

## ALERT

## Supreme Court Denies Premature Appeal of Injunction Allowing DACA Renewals

FEBRUARY 26, 2018

**O**n February 26, 2018, the U.S. Supreme Court rejected the federal government's attempt to get early review of a preliminary injunction that required U.S. Citizenship and Immigration Services (USCIS) to begin accepting renewal applications through the Deferred Action for Childhood Arrivals (DACA) program. This means that USCIS is currently required to accept renewal applications from people who have previously received deferred action and work permits through DACA while litigation works through the normal appeals process. For more information on how an individual can apply for DACA renewal today, see our [Frequently Asked Questions: USCIS Is Accepting DACA Renewal Applications](http://www.nilc.org/faq-uscis-accepting-daca-renewal-applications/).<sup>1</sup>

### Background

After the Trump administration terminated the DACA program, several sets of DACA recipients, community organizations, state and local governments, universities, and employers filed lawsuits around the country arguing that the termination was unlawful.

In January, plaintiffs in five separate-but-related lawsuits filed in the U.S. District Court for the Northern District of California obtained a preliminary injunction requiring USCIS to accept DACA applications from anyone who had previously had DACA. The court found a substantial likelihood that the termination of DACA was arbitrary and capricious, in violation of a federal law called the Administrative Procedure Act (APA).

The government immediately appealed the preliminary injunction to the U.S. Court of Appeals for the Ninth Circuit and filed a "petition for certiorari before judgment" with the Supreme Court. The petition to the Supreme Court asked the high court to take an appeal from the case before it worked its way through the normal appellate process.

In February, the U.S. District Court for the Eastern

District of New York granted a second preliminary injunction requiring USCIS to accept DACA applications from anyone who had previously had DACA. Those injunctions arose from *Batalla Vidal v. Nielsen* — a lawsuit brought by a brave group of DACA recipients represented by NILC, Make the Road New York, and the Jerome N. Frank Legal Services Organization at Yale Law School — as well as a separate lawsuit brought by 16 states. The U.S. district court in New York likewise found a substantial likelihood that the termination of DACA was arbitrary and capricious. The federal government has appealed this ruling to the U.S. Court of Appeals for the Second Circuit.

### What does the Supreme Court's order do?

The Supreme Court denied the federal government's petition for certiorari before judgment. This means that the California and New York injunctions will proceed through the normal process of appellate review. The injunctions will be reviewed by the Courts of Appeals for the Second and Ninth Circuit. In the meantime, the injunctions currently remain in effect, and USCIS is required to accept renewal applications from people who have previously had DACA.

Note that the injunctions are limited to people who have already had DACA. For people who have not had DACA in the past, either because they were not old enough to be eligible or for another reason, USCIS is not accepting initial DACA applications.

### What does this mean for Congress?

There is strong urgency for Congress to do the right thing on the Dream Act. Although these injunctions provide some immediate relief for people who have had DACA in the past, they do not provide any permanent solution. Dreamers need the real, certain solution that can only come from legislation.

<sup>1</sup> [www.nilc.org/faq-uscis-accepting-daca-renewal-applications/](http://www.nilc.org/faq-uscis-accepting-daca-renewal-applications/).

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