

## THE 2018 **CLAY** AWARDS

*The 22nd Annual California Lawyer Attorneys of the Year*

### IMMIGRATION

## Stopping the end of US program protecting undocumented immigrants



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### *Garcia v. USA*

Three days after U.S. Attorney General Jeff Sessions announced that the government was rescinding legal protections for nearly 700,000 undocumented immigrants who came to the United States as children, a flood of lawsuits began pouring into California federal court seeking to stop the action.

The leadership of California's public university system, cities, counties, individual Deferred Action for Childhood Arrivals recipients and states filed lawsuits arguing that the government had acted unlawfully in ending the program.

The United States, the plaintiffs argued, had made a deal with the young Dreamers, as DACA recipients are known. In exchange for coming forward to the government to reveal sensitive information for a thorough vetting process, they were allowed to stay in the country to work and go to

school.

"Thousands of people have come out of the shadows," said Mark Rosenbaum, an attorney at Public Counsel who has represented several DACA recipients in the ongoing litigation.

"They have upheld their end of the deal," he continued. "What's at issue here is whether the United States will be held to its word."

The concerted legal effort to stop the Trump administration from ending the program has been a tapestry of California's legal community. Gibson, Dunn & Crutcher LLP, Covington & Burling LLP, Public Counsel, California's Justice Department, Cotchett, Pitre & McCarthy LLP, Altshuler Berzon LLP, and professors from the University of California at Berkeley and Irvine have all worked in tandem on the consolidated cases.

In January, the team secured a profound victory. U.S. District Judge William H. Alsup granted their request to enjoin the government from ending DACA on a nationwide basis. In a 49-page order, Alsup detailed why the decision to end the program was likely arbitrary and based on a

flawed interpretation of the law. Days later, the government began accepting DACA renewal applications.

But what followed was unprecedented: a request on the part of the government to skip normal federal appellate procedures — a move usually reserved for moments of national emergencies — in order to receive immediate U.S. Supreme Court review. Court watchers speculated that the government wanted to avoid the 9th U.S. Circuit Court of Appeals, for which the expressed public disdain in a tweet the day after Alsup's order.

Last month, the Supreme Court rejected that request in a decision that came a week before the Trump administration's deadline for a legislative fix to the self-imposed quagmire. The case will now proceed at the 9th Circuit on an expedited briefing schedule. Oral arguments and an opinion on the injunction are expected by the fall.

Attorneys agree, though, that a permanent legislative fix is preferable than legal stopgaps.

"Now that the government's March 5 deadline has passed, [Alsup's] injunction (and the similar one issued in New York) are the only things standing between 690,000 upstanding young adults and loss of their ability to work and even deportation," said Gibson Dunn's Ethan Dettmer, who represents DACA recipients in the case.

Without that order, the government would be free to initiate removal proceedings against the recipients, who include doctors, lawyers, teachers and physiologists among their ranks.

"The stakes of these case extend beyond recipients of DACA protections to the communities in which they live and work," said Leah Litman, a professor at U.C. Irvine School of Law who is also involved in the case.

Despite Alsup's ruling and a similar injunction in New York federal court, a Maryland district judge reluctantly ruled that the Trump administration acted within the bounds of the law when it ended DACA. Until congress and the president enact a permanent solution to protect Dreamers, the federal judiciary will continue to wrestle with the issue.

"We're litigating the case as if it's the only one in the country," said Jeffrey M. Davidson, a partner at Covington who also represents the plaintiffs. "And we're trying our best to win it,"

— Nicolas Sonnenburg