



MEMORANDUM

TO: Interested Parties
FROM: FWD.us
DATE: February 4, 2021
RE: DACA Under Imminent Legal Threat, Congress Must Act

After four long years, Donald Trump is no longer president and the Deferred Action for Childhood Arrivals (DACA) program remains on the books thanks to the tireless efforts of immigrant youth, advocates, and talented litigators. On day one of his presidency, President Biden ordered the Justice Department and Department of Homeland Security to [“preserve and fortify DACA.”](#)

While many are breathing a sigh of relief, DACA remains under imminent legal threat and only Congress can and must act to put permanent protections in place. **A federal court ruling ordering DACA to be shut down could come at any moment.**

More than 200,000 DACA recipients [work in essential industries](#). They have been on the frontlines in hospitals and grocery stores and behind the scenes in food service, logistics, and other jobs that we all depend on. Ending DACA would take these essential workers out of the workforce.

Anti-DACA Ruling from Texas Federal Judge is Imminent

DACA is both legal and highly successful, but it has been under legal attack since it was created in 2012. No court has ever found DACA to be illegal. In fact, early lawsuits were tossed out of court, including by the conservative Fifth Circuit Court of Appeals.

A 2018 lawsuit brought by the State of Texas and eight other states and backed by the Trump administration is seeking a ruling that declares DACA unconstitutional and illegal. The states are seeking a nationwide order prohibiting the government from continuing to issue deferred action and work authorization or advance parole to DACA recipients.

The litigation is before Judge Andrew Hanen, a federal judge in the Southern District of Texas. The Mexican-American Legal Defense Fund (MALDEF) and the State of New Jersey intervened to defend DACA because the Trump administration refused to do so.



Judge Hanen's previous actions leave little doubt as to his imminent ruling on the legality of DACA. These actions include:

- Invalidating the Obama-era Deferred Action for Parents of Americans (DAPA) program and an expansion of the DACA program (DACA+). Hanen's injunction was ultimately upheld in 2016 by an equally-divided Supreme Court.
- Seeking the personal information of approximately 100,000 DACA recipients and suggesting that this information, including "all personal identifiers and locaters including names, addresses, 'A' file numbers and all available contact information," would be turned over to Texas and the other 25 states suing over DAPA and DACA+.
- Stating in 2018 that [DACA was probably illegal](#) and that he would likely invalidate the program after further proceedings. Hanen temporarily halted the proceedings in his court while litigation regarding Trump's unlawful termination of DACA worked its way through the courts and the Supreme Court rendered its decision, which was silent on the legality of DACA.
- Ordering attorneys to appear at a DACA hearing in person during the height of the pandemic in December 2020. During the hearing, Hanen directed participants to refer to DACA beneficiaries as "illegal aliens," which he noted was not "politically correct in today's popular parlance."

What a Ruling Against DACA Would Mean

Judge Hanen could issue a ruling on this case any day now, possibly ending any additional DACA renewals immediately and leaving hundreds of thousands of young people without protection from deportation or work authorization.

A negative ruling from Judge Hanen would conflict with orders from Judge Nicholas Garaufis of the Eastern District of New York. Judge Garaufis' December 2020 orders require the Department of Homeland Security to operate DACA fully and under its original terms.

Creating a conflict among the lower courts could pave the way for the Supreme Court to take some action regarding DACA even before a full challenge, briefing, and oral argument plays out. Of note, Justice Barrett has replaced Justice Ginsburg since the Supreme Court ruled 5-4 in June of 2020 that Trump's termination of DACA was unlawful.

Congress Must Act



Only Congress can pass permanent protections for DACA recipients and the rest of the community of 11 million undocumented immigrants, who have lived in the United States for an average of two decades. DACA recipients and their families will continue to live with uncertainty until permanent protections are passed by Congress and signed into law. Courageous leadership is needed now more than ever. It is long past time that lawmakers stop treating DACA recipients and their families like pawns in a political game and work together, across party lines, to relieve the fear they have been experiencing for years in the country that they call home.