Third US judge orders Daca restarted, saying new applicants must be accepted

**Judge John Bates is first to order Trump administration to accept new applications as young undocumented Dreamers await their fate**

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 Protesters demonstrate in Washington in support of Daca protections for undocumented young people. Photograph: Shawn Thew/EPA

A third federal judge has ordered the [Trump administration](https://www.theguardian.com/us-news/trump-administration) to restart a program that shields young undocumented immigrants known as “Dreamers” from deportation and, in a first, to accept new applicants to the program.

Writing that the decision to end the [Deferred Action for Childhood Arrivals (Daca)](https://www.theguardian.com/us-news/2017/sep/05/dreamers-daca-trump-ends-program-fears-for-future)program was “virtually unexplained”, the US district judge John Bates said on Tuesday he would stay the order for 90 days to allow the Department of Homeland Security (DHS) an opportunity to “better explain” its decision.

“Daca’s rescission was arbitrary and capricious because the department failed adequately to explain its conclusion that the program was unlawful,” Bates wrote in his 60-page [ruling](https://assets.documentcloud.org/documents/4446318/Microsoft-Princeton-Daca-20180424.pdf), released on Tuesday evening.

Two district court judges, in San Francisco and Brooklyn, previously ordered the Trump administration to spare Daca. Bates, however, went a step further and ordered that the administration accept new applications while litigation continues.

The first injunction came several weeks before 5 March, a deadline set by the Trump administration to end the program. In the countdown to that date, nearly 100 Daca recipients per day were losing their protected status. The rulings forced DHS to begin accepting renewal applications from recipients. But it did not have to accept new applications.

Bates is also the first Republican appointee to rule on the matter. Judge Nicholas Garaufis of the federal district court in Brooklyn and Judge William Alsup of the federal district court in San Francisco were both appointed by Bill Clinton.

The program was unilaterally created by Barack Obama in 2012, offering renewable two-year work permits to young undocumented immigrants, the majority of whom were brought to the US as children. Since the program was created, nearly 700,000 immigrants have enrolled.

On 5 September, the US attorney general, Jeff Sessions, said the Trump administration would end Daca after six months, arguing that the program was unconstitutional. The move set off a furious debate in Congress, where lawmakers ultimately failed to strike a deal that would preserve the program in exchange for Trump immigration priorities, including funding for his border wall and new limits on legal immigration.

“Today’s order doesn’t change the Department of Justice’s position on the facts: DACA was implemented unilaterally after Congress declined to extend benefits to this same group of illegal aliens,” said Devin O’Malley, a spokesman for the justice department, in a statement. “The Department of Homeland Security therefore acted within its lawful authority in deciding to wind down DACA in an orderly manner.”

O’Malley continued: “The Justice Department will continue to vigorously defend this position, and looks forward to vindicating its position in further litigation.”

Bates rejected the administration’s argument that the action was necessary because of a threat by coalition of attorney generals from conservative states to sue the federal government if Trump didn’t dismantle the program.

“The agency’s prediction regarding the outcome of threatened litigation over DACA’s validity – specifically, that the district court in the Texas litigation would immediately halt the program, without any opportunity for a wind-down – was so implausible that it fails even under the deferential arbitrary and capricious standard. DACA’s rescission will therefore be set aside,” Bates wrote.

He said that if the department did not come up with a better defense for ending the program, Daca would be restored in 90 days.

Immigration advocates celebrated the decision late Tuesday night.

“Either Trump finds another way to end the program, tossing hundreds of thousands of young people into deportation proceedings, or he works with [Republicans] and [Democrats] to find a legislative solution that secures our border and ensures Dreamers continue contributing to our economy,” Ali Noorani, the executive director of the Washington-based National Immigration Forum, said on Twitter.

“The American public wants permanent legislative solutions, not mass deportation.”