

# DACA Litigation Timeline

Last updated SEPTEMBER 4, 2018

Since the Trump administration ended the Deferred Action for Childhood Arrivals (DACA) program on September 5, 2017, [several lawsuits](#) have been filed against the administration for terminating the program unlawfully.<sup>1</sup> As a result, three nationwide injunctions issued by U.S. district courts — in California, New York, and the District of Columbia — have allowed people who have previously had DACA to renew their deferred action. However, there are still active legal threats to the program, and court dates and rulings in the next few months will determine the program's future.

We have received inquiries asking about possible timelines and future scenarios. The reality is that nobody knows for certain what will happen in the courts or whether a future court ruling, such as a decision from a higher court, could affect the current DACA renewal application process. But here we highlight key dates for DACA recipients and other stakeholders to keep in mind.

## What are the key recent and upcoming dates?

ON **AUGUST 31, 2018**, the court in *Texas v. Nielsen* (U.S. District Court for the Southern District of Texas – Judge Andrew S. Hanen) issued an [opinion and order](#) rejecting the plaintiff states' motion for a preliminary injunction.<sup>2</sup> (NOTE: This case was brought by Texas and other states to *challenge the lawfulness of the DACA program, not to challenge the Trump administration's termination of the program.*) The plaintiff states' preliminary injunction motion sought an order halting the DACA program by enjoining the 2012 memorandum that created the DACA program while the rest of the case proceeds.

Judge Hanen reasoned that although, in his opinion, the plaintiff states are (1) likely to prevail on the merits of their argument that the DACA program is unlawful and are (2) likely to be able to show that the DACA program is causing them irreparable harm, he would not grant a preliminary injunction because (3) DACA recipients deprived of their protection from deportation and employment eligibility would face significant hardship and (4) Texas and the other plaintiff states could have challenged DACA's lawfulness years earlier but did not. (These four findings correspond to the four factors or conditions that federal judges must consider before issuing a preliminary injunction.)

The opinion recognizes that granting a preliminary injunction would upset the status quo reached after federal courts in California and New York issued preliminary injunctions requiring U.S. Citizenship and Immigration Services (USCIS) to resume accepting DACA renewal applications. While Judge Hanen maintains that a previous injunction he issued in 2015 to stop the implementation of the Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) and expanded DACA programs was warranted, he explains that it is impossible now, with respect to DACA, to “put the toothpaste back in the tube” or “unscramble the egg.” He notes in his

<sup>1</sup> See [www.nilc.org/issues/daca/litigation-related-to-the-daca-program/](http://www.nilc.org/issues/daca/litigation-related-to-the-daca-program/).

<sup>2</sup> <https://www.nilc.org/wp-content/uploads/2018/08/Texas2-v-US-memorandum-opinion-and-order-2018-08-31.pdf>.

LOS ANGELES (Headquarters)  
3450 Wilshire Blvd. #108 – 62  
Los Angeles, CA 90010  
213 639-3900  
213 639-3911 fax



WASHINGTON, DC  
1121 14th Street, NW, Ste. 200  
Washington, DC 20005  
202 216-0261  
202 216-0266 fax

opinion that the DACA “egg has already been scrambled” and that “[t]o try to put it back in the shell with only a preliminary injunction record, and perhaps at great risk to many, does not make sense nor serve the best interests of this country.”

**The bottom line:** USCIS will continue to accept DACA applications from individuals who currently have or previously had DACA. The injunctions issued by the U.S. District Courts for the Northern District of California, the Eastern District of New York, and the District of Columbia remain in place and require USCIS to continue accepting and adjudicating DACA renewal applications. While the federal government and the plaintiff states in this case will continue to argue against the DACA program, Judge Hanen’s opinion will likely slow their attempts to immediately halt the program. However, the ultimate fate of the DACA program remains uncertain. Eligible DACA recipients are encouraged to consult with an attorney or Board of Immigration Appeals–accredited representative and decide as soon as possible whether to submit renewal applications.

**Next steps in the Texas litigation:** Texas and the nine other plaintiff states will likely appeal the opinion denying the preliminary injunction to the Fifth Circuit Court of Appeals. Any party dissatisfied with the Fifth Circuit’s decision could then seek relief from the U.S. Supreme Court.

ON AUGUST 17, 2018, the court in *NAACP v. Trump* (U.S. District Court for the District of Columbia – Judge John D. Bates) partially stayed its earlier order that vacated the Trump administration’s termination of the DACA program. This stay postpones the effective date of portions of the court’s order that would require USCIS to accept DACA applications regardless of whether the applicants previously had DACA.

**THE WEEK OF OCTOBER 6, 2018**, is the first time the **U.S. Supreme Court** may announce whether it will accept an appeal of one of the DACA cases, if the appeal is filed over the summer. If the Court decides to accept an appeal, any oral argument would be scheduled for late 2018 or early 2019. A decision would be unlikely before the spring of 2019.

**NOTE:** If the Supreme Court decides to hear an appeal, *an order that is in place and enforceable at that time* that either requires USCIS to accept and adjudicate DACA renewal applications or blocks USCIS from accepting and adjudicating applications most likely would *not* be reaffirmed or altered until spring 2019 or after.

## Other potential developments

APPEALS ARE PENDING in the **Courts of Appeals for the Second, Fourth, and Ninth Circuits on lawsuits challenging the end of the DACA program**. The Ninth Circuit may issue its opinion/ruling at any time. The parties in the Second and Fourth Circuit cases have begun to submit briefs, but the courts have not yet scheduled argument in those cases. After each court hears argument, it will take an indeterminate amount of time to consider the arguments and issue a ruling.

Therefore, **many different scenarios and timeframes are possible**, depending on the different courts’ timing and rulings. One way **to stay informed on the latest developments** is to follow NILC on [Facebook](#) and [Twitter](#) and to subscribe to our email list (sign up at [www.nilc.org](#)).<sup>3</sup> We also encourage you to follow [MALDEF](#)’s and the [NAACP](#)’s social media and to visit their websites for information on their cases (the Texas and DC cases, respectively), in which there could be major developments this summer and fall.<sup>4</sup>

<sup>3</sup> NILC Facebook: <https://www.facebook.com/NationalImmigrationLawCenter>; Twitter: [https://twitter.com/NILC\\_org](https://twitter.com/NILC_org).

<sup>4</sup> MALDEF’s website: [www.maldef.org](http://www.maldef.org); NAACP’s website: [www.naacp.org](http://www.naacp.org).