

Litigation Related to the DACA Program

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On Sep. 5, 2017, the Trump administration announced that it was terminating the Deferred Action for Childhood Arrivals (DACA) program, which was created during President Obama’s administration. Under the terms of the DACA termination, everyone who had filed a first-time or a renewal application for DACA as of Sep. 5, 2017, would continue to have their applications processed. And anyone with a grant of DACA expiring between Sep. 5, 2017, and Mar. 5, 2018, could apply for a two-year renewal of their DACA. Originally, the deadline to submit renewal applications to U.S. Citizenship and Immigration Services (USCIS) was October 5, 2017. No other DACA applications were to be accepted.

However, due to three court orders — in *Regents of the University of California, et al. v. Dept. of Homeland Security (DHS)*, *Batalla Vidal v. Nielsen*, and *NAACP v. Trump* — USCIS is accepting DACA renewal applications. Under these injunctions, anyone who has had DACA in the past may apply, although those whose DACA expired on or before Sep. 4, 2016, must file as if they were applying for the first time. A person who’s had DACA may now apply to renew it regardless of when their DACA expired and even if their application was pre-

viously rejected for not meeting the Oct. 5, 2017 deadline. For information on the orders and the application process, see NILC’s [Frequently Asked Questions: USCIS Is Accepting DACA Renewal Applications](#).¹

More than ten cases have been filed challenging the Trump administration’s termination of the DACA program. The two tables in this publication provide information only about the cases with the most traction as of its publication date. The tables were created for easy reference and are not intended to be comprehensive.

Table 1 includes cases challenging the termination of DACA on Sep. 5, 2017. The plaintiffs in these cases brought claims primarily under the Administrative Procedure Act and the U.S. Constitution’s Due Process and Equal Protection clauses; some brought claims of estoppel. NILC is counsel only in the *Batalla Vidal v. Nielsen* case. For further information about the other cases described in Table 1, you may want to contact the entities involved in them (listed in the table) or read the complaints to which the table hyperlinks.

Table 2 includes the single case currently challenging the DACA program itself, which Texas and six other states filed on May 1, 2018.

Table 1: Cases Challenging the Termination of the DACA Program

LAWSUIT NAME	COURT	PLAINTIFF(S)	STATUS OF CASE
Batalla Vidal v. Nielsen Case No. 1:16-cv-04756 (NGG) (JO)	Filed in E.D.N.Y. Appeal pending in 2d Circuit. Petition for “cert. before judgment” pending in U.S. Supreme Court.	Martin Jonathan Batalla Vidal, Antonio Alarcón, Carolina Fung Feng, Eliana Fernández, Mariano Mondragón, Carlos Vargas, Make the Road New York	<ul style="list-style-type: none"> • 8/25/16: Case filed.² Case assigned to Judge Nicholas G. Garaufis. • 9/19/18: Complaint amended to challenge DACA termination.³ • 2/13/18: District court granted motion for preliminary injunction requiring USCIS to accept DACA applications from people who have had DACA previously. • The government has appealed the preliminary injunction and other orders to the U.S. Court of Appeals for the Second Circuit. • 11/5/18: The government filed a highly unusual petition for “cert. before judgment,”⁴ asking the Supreme Court to hear the case without waiting

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



WASHINGTON, DC
PO Box 34573
Washington, DC 20043
202 216-0261
202 216-0266 fax

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			<p>for the Second Circuit to rule. The Supreme Court has not yet issued a decision about whether it will hear the appeal.</p> <ul style="list-style-type: none"> 1/25/19: The U.S. Court of Appeals for the Second Circuit heard oral argument on the government’s appeal. <p>For more information on the case and for the latest developments: www.nilc.org/batalla-vidal-v-baran-et-al/</p>
<p>NY v. Trump, et al. Case No. 17-cv-5228</p>	<p>Filed in E.D.N.Y. Appeal pending in 2d Circuit. Petition for “cert. before judgment” pending in U.S. Supreme Court.</p>	<p>New York, Connecticut, Delaware, District of Columbia, Hawaii, Illinois, Iowa, Massachusetts, New Mexico, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Washington</p>	<ul style="list-style-type: none"> 9/6/17: Case filed. 9/7/17: The court reassigned this case to Judge Nicholas G. Garaufis, who has heard this case in tandem with <i>Batalla Vidal v. Nielsen</i>. The appeal in <i>New York v. Trump</i> has been consolidated with the appeal in <i>Batalla Vidal v. Nielsen</i>. See <i>Batalla Vidal</i>, above.
<p>Regents of the Univ. of Calif. v. DHS (lead case) Case No. 17-cv-05211 Consolidated with <i>Calif. v. DHS</i>, Case No. 17-cv-05235; <i>County of Santa Clara v. Trump</i>, Case No. 17-cv-05813; <i>Garcia et al. v. Trump</i>, Case No. 17-cv-05380; and <i>San Jose v. Trump</i>, Case No. 17-cv-05329-SVK.</p>	<p>Filed in N.D. Cal. 9th Circuit issued an opinion upholding preliminary injunction.</p>	<ul style="list-style-type: none"> The regents of the University of California and Janet Napolitano California, Maine, Maryland, and Minnesota Santa Clara County and Service Employees International Union Local 521 (Local 521) Miriam González Ávila, Dulce Garcia, Jirayut Latthivongskorn, Viridiana Chabolla Mendoza, Norma Ramírez, and Saul Jiménez Suarez City of San Jose 	<ul style="list-style-type: none"> 9/8/17: Case filed.⁵ 9/20/17: On this date, the court consolidated this case with <i>City of San Jose v. Trump</i>, <i>State of Calif. v. DHS</i>, and <i>Garcia v. United States</i>. All of the cases were then reassigned to Judge William Alsup. 1/9/18: The U.S. district court in California granted the preliminary injunction requiring the federal government to accept applications for renewal of DACA. 1/18/18: DHS filed an unusual request to appeal to the Supreme Court directly, asking that review by the Ninth Circuit be skipped. 2/26/18: U.S. Supreme Court denied DHS’s request,⁶ so the case was returned to the lower courts. 5/15/18: The Ninth Circuit Court of Appeals heard oral argument on the case in Pasadena, California.⁷ 11/5/18: The government filed a highly unusual petition for “cert. before judgment,”⁸ requesting that the Supreme Court hear the case without waiting for the Ninth Circuit to rule. The Supreme Court has not yet issued a decision about whether it will hear the appeal. 11/8/18: The Ninth Circuit upheld the preliminary injunction requiring the government to continue accepting DACA renewal applications.⁹ <p>For more information on the case and for the latest developments, see UC press releases, including https://www.universityofcalifornia.edu/press-room/uc-statement-federal-court-daca-ruling.</p>

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<p>CASA de Maryland v. Trump Case No. 17-cv-02942-RWT</p>	<p>Filed in D.Md. Permanent injunction on information-sharing; other claims dismissed.</p>	<p>CASA de Maryland, Arkansas United Community Coalition, CHIRLA, FIRM, Junta for Progressive Action Inc., Make the Road Pennsylvania, Michigan United, OneAmerica, Promise Arizona, Maricruz Abarca, Luis Aguilar, Ángel Aguiluz, José Aguiluz, Josué Aguiluz, María Joseline Cuellar Baldelomar, Missael Garcia, Annabelle Martinez Herra, Eliseo Mages, Heymi Elvir Maldonado, Brenda Moreno Martinez, Jesús Eusebio Perez, Nathaly Uribe Robledo, Estefany Rodriguez, A.M., a minor child, and Isabel Cristina Aguilar Arce, on behalf of A.M.; J.M.O., a minor child, and Adriana Gonzales Magos, on behalf of J.M.O.</p>	<ul style="list-style-type: none"> • 10/5/17: Case filed.¹⁰ • 3/5/18: The U.S. district court in Maryland granted summary judgment to the plaintiffs on only their information-sharing/estoppel claim, prohibiting the government from using or sharing information provided through the DACA application process for enforcement or deportation purposes.¹¹ To the extent that the government wants to use the information, the government must apply to the court on a case-by-case basis. The court granted summary judgment to the government, however, on the other claims challenging the termination of DACA. • 4/27/18: Both the plaintiffs and the government appealed the district court’s order to the Fourth Circuit Court of Appeals. Oral argument is scheduled for Dec. 11, 2018. <p>For more information on the case and for the latest developments, see CASA’s press releases, including https://wearecasa.org/press/casa-weighing-options-to-federal-judges-ruling-in-casa-v-trump/.</p>
<p>NAACP v. Trump Case No. 17-cv-01907</p>	<p>Filed in D.D.C. Appeal pending in D.C. Cir. Petition for “cert. before judgment” pending in U.S. Supreme Court.</p>	<p>NAACP, American Federation of Teachers (AFT), United Food and Commercial Workers International Union (UFCW)</p>	<ul style="list-style-type: none"> • 9/18/17: Case filed.¹² • 1/18/17: The court consolidated this case with <i>Trustees of Princeton University v. USA</i> (see below), and the consolidated case was reassigned to Judge John D. Bates. • 3/14/18: The court heard oral argument on the case. • 4/24/18: The court issued a decision partially granting summary judgment to the plaintiffs,¹³ holding that the DACA termination was arbitrary and capricious, in violation of the Administrative Procedure Act, because the government did not sufficiently explain why it made the decision. The court ordered that the memo terminating DACA be vacated — which would reinstate the original DACA program, allowing DACA-eligible people to file first-time applications — but the court <i>stayed its order for 90 days</i> to give the government time to issue a new memo or better explain why it ended DACA. The court denied the plaintiffs’ request for a preliminary injunction on their information-sharing/estoppel claim, because it found that harm was not imminent given that the <i>CASA de Maryland</i> order (above) currently prevents DHS

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			<p>from sharing that information. The court then dismissed that claim entirely because it found that the claim was not sufficiently pled.</p> <ul style="list-style-type: none"> 6/22/18: The government submitted a new memorandum from Secretary of Homeland Security Kirstjen Nielsen, which reaffirms the decision to end the DACA program. In response, the court delayed its order to vacate the memo terminating DACA. 8/4/18: The court issued a decision regarding the new Nielsen memo, ruling that it does not change the court’s earlier judgment. The court reinstated its earlier order, i.e., that the DACA program be reinstated. However, the court gave the government 20 days to appeal before the order takes effect. 8/17/18: With the consent of the plaintiffs, the court partially stayed its order as it applies to initial applications and advance parole. This means that the order goes into effect on Aug. 23 only with regard to renewal applications — in a manner similar to the orders issued by the U.S. District Courts for the Eastern District of New York and Northern District of California. The government has appealed the court’s judgment to the U.S. Court of Appeals for the D.C. Circuit. Oral argument is set for 2/22/19. 11/5/2018: The government filed a highly unusual petition for “cert. before judgment,”¹⁴ requesting that the Supreme Court hear the case without waiting for the D.C. Circuit to rule. <p>For more information on the case and for the latest developments, see NAACP, AFT, and UFCW press releases, including:</p> <ul style="list-style-type: none"> www.naacp.org/latest/naacp-files-lawsuit-defense-daca-eligible-people-color/ www.aft.org/press-release/aft-joins-naacp-lawsuit-stop-trumps-termination-daca www.ufcw.org/2017/10/23/dacanaacpft/
<p>Trustees of Princeton University, et al. v. USA, et al. Case No. 17-cv-02325</p>	<p>Filed in D.D.C.</p>	<p>Trustees of Princeton University, Maria De La Cruz Perales Sanchez, Microsoft Corporation</p>	<ul style="list-style-type: none"> 11/3/17: Case filed.¹⁵ 1/18/17: The court consolidated this case with <i>NAACP v. Trump</i> (above), and the consolidated case was reassigned to Judge John D. Bates. See <i>NAACP v. Trump</i>, above.

Table 2: Case Challenging the Creation of the 2012 DACA Program

LAWSUIT NAME	COURT	PLAINTIFF(S)	STATUS OF CASE
<p>Texas et al. v. Nielsen et al. Case No. 1:18-cv-00068</p>	<p>Filed in S.D. Tex., Brownsville Division</p>	<p>States of Texas, Alabama, Arkansas, Kansas, Louisiana, Nebraska, South Carolina, and West Virginia, and the governor of Mississippi</p>	<ul style="list-style-type: none"> • 5/1/18: Case filed.¹⁶ Case first assigned to Judge Olvera, a President Obama appointee, but then later reassigned to Judge Hanen, who presided over the expanded DACA and DAPA (Deferred Action for Parents of Americans and Lawful Permanent Residents)–related litigation in <i>Texas v. United States</i>. Counter to case-relation rules, this new case was marked as related to <i>Texas v. U.S.</i>, even though the latter case was closed. • 5/2/18: Plaintiff states filed a request for a preliminary injunction that would halt the 2012 DACA program from operating during the pendency of this lawsuit, both for initial and renewal applications.¹⁷ Texas and the other states requested relief from Judge Hanen by July 23, 2018, the date on which the 90-day period set out in the <i>NAACP v. Trump</i> and <i>Princeton et al. v. Trump</i> cases had been scheduled to run out. • 5/15/18: The court granted a request by 22 individual DACA recipients, represented by the Mexican American Legal Defense and Educational Fund (MALDEF) to intervene, formally making them defendants in the case.¹⁸ The DACA recipients had argued that because the federal government and the plaintiff states both have taken the same position on the legality of DACA, the agencies of the federal government that are the defendants in the case will not adequately represent DACA recipients’ interests if the court does not let the latter become part of the case. • 6/25/18: The court granted a request by the New Jersey to intervene, formally making it a defendant in the case. • 8/8/18: A hearing was held on the plaintiff states’ motion for a preliminary injunction. (This hearing was originally scheduled for July 17 but was postponed in light of the developments in the DC district court, described above.) • 8/31/18: The court issued an opinion and order denying the plaintiff states’ motion for a preliminary injunction.¹⁹ Although the court found that the plaintiff states were likely to succeed on substantive and procedural due process claims, the court declined to issue a preliminary injunction, recognizing the harm it would cause to DACA recipients who have relied on the program for protection from deportation and work authorization and reasoning that the plaintiff states could have challenged the DACA program in 2014, when they filed their suit challenging DAPA and expanded DACA. <p>The court also issued an interlocutory appeal order certifying the case</p>

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			<p>for appeal to the Fifth Circuit and staying the case for 21 days to allow the parties to pursue an interlocutory appeal.²⁰</p> <ul style="list-style-type: none"> • 9/12/18: Plaintiff states informed the district court that they do not intend to pursue an interlocutory appeal and want to move directly to summary judgment, without discovery. • 11/14/18: The U.S. district court held a conference addressing how the case will proceed. The court issued a discovery schedule and set a trial date for the litigation in May 2020. • 2/4/19: Plaintiff states moved for summary judgment, stating that no further discovery was needed. The court has not yet issued a decision on the plaintiffs’ motion.

URLs and Notes

¹ www.nilc.org/faq-uscis-accepting-daca-renewal-applications/.

² www.nilc.org/wp-content/uploads/2017/09/Batalla-Vidal-v-Baran-et-al-complaint-2016-08-25.pdf.

³ www.nilc.org/wp-content/uploads/2017/10/Batalla-Vidal-v-Duke-2d-Amended-Complaint-2017-09-19.pdf.

⁴ https://www.supremecourt.gov/DocketPDF/18/18-589/71034/20181105135249732_Nielsen%20v%20Battalla%20Vidal%20-%20Pet%20-%20REVISED.pdf.

⁵ <https://universityofcalifornia.edu/sites/default/files/UC-DACA-Complaint.pdf>.

⁶ <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/17-1003.html>.

⁷ https://www.ca9.uscourts.gov/media/view_video.php?pk_vid=0000013676.

⁸ https://www.supremecourt.gov/DocketPDF/17/17-1003/28381/20180119100226711_DACA%20Rule%2011%20Petition.pdf.

⁹ <http://cdn.ca9.uscourts.gov/datastore/general/2018/11/08/18-15068%20Opinion.pdf>.

¹⁰ www.washlaw.org/pdf/daca_complint_10_05_17.PDF.

¹¹ <http://cdn.cnn.com/cnn/2018/images/03/06/maryland-daca-opinion.pdf>.

¹² <https://www.naacp.org/wp-content/uploads/2017/09/NAACP-DACA-complaint.pdf>.

¹³ https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2017cv2325-70.

¹⁴ https://www.supremecourt.gov/DocketPDF/18/18-588/71025/20181105134008371_Trump%20v%20NAACP%20-%20Pet%20-%20REVISED.pdf.

¹⁵ <https://www.princeton.edu/sites/default/files/documents/2017/11/DACA%20Complaint%2011%203%2017%20FINAL.pdf>.

¹⁶ https://www.texasattorneygeneral.gov/files/epress/File-Stamped_Complaint.pdf.

¹⁷ https://www.texasattorneygeneral.gov/files/epress/Mt_for_PI.pdf.

¹⁸ MALDEF’s press release about this development is available at www.maldef.org/news/releases/2018_05_15_Federal_Court_Grants_MALDEF_Motion_to_Intervene_on_Behalf_of_Dreamers_in_Texas-Led_Lawsuit_Challenging_DACA/.

¹⁹ <https://www.nilc.org/wp-content/uploads/2018/08/Texas2-v-US-memorandum-opinion-and-order-2018-08-31.pdf>.

²⁰ <https://www.nilc.org/wp-content/uploads/2018/08/Texas2-v-US-interlocutory-appeal-order-2018-08-31.pdf>.