



DACA-Related Litigation Status Update

July 27, 2018

Legislative Solution Still Needed

Dreamers contribute to our communities and economy and see America as their home. While the courts have blunted the effects of the Trump Administration's rescission of DACA, a legislative solution is still needed. The best outcome for Dreamers in the cases described below is that the courts allow DACA to continue. Requiring DACA recipients to renew every two years and not allowing new people to apply is not a permanent solution. The worst outcome is that DACA ends this summer. Only Congress can give Dreamers and our nation the certainty of legislation addressing the plight of Dreamers.

Cases Challenging the Rescission of DACA

Three courts are examining lawsuits claiming the federal government terminated DACA improperly. In all three of those cases, the courts have ruled against the government.

The federal district court judges in the California and New York cases issued preliminary injunctions requiring DHS to continue to accept DACA renewals. They did not require that new applications be accepted. The decisions have been appealed and the 9th Circuit held a hearing on May 15. A decision from the 9th Circuit is expected this summer. No oral argument has been scheduled in the 2nd Circuit yet. Many advocates predict that these appellate courts will uphold the District Court's preliminary injunctions and the government would then appeal to the Supreme Court.

In the third case, the federal district court judge in Washington, DC also held the rescission was improper and ordered the reinstatement of DACA completely, even requiring DHS to process new applications on April 24. The judge put his order on hold until he can consider additional filings from DHS and the plaintiffs that are due on July 27. It is unclear when the judge will issue another order.

Case Challenging the Constitutionality of DACA

A fourth lawsuit in Texas alleges that DACA is unconstitutional. Six other states (Alabama, Arkansas, Louisiana, Nebraska, South Carolina, and West Virginia) joined this lawsuit. MALDEF, representing individual DACA recipients, and the State of New Jersey was allowed to intervene making them defendants in the case. Texas filed a motion for preliminary injunction to halt DACA (both renewals and new applications) while the litigation is on-going. A hearing is scheduled for August 8.

Potential Outcomes and Timing

We can only guess at the actual outcomes of all these decisions, but very likely this summer will result in court decisions impacting DACA and potentially sets up an urgent situation leading to a Supreme Court ruling in the fall.

One scenario is that Judge Hanen, the judge in the Texas case, will issue a preliminary injunction finding that DACA is likely unconstitutional and order DHS to stop renewals (and taking any new applications if the judge in DC allows his previous order to go into effect). This would set up a situation in which DHS was subject to conflicting court orders and no matter what action DHS takes, it would likely be found in contempt of court.

The interaction of these court cases sets up a situation in which DHS could be put in an impossible situation raising an urgent situation for the appellate and Supreme Courts to resolve through the summer and fall. During this time period as the litigation proceeds, it is possible that DHS could continue with DACA renewals, but it is also possible that DHS could let DACA recipients' work permits and protection from deportation expire.

If, however, Judge Hanen does not issue a conflicting court order, then these cases will likely be appealed to the Supreme Court once the appellate courts rule, and at the earliest, the Supreme Court would issue a ruling next April or June.

No matter how the court cases are decided, the long-term situation for Dreamers will remain uncertain. Only Congress can provide a permanent legislative fix to help Dreamers.