

DACA Litigation Timeline

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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.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. However, there are still active legal threats to the program, and court dates and rulings in the next 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 **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 was asking 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.

IN A LETTER ACCOMPANYING its petition to the Supreme Court for certiorari before judgment, the DOJ expressed its desire for the Court to consider the certiorari petition at its January 4, 2019, conference. It was expected that the Court could decide whether to hear the cases as early as **January 7, 2019**, the first day on which it was scheduled to issue a public order listing its decision. However, to date, the Court has yet to issue an order indicating whether it will review ***Regents***, ***NAACP***, and ***Batalla Vidal***.

ON **MAY 24, 2019**, the 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 government also requested expedited consideration of its petition,

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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which the Supreme Court denied on June 3, 2019. The plaintiffs' response to the petition for a writ of certiorari is due on **June 24, 2019**.

THE COURT HAS AN OPPORTUNITY to decide whether it will review any of the pending petitions through its upcoming conference on **June 20, 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 U.S. Citizenship and Immigration Services (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 fall 2019 or after.

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 (**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. Although the federal government declined to defend DACA, a group of individual DACA recipients and the state of New Jersey have intervened to defend the program.

Judge Andrew 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 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 in **May 2020**. On **February 4, 2019**, Texas and the other states moved for summary judgment, stating 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

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

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.

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 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.

Other potential developments

ON **JANUARY 25, 2019**, the Second Circuit Court of Appeals heard argument in *Batalla Vidal v. Nielsen*.⁶ In that case, the U.S. District Court for the Eastern District of New York issued an injunction ordering the government to continue processing applications for renewals from individuals who have or previously had DACA. The Second Circuit Court of Appeals is expected to issue a decision soon.

ON **FEBRUARY 22, 2019**, the U.S. Court of Appeals for the D.C. Circuit heard oral argument in *NAACP v. Trump*. In that case, the U.S. District Court for the District of Columbia set aside part of the Department of Homeland Security memorandum that terminated DACA, after determining that the decision to end DACA was arbitrary and capricious. A decision from the U.S. Court of Appeals for the D.C. Circuit is expected soon.

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).⁷ 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).⁸

⁶ www.nilc.org/issues/litigation/batalla-vidal-v-baran-et-al/.

⁷ NILC Facebook: <https://www.facebook.com/NILC/>; Twitter: <https://twitter.com/NILC>.

⁸ MALDEF's website: www.maldef.org; NAACP's website: www.naacp.org.