

DACA Litigation Timeline

Last updated MAY 8, 2020

Since the Trump administration announced on September 5, 2017, that it was ending Deferred Action for Childhood Arrivals (DACA), **several lawsuits** were filed against the administration for terminating DACA unlawfully.¹ 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.

On June 28, 2019, the U.S. Supreme Court agreed to review these legal challenges. The Supreme Court heard oral argument on the cases on November 12, 2019. A decision is expected no later than June 2020. The Supreme Court did not “stay” any of the lower court orders when it agreed to review these challenges, which means that **DACA recipients who currently have or previously had DACA can continue to submit applications to renew their DACA.**

Here we highlight key dates for DACA recipients and other stakeholders to keep in mind.

What are the key recent and upcoming dates?

Litigation Challenging the DACA Termination Decision

ON **NOVEMBER 6, 2018**, the U.S. Department of Justice (DOJ) took the rare step of seeking certiorari before judgment before the U.S. Supreme Court for the *second* time in ***Regents of the University of California v. Department of Homeland Security***, a case that was pending before the Ninth Circuit Court of Appeals. The DOJ also sought certiorari before judgment in two of the other cases challenging DACA’s termination, ***Batalla Vidal v. Nielsen*** (pending before the Second Circuit) and ***NAACP v. Trump*** (pending before the D.C. Circuit). In other words, the government asked the Supreme Court to take up the cases before the courts of appeal could issue decisions on them.

ON **NOVEMBER 8, 2018**, the Ninth Circuit issued a **decision** affirming the lawfulness of the preliminary injunction in ***Regents***.² In its decision, the court reasoned that the plaintiffs in the case were likely to prevail on their claim that the Trump administration’s termination of DACA was “arbitrary and capricious” and therefore unlawful.

ON **MAY 24, 2019**, the federal government filed a petition for a writ of certiorari to the Supreme Court seeking review of the Fourth Circuit’s **decision** in ***Casa de Maryland v. Department of Homeland Security***.³ The federal government also requested expedited consideration of its petition, which the Supreme Court denied on June 3, 2019. The plaintiffs’ response to the petition for a writ of certiorari was filed on **June 24, 2019**. The government

¹ See www.nilc.org/issues/daca/litigation-related-to-the-daca-program/.

² See www.nilc.org/wp-content/uploads/2018/11/DACA-ca9-2018-11-08.pdf.

³ www.nilc.org/wp-content/uploads/2018/11/DACA-ca9-2018-11-08.pdf.

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filed its reply brief on **July 10, 2019**. To date, the Supreme Court has not issued a decision on the pending petition for certiorari in *Casa de Maryland*.

ON **JUNE 28, 2019**, the Court granted review of the three petitions: *Regents, Batalla Vidal*, and *NAACP*. The three cases were consolidated, and a total of one hour was allotted for oral argument. On **NOVEMBER 1, 2019**, the Court extended the time for oral argument to 80 minutes. The Court heard oral argument on the cases on November 12, 2019. On **April 2, 2020**, the *Batalla Vidal* litigants sought the Court's permission to file a supplemental brief after oral argument. The Court granted that request on **April 20, 2020**. The Court's decision is expected by the end of its 2019 term, which is expected to conclude at the end of June 2020.

Litigation Challenging the DACA Program

ON **MAY 1, 2018**, Texas and other states brought a lawsuit challenging the *lawfulness of DACA*, unlike the other cases that challenge the Trump administration's termination of DACA. The plaintiff states filed a preliminary injunction motion seeking an order that halts DACA by enjoining the 2012 memorandum that created the program. Although the federal government declined to defend DACA, a group of individual DACA recipients and the state of New Jersey intervened to defend DACA. On **AUGUST 31, 2018**, the court in *Texas v. Nielsen* (U.S. District Court for the Southern District of Texas) issued an **opinion and order** rejecting the plaintiff states' motion for a preliminary injunction.⁴

Judge Andrew Hanen reasoned that although, in his opinion, the plaintiff states are (1) likely to prevail on the merits of their argument that DACA is unlawful and are (2) likely to be able to show that DACA 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 Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) and expanded DACA 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 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."

Texas and the other states did not appeal the decision. Instead, the parties appeared in court on **November 14, 2018**, to determine the next steps for the case, including whether the defendant-intervenors may obtain further discovery. Following that hearing, the court issued a discovery schedule and set a trial date for the litigation for May 2020. On **February 4, 2019**, however, Texas and the other states moved for summary judgment (a decision on the legal issues), arguing that no further discovery was needed. On **May 1, 2019**, Judge Hanen **issued an order** setting a hearing on the states' summary judgment motion for July 8, 2019.⁵ Judge Hanen subsequently moved the hearing date to October 28, 2019. On **August 28, 2019**, the

⁴ www.nilc.org/wp-content/uploads/2018/08/Texas2-v-US-memorandum-opinion-and-order-2018-08-31.pdf.

⁵ www.nilc.org/wp-content/uploads/2019/06/Texas-et-al-v-US-et-al-Order-2019-05-02.pdf.

state of New Jersey asked the court to stay the proceedings, including the scheduled hearing, in light of the scheduled Supreme Court oral argument in the related DACA termination cases. Judge Hanen heard New Jersey's request to stay the proceeding and a separate request from the individual intervenors to compel discovery on **October 8, 2019**. On **November 22, 2019**, Judge Hanen granted New Jersey's request to stay the proceedings in this lawsuit. That stay remains in place.

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. However, the ultimate fate of DACA 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.

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ONE WAY **to stay informed on the latest DACA litigation–related developments** is to follow NILC on **Facebook** and **Twitter** and to subscribe to our email list (sign up at www.nilc.org).⁶ 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).⁷

⁶ NILC Facebook: <https://www.facebook.com/NationalImmigrationLawCenter>; Twitter: https://twitter.com/NILC_org.

⁷ MALDEF's website: www.maldef.org; NAACP's website: www.naACP.org.