



# DACA: Litigation Status Update

November 14, 2018

This Legal Sidebar provides a status update for various lawsuits concerning the [Deferred Action for Childhood Arrivals initiative](#) (DACA) and the decision by the Department of Homeland Security (DHS) to rescind that initiative.

- As things [currently stand](#) under federal court orders in three cases, DHS must process applications for DACA relief from individuals who have obtained DACA relief in the past, but not from individuals who would be first-time DACA enrollees.
- This status quo likely will remain in place at least until the Supreme Court issues a decision in one of the cases. The High Court has yet to grant review in any of the three cases. Assuming the Court does grant review in at least one case, it probably would not issue a definitive ruling until late spring or early summer of 2019 at the earliest.

An [earlier Legal Sidebar](#) analyzed some of the primary legal issues in the lawsuits. Future CRS products may supplement that analysis to address subsequent court decisions and other legal developments.

## Litigation Overview

On September 5, 2017, the Department of Homeland Security (DHS) issued a [memorandum](#) announcing its decision to rescind DACA, which the Obama Administration implemented in 2012 to provide temporary relief from removal and work authorization, among other benefits, to certain unlawfully present aliens who arrived in the United States as children. As justification for the rescission, DHS relied upon a [letter](#) from then-Attorney General Sessions concluding that DACA was illegal—specifically, that it lacked “proper statutory authority,” was “an unconstitutional exercise of authority by the Executive Branch,” and would likely be enjoined in “potentially imminent litigation.”

Following this announcement, litigation ensued at cross purposes. DACA recipients and other parties, including states and universities, filed lawsuits in [four federal district courts](#) challenging the rescission as unlawful. [Two](#) of those district courts have issued nationwide preliminary injunctions that currently require DHS to continue processing applications for DACA relief from individuals who have obtained DACA relief in the past (renewal applicants), but not applications from individuals who would be first-time DACA enrollees. The U.S. Court of Appeals for the Ninth Circuit upheld one of those injunctions on [November 8, 2018](#); the government’s appeal of the other injunction is pending before the Second Circuit. The [order](#) of a third district court would require DHS to process both first-time and renewal applications

**Congressional Research Service**

<https://crsreports.congress.gov>

LSB10216

for DACA relief, but the district court has stayed the relief for first-time applicants pending the outcome of the government’s appeal to the D.C. Circuit. Thus, DHS currently must process applications for DACA relief only from individuals who have obtained DACA relief in the past.

Even if the government wins its appeals in the Second and D.C. Circuits, the preliminary injunction affirmed by the Ninth Circuit would preserve this status quo (barring legislative action or a rehearing in the Ninth Circuit). Thus, the status quo will likely remain in place at least until the Supreme Court issues a decision in one of the rescission cases, which could occur in late spring or early summer of 2019 if the Court agrees to hear an appeal of one of the cases. In an effort to ensure Supreme Court review before the Court’s current term ends in June 2019, the government filed petitions on November 5, 2018, asking the Court to grant [certiorari before judgment](#) in [all three cases](#). Supreme Court rules provide that such petitions will be granted only in cases of “[imperative public importance](#),” and the Supreme Court already [rejected](#) one earlier government [petition](#) that sought review before judgment in the Ninth Circuit case. Now that the Ninth Circuit has issued its decision, however, the government will likely file a reformulated certiorari petition, and it is possible the government could obtain Supreme Court review in that case before the end of the current term.

On the flip side, Texas and six other states filed a [separate lawsuit](#) arguing that DACA is unlawful and seeking to bar DHS from continuing to grant DACA relief. The case is before a federal district judge in Texas who in 2015 [barred](#) the Obama Administration from implementing both an expansion of DACA’s coverage and a different deferred action initiative—the Deferred Action for Parents of Americans and Lawful Permanent Residents initiative (DAPA)—which would have protected certain unlawfully present aliens with U.S. citizen or lawful permanent resident children. (The Fifth Circuit [upheld](#) that district court ruling, and an equally divided, eight-member Supreme Court [affirmed](#) without opinion in June 2016). On August 31, 2018, the district court [held](#) that the states were likely to succeed on the merits of their claims. But the court declined to issue a preliminary injunction barring DHS from continuing to grant DACA relief because, in the court’s view, neither public nor private interests favor a preliminary injunction against an initiative that is now six years old. Still, given its positive assessment of the merits of the states’ claims, the court may well grant the states permanent injunctive relief against DACA when the case is ready for final resolution. It is difficult to estimate when the case could reach that stage. The district court contemplated in one order that the case could require an “expensive” trial that will come only after a “[protracted delay](#).”

Collectively, the lawsuits to preserve DACA and to force its termination raise the related issues of whether DHS offered an adequate justification for the DACA rescission and whether DHS lacks, as former Attorney General Sessions concluded, statutory and constitutional authority to administer DACA. Enactment of statutory protections for certain childhood arrivals would likely moot the lawsuits in substantial part or entirely, but a [range of legislative proposals](#) to this effect—including those considered during [open debate](#) on the Senate floor in February 2018 in the wake of a government shutdown over the childhood arrivals issue—have not resulted in new law. According to [some reports](#), Members of the 115<sup>th</sup> Congress continue to discuss similar proposals.

## Tables of Ongoing Cases

### Cases Challenging DACA Rescission

Case	Federal District Court	Relief Granted	Status (including judicial developments as of the date of this Sidebar)

<p>Regents of the University of California v. DHS, No. C 17-05211 WHA</p>	<p>Northern District of California (N.D. Cal.)</p>	<p><b>Jan. 9, 2018:</b> Nationwide preliminary injunction requiring DHS to continue processing DACA renewal applications.</p>	<p>The Ninth Circuit affirmed the preliminary injunction on <b>November 8, 2018</b>. Three days earlier, on November 5, the government <b>petitioned</b> the Supreme Court to grant certiorari before judgment by the circuit court.</p>
<p>Batalla Vidal v. Nielsen, 16-CV-4756 (NGG) (JO)</p>	<p>Eastern District of New York (E.D.N.Y.)</p>	<p><b>Feb. 13, 2018:</b> Nationwide preliminary injunction requiring DHS to continue processing DACA renewal applications.</p>	<p>DHS appeal pending before the Second Circuit. The docket shows a proposed oral argument date for the week of January 22, 2019. On November 5, the government filed a <b>petition</b> asking the Supreme Court to grant certiorari before judgment by the circuit court.</p>
<p>Casa de Maryland v. DHS, RWT-17-2942</p>	<p>District of Maryland (D. Md.)</p>	<p><b>March 5, 2018:</b> The court ruled primarily in DHS's favor, denying plaintiffs' request for a preliminary injunction against the DACA phase-out but granting them an injunction that bars DHS from using DACA application information for enforcement purposes.</p>	<p>Cross-appeals pending before the Fourth Circuit. Oral argument is set for December 11, 2018.</p>

NAACP v. Trump, 17-1907 (JDB)	District of Columbia (D.D.C.)	<p><a href="#">April 24, 2018</a>: The court granted summary judgment substantially in plaintiffs' favor, vacating the DACA rescission memo and remanding it to DHS. The court stayed the vacatur order to give DHS "an opportunity to better explain its rescission decision." On <a href="#">August 3, 2018</a>, the court held that a second explanation by DHS also failed to provide adequate justification for the rescission, and the court declined to give DHS further opportunity to remedy the defects in its explanation. The vacatur order <a href="#">remains stayed</a> with respect to first-time DACA applications, pending DHS's appeal to the D.C. Circuit.</p>	DHS appeal pending before the D.C. Circuit, where briefing is scheduled to conclude on January 22, 2019. On November 5, the government filed a <a href="#">petition</a> asking the Supreme Court to grant certiorari before judgment by the circuit court.
-------------------------------	-------------------------------	--	--

### Case Challenging DACA Implementation

Texas v. United States, 1:18-cv-00068	Southern District of Texas (S.D. Tex.)	<p><a href="#">August 31, 2018</a>: The Court denied the plaintiff states' request for a preliminary injunction against further grants of DACA relief, but concluded that the states were likely to succeed on the merits of challenges to DACA's legality.</p>	Initial conference before magistrate judge held on Nov. 14, 2018.
---------------------------------------	--	---	---

### Author Information

Ben Harrington  
Legislative Attorney

---

### Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However,

as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.