizens and lawful permanent residents.

In December 2014, Texas and 25 other states filed a lawsuit in the Federal District Court for the Southern District of Texas to stop DAPA and the *expansion* of DACA (DACA+) from being implemented. In February 2015, just two days before the federal government was set to begin accepting applications for DACA+, Judge Andrew Hanen of the Texas district court issued an order—a *preliminary injunction*—that temporarily blocked DAPA and DACA+ from being implemented.

When the Obama administration appealed this order, the Fifth Circuit Court of Appeals affirmed Judge Hanen's decision. This kept DAPA and DACA+ blocked. The Obama administration then appealed the Fifth Circuit's decision to the U.S. Supreme Court, arguing that DAPA and DACA+ should be allowed to go forward.

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What does the Supreme Court's ruling mean for the DAPA and DACA+ initiatives?

Because of the Court's tie vote, the DAPA and DACA+ initiatives continue to be blocked by the Texas district court's preliminary injunction. But the issue of whether or not DAPA and DACA+ are legal has not been ultimately decided. In the coming months, NILC will continue to fight for the DAPA and DACA+ initiatives.

In addition, because the Supreme Court could not arrive at a majority decision in the case, its ruling does not set a Supreme Court precedent (i.e., a rule for future cases). A result of the 4-4 tie is that the nation's highest court did not provide its opinion on the legality of these initiatives. Rather, the tie leaves in place the rulings issued by the Fifth Circuit Court of Appeals and the federal district court. It is important to note that the district court's injunction, which was affirmed by the Fifth Circuit, continues to block the DAPA and DACA+ initiatives nationwide.

What does the Supreme Court's ruling mean for the original 2012 DACA initiative?

This case does *not* challenge the original 2012 DACA initiative and does not directly affect it. People who are eligible under the original DACA initiative can continue to apply for DACA or to renew their DACA if they already have it, just as before the ruling issued on June 23. More information about the 2012 DACA initiative is available at www.nilc.org/issues/daca/.

What happens next?

Going forward, we will urge the U.S. Department of Justice to ask the Supreme Court to rehear this case after a ninth justice has been confirmed. Although it's rare for the Supreme Court to grant a rehearing, the Court is more likely to rehear a case when a vacancy on the Court has prevented it from reaching a majority decision. For example, after Justice Robert Jackson died suddenly of a heart attack in 1954, the Court reheard three cases after the vacancy was filled by Justice John Harlan.

Besides urging the Justice Department to request a rehearing, we will also be exploring other legal avenues to advance DAPA and DACA+ and to protect DACA 2012.

In any case, the battle is not over. We will not stop working on these issues until all of our community members can live in dignity, without fear of being separated from their loved ones. While we will continue to defend the legality of DAPA and DACA+, we strongly urge **states and localities to step up now.** [States and localities play a vital role](#) in safeguarding the health and safety of immigrant communities. State and local governments should pass measures that enable all of us, regardless of income level or country of birth, to thrive.

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