

# DACA Litigation Timeline

JULY 23, 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, two nationwide injunctions in California and New York have allowed people who have previously had DACA to renew their status. 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 another injunction, 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 upcoming key dates?

**July 27, 2018**, is the last day to submit briefs in *NAACP v. Trump* (U.S. District Court for the District of Columbia – Judge Bates). After this date, the court in DC will rule on whether to vacate completely the DACA termination, i.e., require U.S. Citizenship and Immigration Services (USCIS) to accept DACA applications regardless of whether the applicants previously had DACA.

**NOTE:** In an earlier order, the court in DC gave the government 90 days (a period ending on July 23) to try to terminate DACA again in a legally sound manner. The court ordered that, if the government failed to do so, USCIS must start accepting first-time DACA applications as well as applications for advance parole from DACA recipients.

The government submitted a memorandum regarding DACA termination to the DC court on June 22, arguing that this memorandum is adequate under the court's order. The court extended its 90-day deadline indefinitely to give the court time to decide the effect of the memorandum. Although the deadline to submit briefs about the memorandum is July 27, the court could take additional time to issue its decision on whether the memorandum is adequate.

On **August 8, 2018**, there will be a preliminary injunction hearing in *Texas v. Nielsen* (U.S. District Court for the Southern District of Texas – Judge Hanen). (**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.) Following the hearing, Judge Hanen will decide whether to issue a preliminary injunction against the DACA program, possibly ordering USCIS to stop accepting DACA applications, including applications for renewal. (It is very uncommon for judges to issue orders, such as preliminary injunctions, during hearings. Usually they will issue a written order sometime after the hearing concludes.)

**Two weeks after a potential injunction in *Texas v. Nielsen*:** The federal government has asked the court in Texas that any injunction in *Texas v. Nielsen* be delayed by two weeks to allow

<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/).

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time for “stay” applications to be filed with all of the courts that are hearing DACA-related cases, and potentially the U.S. Supreme Court. A *stay* is a court order that halts further legal proceedings or the enforcement of orders in a case until the stay is either removed or made permanent. The government will want the courts to stay all the orders issued by courts in the DACA-related cases, so that the cases can be reviewed and any conflicts among the California, New York, Texas, and possibly DC court orders can be reconciled.

**NOTE:** Any stay applications to the Supreme Court would likely be considered this summer (of 2018) while the Supreme Court is not in session. For a stay to be granted, five Supreme Court justices must be in favor of granting it. If a stay is not granted, the order(s) already issued by the U.S. courts of appeals and/or district courts will remain in effect.

**If Judge Hanen orders USCIS to no longer accept DACA renewal applications and if that order is not “stayed”— or if the courts stay all the orders, including the New York and California injunctions — USCIS could stop accepting renewal applications as early as *mid-August 2018*.** Therefore, eligible DACA recipients are encouraged to consult with an attorney or BIA-accredited representative and submit their renewal applications as soon as possible, just in case.

**The week of October 6, 2018,** is the first time the 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 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 some time (how much time can’t be known in advance) 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](https://www.facebook.com/NationalImmigrationLawCenter) and [Twitter](https://twitter.com/NILC) and to subscribe to our email list (sign up at [www.nilc.org](http://www.nilc.org)).<sup>2</sup> We also encourage you to follow [MALDEF](http://www.maldef.org)’s and the [NAACP](http://www.naacp.org)’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.<sup>3</sup>

<sup>2</sup> NILC Facebook: <https://www.facebook.com/NationalImmigrationLawCenter>; Twitter: <https://twitter.com/NILC> org.

<sup>3</sup> MALDEF’s website: [www.maldef.org](http://www.maldef.org); NAACP’s website: [www.naacp.org](http://www.naacp.org).