

## Federal Judge Issues Decision That Can Determine DACA's Fate

April 27, 2018

On April 24, 2018, a district judge for the District of D.C. ruled that the Trump administration's decision to rescind the Deferred Action for Childhood Arrivals (DACA) program was arbitrary and capricious under the Administrative Procedure Act. In his opinion, Judge John Bates said the administration failed to provide reasoning to adequately explain its conclusion that DACA was unlawful. "Neither the meager legal reasoning nor the assessment of litigation risk provided by DHS to support its rescission decision is sufficient to sustain termination of the DACA program."

This decision is the first to reinstate DACA in its entirety, including allowing new applicants to participate in the program. However, the decision will not go into effect for 90 days, and the government has the opportunity to provide reasoning to explain why the program was unlawful.

### Federal Litigation Following Rescission

Last year, we provided an update on President Trump's decision to rescind DACA, a program that had been in place since June 15, 2012. Although there were bi-partisan bills under consideration to extend the DACA program and President Trump expressed willingness at some points to protect it, Congress and the administration failed to reach an agreement and no legislation was passed. In the absence of Congressional action, various cases challenging the administration's decision to rescind DACA have progressed through the courts.

Judge Bates is the third judge to rule against the Trump administration's decision to rescind the DACA program. Two federal judges in California and New York previously ruled against the administration. On January 9, 2018, Judge William Alsup of the Northern District of California issued a national injunction ordering the Trump administration to maintain the DACA program as it existed before it was rescinded, at least with respect to allowing existing enrollees to renew their enrollments. On February 13, 2018, Judge Nicholas G. Garaufis of the Eastern District of New York issued a similar national injunction. As a result more than 55,000 work permits have been issued to existing enrollees pursuant to these court orders.

Neither of these decisions applied to those who had not applied for DACA by September 5, 2017. Thus, no previous decision required the full program to be reinstated including allowing new applicants. Judge Bates' decision, should it take effect, allows for new DACA applicants.

Not every court has been as hospitable to challengers' arguments. On March 5, 2018, a federal judge in Maryland dismissed a challenge to the administration's decision to end DACA.

### What's Next

The Department of Homeland Security has 90 days to issue a new memorandum providing a fuller explanation as to why the program is unlawful. Until then, the decision is stayed and will not take effect. If the government fails to issue a new memorandum, the previous memo will be vacated and the DACA program will be restored in its entirety. Unless and until the DACA program is restored by court order or through legislation, no new applications will be accepted.

Either way, it is likely that the court battles will continue.

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