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Legal Sidebar

District Court Enjoins DACA Phase-Out: Explanation and Takeaways

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Update 2: On April 24, 2018, a federal district court in the District of Columbia held that the rescission of the Deferred Action for Childhood Arrivals initiative (DACA) violates the Administrative Procedure Act (APA). The decision, NAACP v. Trump*, grants permanent relief that differs from the nationwide preliminary injunctions granted by district courts in the Northern District of California and the Eastern District of New York (both analyzed below). Specifically, the* NAACP *court decided to vacate the DACA rescission and remand it to the Department of Homeland Security (DHS), the agency responsible for administering DACA, because the legal reasoning that formed the basis for the rescission was "scant" and "barebones." But the district court stayed the vacatur order for 90 days to give DHS "an opportunity to better explain its rescission decision."*

For the time being, therefore, NAACP *does not change the current availability of DACA relief: the preliminary injunctions issued by the other two district courts continue to require DHS to process DACA renewal applications but not initial applications. However, if the* NAACP *vacatur order goes into effect at the end of the 90-day stay—that is, if DHS does not supply new reasoning that adequately justifies, in the district court's opinion, the rescission of DACA—the order will require DHS to process both initial and renewal applications. The* NAACP *court expressed doubt as to whether DHS will be able to provide an adequate justification. The court noted that Trump Administration officials have shown support for the policy of protecting childhood arrivals from removal, which the court took to suggest "that [DHS] would not have rescinded DACA but for its supposed illegality." Further, the court noted that at least one other federal district court ruling in the District of Columbia had suggested that DACA is not illegal.*

Meanwhile, with respect to the other DACA litigation discussed in the Sidebar below, the U.S. Court of Appeals for the Ninth Circuit is scheduled to hear oral argument in the government's expedited appeal in the Northern District of California case on May 15, 2018. An expedited appeal is also pending before the Second Circuit in the Eastern District of New York case; the appellate docket (No. 18-485) suggests that the Second Circuit will hear oral argument in late June 2018.

Update 1 (March 7, 2018): Following the publication of this Sidebar, additional developments have arisen that affect the Trump Administration's planned phase-out of the DACA program. On February 13, 2018, the U.S. District Court for the Eastern District of New York became the second federal district court to issue a nationwide preliminary injunction limiting the DACA phase-out to aliens who have not

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yet obtained DACA benefits. The district court's injunction mirrors the nationwide injunction issued by the U.S. District Court for the Northern District of California that is discussed in this Sidebar, and the reasoning behind each injunction was largely similar. Both courts held that plaintiffs were likely to succeed on the merits of their claims under the Administrative Procedure Act that DHS's decision to end DACA was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."

On March 5, 2018, a federal district court in Maryland, in considering yet another lawsuit challenging the planned rescission of DACA, ruled primarily in DHS's favor and held that the rescission does not violate the Administrative Procedure Act or the Constitution. That holding does not impact the two nationwide injunctions mentioned above, which continue to prohibit DHS from implementing the DACA rescission in most respects. However, the Maryland federal district court imposed a new restriction on DHS by enjoining it "from using information provided by [applicants] through the DACA program for enforcement purposes." Should DHS seek to use an individual DACA applicant's information for an enforcement purpose implicating "national security . . . public safety or public interest," the injunction requires DHS to "petition the Court for permission to do so on a case-by-case basis with in camera review."

The Department of Justice has been unsuccessful in efforts to bring about a speedy resolution to the litigation surrounding the DACA phase-out. In addition to filing appeals with the relevant federal courts of appeals challenging the California and New York injunctions, the Department of Justice petitioned for Supreme Court review of the California federal district court's decision (at the time of the petition, neither the New York nor Maryland injunctions had been issued). On February 26, 2018, the Supreme Court denied the petition, stating that "[i]t is assumed that the Court of Appeals will proceed expeditiously to decide this case." The two nationwide injunctions halting the phase-out of DACA with respect to persons who have already obtained relief under the initiative will remain in place while the litigation continues in the federal courts of appeals, unless the Supreme Court or the courts of appeals order otherwise.

The original post from January 11, 2018, is below.

Since the Trump Administration announced in September 2017 a phase-out of the Deferred Action for Childhood Arrivals (DACA) initiative, a number of lawsuits have been brought challenging the action as unconstitutional or contrary to federal laws governing agency rulemaking procedures. The Obama Administration implemented DACA in 2012 to provide work authorization and administrative relief from immigration enforcement action to certain unlawfully present aliens who entered the United States as children. The Trump Administration, however, has taken the position that the Immigration and Nationality Act (INA) does not authorize DACA and the initiative is not a valid exercise of the Executive's independent constitutional authority. On January 9, 2018, the U.S. District Court for the Northern District of California issued a nationwide preliminary injunction in the case of *Regents of University of California v. U.S. Department of Homeland Security* limiting the DACA phase-out to aliens not yet enrolled in DACA. The decision, which seems likely to be appealed by the Trump Administration, may have immediate consequences for the disposition of current DACA enrollees and, potentially, broader consequences regarding the permissibility of the large-scale use of deferred action with respect to unlawfully present aliens.

Under the Administrative Procedure Act, a court may set aside executive actions that are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." Having determined that the Administration's decision to phase out DACA was subject to judicial review, the district court reasoned the plaintiffs were likely to succeed on their APA claim. The district court concluded that the Trump Administration's proffered initial reason for ending DACA was not based on a change in policy preference but instead was grounded upon what the court viewed as a mistaken legal conclusion: the Administration believed that DACA could not be supported by the Executive's constitutional and existing statutory powers, but the district court concluded otherwise.

In ruling that DACA was a lawful exercise of executive authority, the district court relied heavily on a 2014 legal opinion of the Department of Justice's Office of Legal Counsel (OLC) included in the administrative record. That OLC opinion characterized certain kinds of large-scale deferred action initiatives including DACA as consistent with longstanding executive policies that were (1) premised on authorities expressly or impliedly granted by Congress; (2) never formally disapproved by Congress, despite the Executive's use of deferred action for many decades (albeit to address a more limited population than covered by DACA); and (3) supported by language in Supreme Court opinions recognizing a broad degree of discretion given to the Executive in enforcing immigration laws. In 2015, the U.S. Court of Appeals for the Fifth Circuit ruled that the Obama Administration's intended 2014 expansion of DACA to additional persons, along with the creation of a new programmatic deferred action initiative for unlawfully present alien parents of U.S. citizens or lawful permanent residents, was unlawful. Specifically, the Fifth Circuit reasoned that the "specific and intricate" INA provisions concerning immigration classifications and work authorization precluded broad-based deferred action initiatives akin those at issue in the litigation. Ultimately, an equally divided Supreme Court affirmed that ruling without issuing an opinion. However, the California district court reasoned that the 2014 deferred action initiatives struck down by the Fifth Circuit were sufficiently distinct in terms of their tether to governing immigration statutes and their scope of coverage, so that the judicial decision did not provide adequate grounds for the Trump Administration to view the 2012 DACA initiative as unlawful. The district court also rejected a related justification raised by the government concerning the potential litigation costs associated with the program as an impermissible and unpersuasive ad hoc justification.

While DACA does not provide enrolled aliens with legal immigration status, enrollees have been granted certain relief from immigration enforcement action and, generally, work authorization for renewable two-year periods. The district court injunction provides that aliens enrolled in DACA may seek renewal of DACA coverage once their current coverage period ends. The injunction does not bar the executive branch from ending DACA eligibility for those aliens who had *never* before enrolled in DACA. The injunction also does not prevent the Executive from limiting the exercise of advance parole that would otherwise enable DACA enrollees traveling abroad to return to the United States, notwithstanding their lack of legal immigration status.

A more detailed discussion of the issues raised by the DACA litigation may be the subject of future CRS products, but the district court's ruling has a few immediate takeaways. Some observers have criticized the district court's reasoning, contending among other things that the district court failed to apply the correct standard of review when considering an APA challenge to the DACA phase-out. The merits of such arguments seem likely to be considered on appeal. But absent further judicial action in favor of the government's position, the status quo for current DACA enrollees largely remains unchanged: once their current period of DACA relief expires, they are allowed to seek renewal of their enrollment. Some observers have suggested the preliminary injunction may have implications for ongoing federal budget negotiations, for which the status of DACA recipients has been a point of contention. Regardless of whether Congress and the President ultimately agree on legislation addressing DACA recipients' status, the district court ruling, while recognizing possible limitations to the scope of permissible deferred action initiatives, arguably represents the strongest judicial opinion recognizing the lawfulness of employing deferred action in a large-scale, programmatic fashion to aliens without legal immigration status. Regardless of whether legislation is enacted to specifically address DACA and its enrollees, the district court opinion might be cited in legal support of future deferred action initiatives by the executive branch. Accordingly, the ultimate disposition of the DACA litigation, including whether the district court's reasoning is endorsed or rejected on appeal, could have wide-reaching implications for the use of deferred action.

For more detailed explanation of DACA and recent activities relating to it, see CRS Report R44764, Deferred Action for Childhood Arrivals (DACA): Frequently Asked Questions, by Andorra Bruno and

CRS Legal Sidebar LSB10052, UPDATE: The End of the Deferred Action for Childhood Arrivals Program: Some Immediate Takeaways, by Hillel R. Smith.

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