

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Circuit Mediation Office  
Phone (415) 355-7900 Fax (415) 355-8566  
<http://www.ca9.uscourts.gov/mediation>

**MEDIATION QUESTIONNAIRE**

The purpose of this questionnaire is to help the court's mediators provide the best possible mediation service in this case; it serves no other function. Responses to this questionnaire are *not* confidential. Appellants/Petitioners must electronically file this document within 7 days of the docketing of the case. 9th Cir. R. 3-4 and 15-2. Appellees/Respondents may file the questionnaire, but are not required to do so.

9th Circuit Case Number(s):	18-15134		
District Court/Agency Case Number(s):	3:17-cv-05380-WHA; 3:17-cv-05813-WHA		
District Court/Agency Location:	U.S. District Court for the Northern District of California		
Case Name:	Dulce Garcia, et al.	v.	United States of America, et al.
If District Court, docket entry number(s) of order(s) appealed from:	65 (Case No. 17-cv-05380); 53 (Case No. 17-cv-05813)		
Name of party/parties submitting this form:	Appellants Garcia, Avila, Suarez, Mendoza, Latthivongskorn, Ramirez, County of Santa Clara, and Service Employees Internatioanl Union Local 521		

Please briefly describe the dispute that gave rise to this lawsuit.

Plaintiffs/Appellants sought to enjoin the Trump Administration's decision to terminate the Deferred Action for Childhood Arrivals program ("DACA") on the grounds that the decision violated the Administrative Procedure Act ("APA") and the due process and equal protection guarantees of the U.S. Constitution.

Briefly describe the result below and the main issues on appeal.

The District Court preliminarily enjoined the termination of DACA on the ground that the decision was arbitrary and capricious under the APA. However, the District Court dismissed-in-part Plaintiffs/Appellants' due process claim. Plaintiffs/Appellants appeal the partial dismissal of that claim.

Describe any proceedings remaining below or any related proceedings in other tribunals.

Plaintiffs/Appellants have until March 20, 2018 to move for leave to amend their complaint. The parties are awaiting an order from the District Court regarding whether the Administrative Record must be expanded, after which an interlocutory appeal of that order may be sought. Defendants/Appellees have also petitioned the United States Supreme Court for certiorari before judgment (Case No. 17-1003); the Supreme Court is scheduled to decide that petition during its February 16, 2018 conference.

Provide any other thoughts you would like to bring to the attention of the mediator.

Plaintiffs/Appellants separately appeal (Case No. 18-15133) the dismissal of their notice-and-comment claim under the APA, and Defendants/Appellees separately appeal (Case Nos. 18-15068, 18-15128) the orders granting the preliminary injunction and denying-in-part their motion to dismiss. The Court has consolidated all appeals under Case No. 18-15068.

Any party may provide additional information *in confidence* directly to the Circuit Mediation Office at [ca09\\_mediation@ca9.uscourts.gov](mailto:ca09_mediation@ca9.uscourts.gov). Please provide the case name and Ninth Circuit case number in your message. Additional information might include interest in including this case in the mediation program, the case's settlement history, issues beyond the litigation that the parties might address in a settlement context, or future events that might affect the parties' willingness or ability to mediate the case.

### CERTIFICATION OF COUNSEL

I certify that:

- a current service list with telephone and fax numbers and email addresses
- is attached (see 9th Circuit Rule 3-2).
- I understand that failure to provide the Court with a completed form and
- service list may result in sanctions, including dismissal of the appeal.

Signature

("s/" plus attorney name may be used in lieu of a manual signature on electronically-filed documents.)

Counsel for

**Note:** Use of the Appellate ECF system is mandatory for all attorneys filing in this Court, unless they are granted an exemption from using the system. **File this document electronically** in Appellate ECF by choosing Forms/Notices/Disclosure > File a Mediation Questionnaire.

## REPRESENTATION STATEMENT

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## CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on February 1, 2018.

The participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

*s/ Theodore J. Boutrous, Jr.*

Theodore J. Boutrous, Jr.

Counsel for Appellants