



## **Practice Advisory**

# **DACA LITIGATION UPDATE**

**March 2019**

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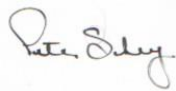
## Practice Advisory Forward

The Center for Human Rights and Constitutional Law is a non-profit, public interest legal foundation dedicated to furthering and protecting the civil, constitutional, and human rights of immigrants, refugees, children, prisoners, and the poor. Since its incorporation in 1980, under the leadership of a board of directors comprising civil rights attorneys, community advocates and religious leaders, the Center has provided a wide range of legal services to vulnerable low-income victims of human and civil rights violations and technical support and training to hundreds of legal aid attorneys and paralegals in the areas of immigration law, constitutional law, and complex and class action litigation.

The Center has achieved major victories in numerous major cases in the courts of the United States and before international bodies that have directly benefited hundreds of thousands of disadvantaged persons.

*This practice advisory provides a summary of the current pending DACA litigation. It will provide the court where the litigation is filed and give a update on the cases current status.*

Manuals prepared by the Center are constantly being examined for improvements and updated to reflect current practices. Please feel free to email [pschey@centerforhumanrights.org](mailto:pschey@centerforhumanrights.org) if you would like to suggest updates or edits to portions of this practice advisory.



Peter Schey  
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## **Table of Contents**

<b>I. INTRODUCTION.....</b>	<b>1</b>
<b>II. BACKGROUND .....</b>	<b>2</b>
FACTS .....	3
<b>III. AN OVERVIEW OF DACA CASES .....</b>	<b>4</b>
REGENTS OF THE UNIVERSITY OF CALIFORNIA V. NIELSEN .....	4
BATALLA VIDAL, ET AL. V. NIELSEN, ET AL., AND STATE OF NEW YORK, ET AL. V. TRUMP, ET AL. ....	7
CASA DE MARYLAND, ET AL. V. DEPT. OF HOMELAND SECURITY, ET AL. ....	8
NAACP V. TRUMP, ET AL., AND TRUSTEES OF PRINCETON, ET AL. V. UNITED STATES OF AMERICA, ET AL.....	9
TEXAS, ET AL. V. NIELSEN, ET AL.....	11
<b>IV. CURRENT APPEALS .....</b>	<b>15</b>
<b>V. THE CURRENT SITUATION FOR DACA RECIPIENTS .....</b>	<b>15</b>
<b>VI. WHAT WILL HAPPEN IF THERE ARE CONFLICTING OPINIONS .....</b>	<b>15</b>

## **I. Introduction**

On September 5, 2017, President Trump announced the end of Deferred Action for Childhood Arrivals (DACA), a program that gave around 800,000 young people who grew up in this country the opportunity to live and work here legally. Since then, there have been multiple lawsuits challenging the Trump administration's decision to shut down the program, but also one challenging the legality of continuing it.

In California, New York, and Washington, D.C., plaintiffs have challenged the Trump administration's decision to rescind the DACA program as arbitrary and capricious under the Administrative Procedure Act, a law that governs federal agencies. Courts in California and New York ordered the government to continue processing DACA renewals, but they did not order it to process new applications. Per those orders, the U.S. Citizenship and Immigration Services agency is still processing DACA renewal applications.

On Friday, August 3, 2018, a district court judge in the Washington, D.C. case ordered the Trump administration to begin accepting new DACA applications — in addition to the renewal applications that it is already processing. But the court stayed its order for 20 days to allow the government to seek a stay and appeal on an emergency basis. The government requested such a stay on August 17<sup>th</sup>. However, the D.C. case will not affect the court orders in New York and California requiring USCIS to continue granting DACA renewals.

On Tuesday, August 7, 2018, the district court in Texas held a hearing in that lawsuit where plaintiffs (Texas and six other States) were requesting a preliminary injunction to halt the DACA program. On August 31<sup>st</sup>, in an unexpected ruling, the federal judge in Texas refused to issue the preliminary injunction.

All of this bodes well for current and potential DACA recipients. But the program still very much hangs in the balance since the federal government is appealing these cases. It is likely one of these cases will end up before the Supreme Court, and no one knows for certain how the Supreme Court would rule.

## **II. Background**

DACA is a federal program created in 2012 under Barack Obama to allow undocumented residents, brought to the United States as children, the temporary right to live, study and work in the US. DACA gives young undocumented immigrants: 1) protection from deportation, and 2) a work permit. The program expires after two years, subject to renewal.

### Requirements For DACA

- You were under 31 years old as of June 15, 2012;
- You first came to the United States before your 16th birthday;
- You have lived continuously in the United States from June 15, 2007 until the present;
- You were physically present in the United States on June 15, 2012 and at the time you apply;
- You came to the United States without documents before June 15, 2012, or your lawful status expired as of June 15, 2012;
- You are currently studying, or you graduated from high school or earned a certificate of completion of high school or GED, or have been honorably discharged from the Coast Guard or military (technical and trade school completion also qualifies); and
- You have NOT been convicted of a felony, certain significant misdemeanors (including a single DUI), or three or more misdemeanors of any kind.

## **Facts**

The policy was created by an executive branch memorandum and announced by President Barack Obama on June 15, 2012.

U.S. Citizenship and Immigration Services (USCIS) began accepting applications for the program on August 15, 2012.

Research has shown that DACA increased the wages and labor force participation of DACA-eligible immigrants<sup>1</sup> and reduced the number of illegal immigrant households living in poverty<sup>2</sup>. Studies have also shown that DACA increased the mental health outcomes for DACA-eligible immigrants and their children<sup>3</sup>. There are no known major adverse impacts from DACA on native-born workers' employment, and most economists say that DACA benefits the U.S. economy<sup>4</sup>. To be eligible for the program, recipients cannot have felonies or serious misdemeanors on their records.

On September 5, 2017 the Trump Administration announced plans to end DACA, sparking lawsuits across the nation.

<sup>1</sup> Pope, Nolan G. (2016). "The effects of DACAmentation: The impact of Deferred Action for Childhood Arrivals on illegal immigrants". *Journal of Public Economics*; Patler, Caitlin; Cabrera, Jorge (June 2015). *From Undocumented to DACAmented: Impacts of the Deferred Action for Childhood Arrivals (DACA) Program Three Years Following its Announcement (PDF) (Report)*. Institute for Research and Labor Employment, University of California, Los Angeles; Gonzales, Roberto; Terriquez, Veronica; Ruszczyk, Stephen (October 1, 2014). "Becoming DACAmented: Assessing the Short-Term Benefits of Deferred Action for Childhood Arrivals (DACA)". *American Behavioral Scientist*.

<sup>2</sup> Amuedo-Dorantes, Catalina; Antman, Francisca (2016). "Can authorization reduce poverty among undocumented immigrants? Evidence from the Deferred Action for Childhood Arrivals program". *Economics Letters*.

<sup>3</sup> Hainmueller, Jens; Lawrence, Duncan; Martén, Linna; Black, Bernard; Figueroa, Lucila; Hotard, Michael; Jiménez, Tomás R.; Mendoza, Fernando; Rodriguez, Maria I. (August 31, 2017). "Protecting unauthorized immigrant mothers improves their children's mental health". *Science*; Venkataramani, Atheendar S; Shah, Sachin J; O'Brien, Rourke; Kawachi, Ichiro; Tsai, Alexander C (2017). "Health consequences of the US Deferred Action for Childhood Arrivals (DACA) immigration programme: a quasi-experimental study". *The Lancet Public Health*; "From undocumented to lawfully present: Do changes to legal status impact psychological wellbeing among latino immigrant young adults?". *Social Science & Medicine*

<sup>4</sup> Fact Check: Are DACA Recipients Stealing Jobs Away From Other Americans?. NPR.org; "Trump's Harsh Message to Immigrants Could Drag on Economy". Associated Press. 2017-09-06; Associated Press. Retrieved September 6, 2017; "Analysis | The Trump administration's claim that DACA 'helped spur' the 2014 surge of minors crossing the border". Washington Post. Retrieved September 6, 2017.

### **III. An Overview of DACA cases**

After the Trump administration terminated the DACA program, several sets of DACA recipients, community organizations, state and local governments, universities, and employers filed lawsuits in different parts of the country arguing that the termination was unlawful.

#### **Regents of the University of California v. Nielsen**

On January 9, 2018, Judge William Alsup of the U.S. District Court for the Northern District of California issued a preliminary injunction requiring the federal government to maintain the Deferred Action for Childhood Arrivals, or DACA, program on a nationwide basis by allowing individuals to submit applications to renew their enrollment in DACA, subject to a few exceptions. Generally, parties objecting to a district court's order must wait until the litigation is complete before asking the court of appeals for review. However, a preliminary injunction order is immediately appealable (a process referred to as an "interlocutory appeal"), meaning that the government can ask the Ninth Circuit Court of Appeals to review Judge Alsup's order immediately.

*Supreme Court denies government's request for unusual "cert. before judgment" review.* In this case, however, the government took the unusual step of seeking to skip review in the Ninth Circuit and instead appeal directly to the U.S. Supreme Court through a rarely used legal mechanism called "cert. before judgment."<sup>5</sup> The government filed its request, or petition for certiorari, with the Supreme Court on Jan. 18, 2018. This kind of request is rarely granted, as

<sup>5</sup> The petition for certiorari before judgment was filed pursuant to 28 U.S.C. § 2101(e), <https://www.law.cornell.edu/uscode/text/28/2101>, and 28 U.S.C. § 1254(1), <https://www.law.cornell.edu/uscode/text/28/1254>. For an explanation of "cert. before judgment," see Kevin Russell, "Overview of Supreme Court's Cert. Before Judgment Practice," *SCOTUSblog*, Feb. 9, 2011, [www.scotusblog.com/2011/02/overview-of-supreme-court-s-cert-before-judgment-practice/](http://www.scotusblog.com/2011/02/overview-of-supreme-court-s-cert-before-judgment-practice/).

Supreme Court rules warn that the Court will grant this kind of early review only “upon a showing that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court.”

On Feb. 26, 2018, the Supreme Court announced that it had “denied cert.,” meaning that it declined to hear the government’s direct appeal from the district court. Therefore, the case will return to the lower courts, and appeals will be heard first by the Ninth Circuit Court of Appeals. In other words, although the Supreme Court could hear the case eventually, the appeals process will be the normal one, beginning with the court of appeals.

***The government continues to accept DACA renewal applications.*** Although the government could have sought a stay of Judge Alsup’s preliminary injunction — i.e., while it could have asked the judge or the Supreme Court to allow the government to continue with its process of shutting down DACA — it did not do so. Therefore, the government must continue to accept DACA renewal applications in accordance with the preliminary injunction.

***Other orders subject to appeal.*** In the [order issued on Jan. 9](#), Judge Alsup also ruled for the plaintiffs in holding that the decision to terminate DACA was reviewable by the courts under the Administrative Procedure Act because the decision was not committed to the agency’s discretion by law, as well as under the Immigration and Nationality Act. On Jan. 12, Judge Alsup issued an [additional order](#) that addresses the issue of whether the plaintiffs had pled enough facts to support additional legal claims. Usually, these kinds of intermediate orders in a case would not be directly appealable to the court of appeals, but Judge Alsup also granted the government’s request to appeal these portions of his January 9 decision and his January 12 decision to the Ninth Circuit through a special appeal mechanism that allows immediate appeals of intermediary



orders. The government filed a [Notice of Appeal](#) on January 16, 2018. The Ninth Circuit heard oral argument in the case on May 15, 2018, in Pasadena, CA.

***Government's request to narrow the preliminary injunction.*** On August 1, 2018, the Ninth Circuit, in an unrelated case (City and County of San Francisco v. Trump), found that there was not sufficient support in the record for the district court to have issued an injunction that applied nationwide as opposed to limiting itself to California. The Ninth Circuit vacated the injunction in that case to the extent it applied outside of California and remanded the case back to the district court to further consider the appropriate scope of the injunction. In light of this case, on August 3, 2018, the federal government defendants in *Regents* wrote a [letter](#) to the Ninth Circuit Court of Appeals, asking it to vacate the nationwide injunction requiring the government to continue processing DACA renewals, because the nationwide scope is not necessary to remedy the injuries of the plaintiffs in *Regents*.<sup>6</sup>

***The Ninth Circuit affirms amid a pending petition for certiorari.*** In a rare move, on October 17, 2018, the U.S. Department of Justice (DOJ) filed a letter with the Ninth Circuit Court of Appeals informing the court that the DOJ intended to seek certiorari from the Supreme Court if the Ninth Circuit did not issue its decision on the preliminary injunction appeal by October 31, 2018. The court of appeals did not issue a decision by that date. On November 5, 2018, the DOJ, for the *second* time in this case, filed for certiorari before judgment, seeking review by the Supreme Court of the preliminary injunction issued by U.S. District Court Judge Alsup. The DOJ also filed for certiorari before judgment in the related cases *Batalla Vidal* (New York) and *NAACP* (District of Columbia).

<sup>6</sup> <https://www.law360.com/articles/1070048/white-house-urges-9th-circ-to-let-daca-rollback-proceed>

On November 8, 2018, the Ninth Circuit issued a [decision](#) affirming the lawfulness of the preliminary injunction.<sup>[14]</sup> 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.

**Batalla Vidal, et al. v. Nielsen, et al., and State of New York, et al. v. Trump, et al.**

On Feb. 13, 2018, Judge Nicholas G. Garaufis of the U.S. District Court for the Eastern District of New York, issued a second nationwide preliminary injunction requiring USCIS to accept DACA applications from people who have had DACA previously but the administration will not have to hold the program open to those who have never previously applied for and received DACA. The preliminary injunction was the same in scope as the order from the U.S. district court in California. The court in New York held that there was a substantial likelihood that the plaintiffs would prevail on their claim that the Trump administration ended DACA in a way that was arbitrary and capricious, and therefore unlawful.

The order was issued in two lawsuits currently pending before Judge Nicholas Garaufis. The *Batalla Vidal* case was brought by six New Yorkers who had benefited from DACA and stood up to challenge the administration’s decision to end the program. The plaintiffs in that case are represented by NILC, along with the Jerome N. Frank Legal Services Organization at Yale Law School, and Make the Road New York. The *State of New York* case was brought by a coalition of seventeen attorney generals.

The government has appealed the decision to the Second Circuit Court of Appeals. On November 5, 2018, the U.S. Department of Justice took the rare step of filing for certiorari

before judgment with the Supreme Court, seeking review of the preliminary injunction issued in this case and of the similar injunction issued in *U.C. Regents (California)*; and it also seeks review of the decision in *NAACP (District of Columbia)*.

The Second Circuit Court of Appeals heard oral argument on January 25, 2019 and has not issued an opinion.

**CASA de Maryland, et al. v. Dept. of Homeland Security, et al.**

On March 5, 2018, the U.S. District Court for the District of Maryland issued an [opinion](#) in *CASA de Maryland v. Trump* dismissing most of the plaintiffs' claims in that case, including the claim that the DACA termination was unlawful. However, the court did grant a nationwide preliminary injunction to DACA recipients on their claim regarding the sharing and usage of the information DACA recipients have provided to the government when applying for DACA. The court ordered the U.S. Department of Homeland Security (DHS) to follow its original 2012 guidance about not sharing or using DACA recipients' private information for enforcement purposes against them or their family members unless certain circumstances exist, such as that the person poses a national security threat or has committed certain crimes.

The *CASA de Maryland* court order prohibits DHS from rescinding, modifying, or superseding this guidance for the time being. In addition, under the order, if DHS wants to use any DACA recipient's information against them for enforcement purposes, DHS is required to make this request to the court directly and have the court do a confidential review of the request.

On May 4, 2018, plaintiffs [appealed](#) the dismissal of their claim that the DACA termination was unlawful to the Fourth Circuit Court of Appeals, and the parties have now

completed briefing to the Fourth Circuit. Oral argument was held on December 11, 2018. As of March 28, 2019 the Fourth Circuit Court of Appeals has not issued an Opinion.

**NAACP v. Trump, et al., and Trustees of Princeton, et al. v. United States of America, et al.**

On April 24, 2018, Judge John Bates of the U.S. District Court for the District of Columbia issued a final judgment that (a) grants, in part, summary judgment in favor of DACA recipients and organizations that sued to reverse the Trump administration's termination of the DACA program and (b) orders that the memorandum terminating the program be vacated. The order was issued in *NAACP v. Trump* and *Princeton v. Trump*, two cases that the court related to each other such that the order applies to both.

The judge's decision would reinstate the status quo as it was before September 5, 2017, when the original DACA program was in place and U.S. Immigration and Citizenship Services (USCIS) was accepting first-time applications for DACA (rather than only DACA renewal applications). DHS must accept and process new as well as renewal DACA applications. But, critically, the court also stayed (or paused) its own order for 90 days to allow the government to come up with a better explanation than the one it presented to the court for why it ended DACA.

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. 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.

In an [order](#) issued on August 3, 2018, Judge Bates rejected the government’s request for the court to reconsider its previous decision that the memorandum terminating the DACA program must be vacated, potentially paving the way for the original (2012) DACA program to be fully reinstated. 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. However, the court in DC paused 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.

On August 17, 2018 the government submitted a [motion](#) for “a stay pending appeal of the April 24, 2018 order vacating the rescission of the Deferred Action for Childhood Arrivals (“DACA”) program and the August 3, 2018 order denying reconsideration of the April 24, 2018 order.” The government also submitted an unopposed motion “for clarification that the August 3, 2018 order was a final, appealable judgment”.

On the same day, August 17, 2018 Judge Bates held the following in an [order](#):

- ORDERED that the motion for clarification is GRANTED;
- it is further ORDERED that the motion for a stay pending appeal is GRANTED IN PART AND DENIED IN PART;
- it is further ORDERED that, pursuant to Federal Rule of Civil Procedure 62(c), the April 24, 2018 order vacating the rescission of the Deferred Action for Childhood Arrivals (“DACA”) program and the August 3, 2018 order denying reconsideration of the April 24, 2018 order are STAYED pending the government’s appeal in this matter to the extent that those orders require the Department of Homeland Security to begin accepting initial DACA applications or applications for advance parole under the DACA program;
- it is further ORDERED that, in all other respects, the stay of the April 24, 2018 and August 3, 2018 orders is LIFTED and those orders shall take immediate effect;
- and it is further ORDERED that the Court’s April 24, 2018 and August 3, 2018 orders are clarified to constitute together a final, appealable judgment that “adjudicat[ed] all the claims and all the parties’ rights and liabilities” in this action.

Order [Dkt. #31] at 2.

Nevertheless, the court subsequently partially stayed its earlier order that vacated the Trump administration's termination of the DACA program. This stay postpones the effective date of portions of the court's order that would require USCIS to accept DACA applications regardless of whether the applicants previously had DACA. The partial stay does not change the status quo. The government subsequently appealed this decision, and the parties have completed their briefing to the Court. Oral argument was heard on February 22, 2019 but the 2<sup>nd</sup> Circuit Court of Appeals has not yet issued an opinion.

**Texas, et al. v. Nielsen, et al.**

On May 1, 2018, Texas and six other states (Alabama, Arkansas, Louisiana, Nebraska, South Carolina, and West Virginia) filed a lawsuit against the federal government in the U.S. District Court for the Southern District of Texas, Brownsville Division, challenging the creation of the 2012 DACA program. The case was eventually assigned to the same judge who presided over *U.S. v. Texas* in 2015, Judge Andrew Hanen. *U.S. v. Texas*, which when it was originally filed was called *Texas v. U.S.*, was a lawsuit filed to block the Obama administration's implementation of both (a) an expansion of DACA (that was intended to make DACA available to more people) and (b) another, related program, Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA). In that lawsuit, Judge Hanen blocked the implementation of DAPA and expanded DACA, a decision that was upheld by the Fifth Circuit Court of Appeals and left in place by a 4-4 nonprecedential decision of the U.S. Supreme Court.

In their complaint, Texas and the other states argue that, over the summer of 2017, a larger group of ten states had threatened to amend their 2015 lawsuit to also challenge the

original DACA program if the government did not terminate it by September 5, 2017 — and, in response, the government terminated DACA on Sep. 5. Though Texas and the other states dropped their threat to challenge DACA at that time, they now argue that the California and New York injunctions and the District of Columbia order (see above) have had the effect of prolonging the DACA program indefinitely. The injunctions issued in California and New York allow people who have had DACA to apply to renew it, and the D.C. order could nullify the Trump administration memorandum that terminated DACA, if the government does not act by July 23, 2018. Texas and the other states say that this indefinite prolongation of a program that the government terminated is why they filed a lawsuit now against a program that has been in place for nearly six years.

The plaintiff states' complaint raises the same legal claims that the 2015 *U.S. v. Texas* lawsuit did, alleging that the creation of DACA violated both the procedural and substantive requirements of the Administrative Procedure Act, as well as the Take Care Clause of the U.S. Constitution. They seek a declaration that DACA is unlawful and a nationwide order prohibiting the government from issuing new periods of deferred action under the program. Judge Hanen ordered that an initial scheduling conference be held on July 31, 2018.

On May 2, 2018, Texas and the other states filed a motion for preliminary injunction to halt the 2012 DACA program from operating during the pendency of this lawsuit, both for initial and renewal applications. The plaintiff states requested relief by July 23, 2018, the date on which the 90-day period set out in the *NAACP v. Trump* and *Princeton v. Trump* cases expires. As of the date this issue brief was published, Judge Hanen has not responded to the plaintiff states' request for a preliminary injunction.

On May 8, 2018, 22 individual DACA recipients, represented by the Mexican American Legal Defense and Educational Fund (MALDEF), asked Judge Hanen to intervene formally in this case as defendants. In their motion, they argue that if the court does not let them become part of the case, the agencies of the federal government that are the defendants in the case will not adequately represent DACA recipients' interests. On May 15, 2018, Judge Hanen granted MALDEF's and the 22 DACA recipients' request to intervene, formally making them defendants in the case. On June 25, 2018, the court granted a request by the state of New Jersey to intervene, formally making it a defendant in the case as well.

On August 8, 2018 a hearing was held in Houston, Tex., on the plaintiff states' request for a preliminary injunction. The federal government was so confident in this case that they asked the court in Texas that any future injunction in *Texas v. Nielsen* be delayed by two weeks to allow time for "stay" applications to be filed with all 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 was planning 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 DC court orders can be reconciled. For a stay to be granted by the Supreme Court, five Court justices must be in favor of granting it. If the Supreme Court does not grant a stay, the order(s) already issued by the U.S. courts of appeals and/or district courts will remain in effect.

However, in an unexpected ruling, on August 31<sup>st</sup>, federal district Judge Hanen in Texas declined to issue a preliminary injunction halting the DACA program. The [117-page Order](#) may be only a temporary reprieve for DACA recipients: Hanen held that the plaintiffs are likely to



succeed in their argument that the program is unlawful because it oversteps the authority of the executive branch.

"If the nation truly wants a DACA program," Hanen wrote, "it is up to Congress to say so." Still, Hanen declined to put even a temporary halt to DACA because he found that Texas and the other states waited too long to bring their case.

The August 31<sup>st</sup> Order came as a surprise to many because Hanen previously had blocked a similar Obama-era program — Deferred Action for Parents of Americans — before it could take effect. He said the circumstances of this case are different. "Here, the egg has been scrambled," Hanen wrote. "To try to put it back in the shell with only a preliminary injunction ... and perhaps at great risk to many, does not make sense."<sup>7</sup> In the Order, Hanen agreed with Texas and the Trump administration that the DACA program for immigrant youngsters is almost identical to the Obama-era program aimed at protecting undocumented parents of American citizens that Hanen struck down previously. But the judge said he could find no legal justification to grant an emergency halt to DACA when the program has been functioning since 2012.<sup>8</sup>

Judge Hanen also [certified his opinion for appeal](#);<sup>[33]</sup> however, Texas and the other states decided not to appeal. After Judge Hanen issued his latest order, the parties moved for a discovery hearing, for determining whether further discovery is needed and to set the discovery schedule. That hearing was scheduled for November 14, 2018. The court has since issued a discovery schedule that provides time for the parties to undertake discovery prior to any resolution of this lawsuit. Nevertheless, Texas and the other states moved for summary judgment

<sup>7</sup> <https://www.npr.org/2018/08/31/643814735/texas-judge-says-daca-is-probably-illegal-but-leaves-it-in-place>

<sup>8</sup> <https://www.bloomberg.com/news/articles/2018-08-31/dreamers-win-again-as-judge-orders-daca-to-keep-going>

on February 4, 2019, asserting that no further discovery was necessary. Judge Hanen has not yet indicated how he will address the motion.

On February 04, 2019 Plaintiff States' filed a Motion for Summary Judgment requesting the following relief: 1) declaratory judgment that DACA is procedurally unlawful under the APA, 2) a declaratory judgment that DACA is substantively unlawful under the APA, 3) a declaratory judgment that the DACA program violates the Take Case Clause of the United States Constitution; and 4) an Order setting aside the 2012 memorandum and preventing the Federal Defendants from issuing any new grant of deferred action status pursuant to the DACA program and any renewal of deferred action status pursuant to DACA. The Court has yet to rule on the motion for summary judgment.

#### **IV. The Current Situation for DACA recipients**

The U.S. District Courts for the Northern District of California, the Eastern District of New York, and District Court for D.C. all require that the government continue to renew DACA applications. As such, **USCIS is still required to accept, and is currently processing, DACA renewal applications** from people who have previously received deferred action and a work permit through DACA, while litigation in those courts works through the normal appeals process.

#### **V. What Will Happen If There Are Conflicting Opinions**

As a general rule, when different judges in different areas of the country have issued conflicting opinions in a case, it becomes more likely that the Supreme Court will take up the case to sort out the inconsistency. But it usually does so at its own deliberate pace — which

would likely result in the Court hearing one or more of the DACA cases in Spring 2019, for a ruling that June.

What the Court will do is anyone's guess. It might issue the stay and allow DACA to remain in effect per other judges' orders until the case has fully come before SCOTUS.

Any of those, however, would require five justices to agree on the right path forward. And since Justice Anthony Kennedy formally retired in July — and the nominee to succeed him, Brett Kavanaugh, hasn't yet been confirmed by the Senate — the eight justices on the Court are split 4-4 along ideological lines. Any ruling would require a justice to cross the aisle.

It's hardly a secret that the Trump administration would like to stop accepting DACA renewals — after all, that's what it's been trying to do for a year.