



## **Frequently Asked Questions about the Supreme Court's Ruling in *U.S. v. Texas* (updated 8/3/16)**

**Q: How did the Supreme Court rule in *U.S. v. Texas*?**

A: On June 23, 2016, the Supreme Court [issued a one-sentence per curiam ruling](#) in *U.S. v. Texas*, simply stating, “The judgment is affirmed by an equally divided court.” The 4-4 deadlock effectively leaves in place [the preliminary injunction that was issued on February 16, 2015](#) by U.S. district court Judge Andrew Hanen, and affirmed by the Fifth Circuit, blocking the federal government from implementing two initiatives [announced by President Obama in November 2014](#): the expansion of Deferred Action for Childhood Arrivals (DACA+) and Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA). By affirming the lower court in this manner, the Court set no precedent on any of the substantive issues in the case, including the threshold question of whether Texas and the other litigant states have standing to sue.

**Q: How will the Court's ruling affect people who are waiting to apply for these initiatives?**

A: It is no secret that millions of young people and families have been living for years in the United States in an unauthorized status and at risk of deportation. In recognition of this reality, on June 15, 2012, the Obama administration [announced the first DACA initiative](#) for certain young people who came to the United States as children and meet other eligibility criteria. With Congress repeatedly failing to pass immigration reform in the preceding years and again in 2013, AILA and other organizations urged the president to provide temporary relief to other individuals, resulting in the announcement of DACA+ and DAPA. The Court's inability to render a majority decision in *U.S. v. Texas* means the administration's initiatives remain blocked and individuals who would otherwise be eligible for DACA+ or DAPA cannot apply at this time.

It [has also been found that DACA provides recipients](#) with greater access to educational opportunities and better jobs, thus contributing to the growth of businesses and the economy through increased tax contributions. Those additional benefits that DACA+ and DAPA would have yielded will also remain on hold.

**Q: Does the Court’s ruling impact DACA 2012?**

A: The ruling does not directly impact the original DACA initiative launched in 2012. Previous grants of deferred action under DACA 2012 are not affected, and future applicants will still be able to apply for DACA 2012.

**Q: What is the current status of *U.S. v. Texas*?**

A: On July 18, 2016, the federal government [filed a petition for rehearing with the U.S. Supreme Court](#), urging the Court to “grant rehearing to provide for a decision by the Court when it has a full complement of Members, rather than allow a non-precedential affirmance by an equally divided Court to leave in place a nationwide injunction of such significance.”

The Court’s decision to grant rehearing is discretionary, and could take months. For example, in another case that yielded a 4-4 ruling this term, [Friedrichs v. California Teachers Association](#), though the litigants requested rehearing in April, as of late June the Court still had not ruled on the petition. If the Court grants rehearing, it would likely not schedule the case until a ninth justice is confirmed, and it is likely that the Senate will not confirm a ninth justice until the new president takes office in 2017. As a result, re-argument would likely not be scheduled until the Court’s 2017-2018 term, and a decision would not be expected until 2018.

**Q: Will DACA+ and DAPA ever be implemented?**

A: The Supreme Court is not likely to render a decision until 2018. As a result, the future of these programs likely depends on who is elected president in November and whether he or she would continue to pursue this strategy or not. Hillary Clinton has stated publicly that she supports these initiatives and has committed to introducing comprehensive immigration reform legislation with a path to citizenship within the first 100 days of her administration. Donald Trump has said he will rescind DACA 2012 as well as DACA+ and DAPA.

**Q: Does DHS still have the authority to grant deferred action?**

A: Although DACA+ and DAPA are enjoined, the Supreme Court’s ruling does not render judgment on the underlying question of the president’s authority to establish priorities for the enforcement of immigration law or to grant deferred action. Thus, DHS still has the authority to review and grant individual requests for deferred action. Moreover, the Court’s ruling does not affect DHS’s authority to establish a different deferred action initiative that applies to a category of individuals who are not enforcement priorities. There are several examples where DHS has defined a deferred action policy that applies to a group of individuals, most notably the announcement in 1987 under President Reagan of the “Family Fairness” initiative, a blanket deferral of deportation for a defined class of children under 18 in mixed status families.

**Q: As a result of the Court’s ruling are people who would be eligible for DACA+ and DAPA now at greater risk of deportation?**

A. The Court’s ruling does not affect DHS’s authority to establish enforcement priorities, and on the day the ruling was issued, President Obama announced that the enforcement priorities set

forth in [DHS Secretary Jeh Johnson's November 20, 2014 memorandum](#) would remain in effect. Individuals who would qualify for DACA+ or DAPA do not fall under these stated priorities and should not be targeted for enforcement.

**Q. Should individuals who may be eligible for DACA+ or DAPA apply affirmatively for deferred action as an exercise of prosecutorial discretion?**

A: AILA lawyers and other practitioners should continue to evaluate each case individually and make a careful determination as to whether an affirmative request for prosecutorial discretion, including deferred action, is a viable and prudent option. DHS's 2014 policies on enforcement and prosecutorial discretion remain in effect and are intended to clarify the grounds upon which immigration officials will consider a grant of prosecutorial discretion. But requesting deferred action for an individual who is not yet the subject of enforcement carries significant risk which must be carefully evaluated prior to applying. Moreover, the application of the prosecutorial discretion policies is inconsistent across field offices, and a decision to exercise discretion is, by its very definition, discretionary.

**Q: How else can AILA members assist potential DACA+ and DAPA applicants?**

A: Research has shown [that 14.3% of the DACA-eligible population may also qualify](#) for other forms of relief. Thus, practitioners can provide a service to the affected public by screening potential DACA+ and DAPA applicants to determine if they qualify for legal status. In the meantime, AILA will continue fighting for the implementation of DACA+ and DAPA, and [will provide updates on our website about the status of the litigation](#), as well as information about how to support these efforts. AILA will also continue advocating for Congress to pass legislative reforms that provide a more lasting solution, not only for those living in the U.S. without status, but for the families, businesses, asylum seekers, and other individuals who have long awaited reform.

**Q: What is the status of Judge Hanen's demand for the personal information of DACA recipients who received three-year EADs?**

A: On [May 19, 2016, Judge Hanen ordered](#) the federal government to turn over the names, addresses, "A" file numbers, and all available contact information of tens of thousands of DACA recipients who received three-year work authorization cards under the 2012 DACA initiative between November 2014 and February 2015, and who live in one of 26 plaintiff states in *U.S. v. Texas*. While Judge Hanen stated that this information will initially be kept under seal, it could be released to any of the 26 states that are parties to the lawsuit if they show "good cause." Judge Hanen also ordered hundreds of DOJ attorneys to take an in-person ethics course. This order stems from previous hearings where Judge Hanen threatened DOJ attorneys with sanctions for "misleading" him regarding the government's implementation of DACA+ and DAPA.

On [June 7, 2016, Judge Hanen issued an order](#) for the parties to appear for a status conference on August 22, 2016, and stayed the May 19, 2016 order pending the outcome of that conference. In an appeal to the 5th Circuit, DOJ asked the court to vacate Judge Hanen's orders to sanction prosecutors and his request to turn over the personal information of the individuals who received the three-year employment authorization cards in error.