

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):	18-15128, 18-15133		
District Court/Agency Case Number(s):	17-5211, 17-5235, 17-5329, 17-5380, 17-5813		
District Court/Agency Location:	N.D. Cal.		
Case Name:	Regents of CA, et al.	v.	USA, et al.
If District Court, docket entry number(s) of order(s) appealed from:	Dkt Nos. 234, 239		
Name of party/parties submitting this form:	USA, US DHS, Kirstjen Nielsen, Donald J. Trump		

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

Plaintiffs challenge the Acting Secretary's decision to rescind the policy known as DACA.

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

The district court denied in part the government's motions to dismiss for lack of jurisdiction and failure to state a claim. The main issues in these interlocutory appeals are (1) whether the Acting Secretary's decision is subject to review under the APA; (2) whether the district court had jurisdiction notwithstanding the jurisdictional bar in 8 USC 1252(g); (3) whether the Acting Secretary's decision was arbitrary and capricious; (4) whether the plaintiffs have stated a claim for violation of equal protection; (5) whether the plaintiffs have stated a claim for violation of due process; and (6) whether the entry of a nationwide injunction was permissible.

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

This Court denied a petition for writ of mandamus filed by the government in October concerning expansion of the administrative record and discovery matters. The Supreme Court vacated this Court's decision and remanded. The record and discovery issues are pending in the district court. The government has petitioned the Supreme Court for a writ of certiorari before judgment relating to the district court's order granting a preliminary injunction.

Similar litigation is currently pending in the Eastern District of New York, and the government has also filed petitions for certification of interlocutory orders (18-122 & 18-123).

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

The Court of Appeals sua sponte consolidated the above-captioned cases with Nos. 18-15068, 18-15069, 18-15070, 18-15071, and 18-15702 and ordered expedited briefing, after the government filed a mediation statement in the latter group of cases.

Any party may provide additional information *in confidence* directly to the Circuit Mediation Office at 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 on February 2, 2018, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

s/ Thomas Pulham

THOMAS PULHAM