

ALERT

U.S. District Court in DC Rules Again That the Trump Administration’s Termination of DACA Is Unlawful — but Pauses Order until August 23

AUGUST 3, 2018

In an [order](#) issued on August 3, 2018,¹ Judge John D. Bates of the U.S. District Court for the District of Columbia rejects the government’s request for the court to reconsider its previous decision that the memorandum terminating the Deferred Action for Childhood Arrivals (DACA) program must be vacated, potentially paving the way for the original (2012) DACA program to be fully reinstated. The related cases in which the judge ruled are *NAACP v. Trump* and *Princeton v. Trump*, which challenge the Trump administration’s termination of the DACA program. However, the court in DC pauses its order for 20 days (until August 23) to give the federal government the chance to appeal the decision, to request a stay or hold of the reinstatement of the original 2012 DACA program.

What happened in this case *before* August 3?

Back on April 24, 2018, Judge Bates granted, in part, summary judgment in favor of DACA recipients and organizations that brought the lawsuit and ordered that the U.S. Dept. of Homeland Security (DHS) memorandum terminating DACA be vacated. This would have reinstated the status quo as it was before September 5, 2017, with the original DACA program in place and immigrant youth able to submit an initial, first-time application for the benefit. But, critically, at that time **the judge also “stayed” (or paused) his own April 24 order for 90 days** to allow the government time to “better explain its view that DACA was unlawful.” For a fuller discussion of this order and the background of the case, see NILC’s April 25, 2018, alert, [U.S. District Court in D.C. Orders That the DACA Termination Memo Be Vacated — but Not for at Least 90 Days](#).²

In response, on June 22, 2018, DHS Secretary Kirstjen Nielsen issued a [new memorandum](#) that “concur[s] with and decline[s] to disturb” the September 5, 2017, memorandum that terminated the DACA program.³ Afterward, the government asked Judge Bates to reconsider his April 24 order in light of Secretary Nielsen’s new memorandum, which the government said provided more detail on why it decided to end DACA.

Judge Bates’s August 3, 2018, order rejects the government’s request to reconsider the April 24 order that holds the September 5, 2017, memorandum that terminated DACA to be

¹ https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2017cv2325-78.

² www.nilc.org/issues/daca/dc-court-orders-daca-termination-memo-vacated/.

³ https://www.dhs.gov/sites/default/files/publications/18_0622_S1_Memorandum_DACA.pdf.

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unlawful. The order issued on August 3 carefully analyzes Secretary Nielsen's June 22 memorandum but holds that the court's previous decision, issued April 24, still stands.

What does the order issued on August 3 mean?

For now, nothing changes. Judge Bates's August 3, 2018, order does not go into effect for 20 days. This means that on August 23, the memorandum terminating DACA will be vacated, unless the federal government appeals the decision and/or obtains a stay of Judge Bates's order pending appeal. If Judge Bates's order goes into effect on August 23, the status quo before September 5, 2017, will be reinstated. If nothing changes in the interim, the original 2012 DACA memorandum would go back into effect and immigrant youth would be able to submit initial, first-time applications for DACA, and DACA recipients possibly would be able to apply for advance parole (permission to travel outside the U.S.).

However, before August 23, there may be further developments in [other cases](#).⁴ In particular, on August 8, 2018, there will be a hearing before U.S. District Court Judge Andrew S. Hanen in Houston, Tex., in the Texas-led lawsuit to end the original DACA program. (Judge Hanen is the same judge who permanently blocked the implementation of the Obama administration's *expanded* DACA and Deferred Action for Parents of Americans, or DAPA, programs.) We will continue to monitor that case and any developments that come after the August 8 hearing.

USCIS is still accepting and processing DACA *renewal* applications

In the meantime, due to the two nationwide injunctions issued in the U.S. District Courts for the Northern District of California and the Eastern District of New York earlier this year, **U.S. Citizenship and Immigration Services is still required to accept, and is currently processing, DACA renewal applications** from people who have previously received deferred action and work permits through DACA, while litigation in those courts 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](#).⁵

⁴ www.nilc.org/issues/daca/litigation-related-to-the-daca-program/.

⁵ www.nilc.org/issues/daca/faq-uscis-accepting-daca-renewal-applications/.