

ALERT

Court Orders the Department of Homeland Security to Allow Individuals with DACA to Apply to Renew It

JANUARY 10, 2018

On January 9, 2018, Judge William Alsup of the U.S. District Court for the Northern District of California *ordered a halt* to the federal government's termination of the Deferred Action for Childhood Arrivals, or DACA, program. In the case *Regents of the University of California, et al. v. Department of Homeland Security, et al.*, Alsup granted a [preliminary injunction](#) – a temporary order while the case goes forward – requiring U.S. Citizenship and Immigration Services (USCIS) to begin accepting DACA renewal applications again.

This is an important victory, but it makes the need for Congress to do its job and pass the bipartisan Dream Act even greater. Read our [Top 5 Reasons Why the Dream Act Can't Wait](#) to learn more.¹

Background

The *Regents v. DHS* case was filed after the Trump administration announced on Sept. 5, 2017, that it was terminating the DACA program and that Oct. 5, 2017, would be the last day that USCIS would accept any DACA applications. USCIS has accepted no first-time or renewal DACA applications since October 5, 2017. It was one of several cases filed by universities, DACA recipients, state and local governments, grassroots organizations, and others to challenge the government's termination of the DACA program. Several of these lawsuits were brought in the U.S. District Court for the Northern District of California, in San Francisco.

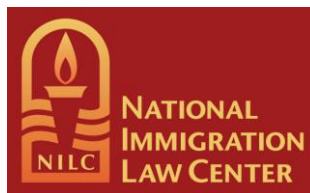
Regents v. DHS is a consolidated case, combining five separate-but-related lawsuits brought in California that challenge the termination of DACA. The five lawsuits were brought by individual DACA recipients Dulce Garcia, Miriam Gonzalez Avila, Saul Jimenez Suarez, Viridiana Chabolla Mendoza, Norma Ramirez, and Jirayut Latthivongskorn; the University of California system; the states of California, Maine, Maryland, and Minnesota; the city of San Jose, Calif.; and California's Santa Clara County and the Service Employees International Union local there. All five lawsuits challenged the government's termination of DACA as a violation of a federal statute called the Administrative Procedure Act (APA) as well as on constitutional grounds.

How the order in *Regents v. DHS* affects DACA

Who should be eligible to renew. Judge Alsup ordered the government to keep the DACA program in place and to announce a process by which DACA recipients can apply to renew their DACA. USCIS is expected to issue guidance explaining its process soon. DACA

¹ www.nilc.org/5-reasons-dream-act-cant-wait-til-2018/.

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recipients who have been unable to renew their DACA after the government's Sept. 5, 2017, DACA termination announcement because of one of the following – (1) their DACA expired before Sept. 5, 2017, (2) their DACA expiration date falls after March 5, 2018, or (3) their renewal application was rejected due to clerical errors – should be able to apply for DACA renewal.

The order does *not* require the government to accept first-time applications for DACA. According to the order, the government may grant deferred action “to new individuals on an ad hoc basis.” Given the government's position in the past, it's unlikely that the government will accept any new first-time applications.

Advance parole not mandated. The order does not reinstate the general availability of *advance parole* (permission to return to the U.S. after traveling abroad) for people with DACA, but it leaves open the possibility that the government may grant advance parole on an individual basis. Given the government's position in the past, it's unlikely that the government will accept advance parole applications from DACA recipients.

Preliminary injunction is not permanent. The court's order and its effects are subject to change. By its nature, a preliminary injunction grants *temporary* relief while the case is being litigated. In addition, the federal government plans to appeal this decision, and a higher court may block the order. But as long as the preliminary injunction remains in place, the government must abide by it.

The government's discretionary power. Finally, the order says that the government has the discretion (1) to take administrative steps “to make sure fair discretion is exercised on an individual basis for each renewal application” and (2) to deport anyone, including a DACA recipient, “who it determines poses a risk to national security or public safety, or otherwise deserves, in its judgment, to be removed.”

When will renewal applications be accepted?

Judge Alsup ordered the government to “post reasonable public notice that it will resume receiving DACA renewal applications” and to set out a process for receiving renewal applications. *We strongly recommend that you wait to submit your application until USCIS announces the process.* If you apply before the process is announced, you risk having your application rejected once USCIS announces its process for receiving applications, if the published application requirements vary from those you followed when you applied early.

However, you could *start* preparing your renewal application now, including getting together the money you'll need to pay the application fee, so you can file as soon as USCIS announces the process. (USCIS removed the DACA application form from its website last fall, but the 01/09/17 edition of the form that USCIS removed is available at www.nilc.org/wp-content/uploads/2017/12/i-821d.pdf.)

NILC WILL CONTINUE TO MONITOR this issue and to provide updates. When we have more information, we'll make it available at www.nilc.org/daca/. We also encourage you to monitor USCIS's Alerts, through which USCIS will most likely announce the process for accepting DACA renewal applications. Subscribe at <https://www.uscis.gov/news/alerts>.

IMPORTANT: Given the limitations of the court order and the need for a permanent form of relief for Dreamers, this decision does not eliminate the need for Congress to pass the Dream Act now. For information on the Dream Act and how to get involved, visit <http://weareheretostay.org>.