



Torres v. U.S. Dept. of Homeland Security and Its Effect on DACA Citizenship Cases

As a Mexican immigrant, Gonzalez Torres was living in the United States under the Deferred Action for Childhood Arrivals program, more commonly known as DACA. The U.S. Department of Homeland Security terminated Torres' DACA status on the suspicion that he played a role in human smuggling resulting from an arrest made in 2016. He argued his case in court and the decision, *Torres v. United States Dep't of Homeland Sec.*, No. 17cv1840 JM(NLS), 2018 U.S. Dist. LEXIS 62366 (S.D. Cal. Apr. 12, 2018), has potentially laid key precedent for future immigration law cases. (You can get [in-depth analysis of that case on Lexis Advance](#)®. Not a subscriber? [Click here](#).)

EVENTS THAT LED TO THE TERMINATION OF TORRES' DACA STATUS

Gonzales Torres immigrated to the United States when he was eight years old and, after the Obama administration introduced it in 2012, enrolled in the DACA program. He attended school, graduated and was employed (with proper work authorization) at a regular job.

In 2016, Torres was dog sitting at a friend's house when the home was raided by U.S. Customs and Border Patrol officers. They found a several undocumented immigrants living there, which led the officers to detain Torres under the suspicion of human smuggling.

Before his arrest, Torres had met the DACA qualifications, as he:

- Entered the United States before his 16th birthday and prior to June 2007
- Lived continuously in the United States during the previous five years
- Was a high school graduate
- Was under the age of 31 as of June 15, 2012
- Had not been convicted of a felony, significant misdemeanor, three or more misdemeanors, nor posed a threat to national or public safety

Note the last point—despite his arrest, Torres was never charged with a crime. Yet the DHS revoked his citizenship due in large part to the new enforcement priority language within President Trump's Executive Orders regarding [tougher application of immigration policies](#).

PRESIDENT TRUMP'S EXECUTIVE ORDERS ON IMMIGRATION

Specifically for Torres' situation, President Trump's Executive Orders outlined an enforcement priority for those who "have been charged with any criminal offense, where such charge has not been resolved" and "have committed acts that constitute a chargeable criminal offense." This new language led directly to Torres' DACA status being thrown into question after his arrest.

Torres initially argued that, since he had never been formally charged with a crime, he was not a foul of his DACA qualifications. Moreover, his legal team pointed to possible breaches in protocol on the part of several agencies within the DHS, including U.S. Citizenship and Immigration Services and U.S. Immigration and Customs Enforcement, that could invalidate his DACA status revocation.

THE COURT BATTLE ON DACA RIGHTS

A judge granted a preliminary injunction based on the protocol issues Torres raised, finding specifically that the agencies involved failed to notify Torres of his DACA termination. That failure to notify also meant that Torres wasn't able to challenge the order. This was similar to what the courts saw in *Pereira v. Sessions*, 866 F.3d 1 (1st Cir. 2017). [Read more about the Pereira decision here.](#)

The preliminary injunction meant that Torres' DACA status was reinstated. Months later however, U.S. Citizenship and Immigration Services brought another challenge to Torres' status—only this time, the agency argued that his arrest for alleged involvement in human smuggling constituted a chargeable criminal offense.

In July of 2018, a federal judge agreed with the agency, essentially saying the government has the authority to make the determination on whether or not a specific person is an enforcement priority.

THE POSSIBLE IMPACT OF THE TORRES DECISION

Torres asked the courts to reconsider, bringing into question the scope of the language in the aforementioned [Executive Orders](#) regarding enforcement priorities. There was a desire for clarification in how much power immigration agencies have in deciding, among other things, what constitutes a chargeable criminal offense.

But the judge upheld the earlier decision, reinforcing the Department of Homeland Security's broad ability to decide what it considers a violation worthy of deportation.

That's important, because it has the potential to factor into future cases. Given the discretion the immigration agencies have, it may be more difficult for other individuals facing deportation to successfully argue their cases. What's really interesting is that—with an election coming up—how will these court decisions impact future cases if there's a different administration in the White House?

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