



SCOTUS Preserves DACA Program, Keeping Workplaces Intact For Now

Insights

6.18.20

By a 5-4 vote, the U.S. Supreme Court ruled today the Trump administration did not provide adequate and appropriate justification to terminate the Deferred Action for Childhood Arrivals (DACA) program, preserving the ability of approximately 700,000 individuals – sometimes known as “Dreamers” – to remain in the country and in American workforces. Considering today’s decision, many DACA recipients will be able to apply to continue to extend their employment authorization or pursue additional educational opportunities.

DACA: A Brief History

In 2012, President Obama introduced DACA as a temporary protection from deportation for those individuals who were brought to the United States as children. The protection was renewable in two-year increments. With DACA protection, the beneficiaries could remain in the United States and apply for work permits, but would not have a pathway to citizenship.

DACA recipients also gained access to higher education. Currently, the average DACA recipient is between the ages of 27 to 35, has received a high school diploma or G.E.D, and does not possess a serious criminal history (such as a felony or serious misdemeanor conviction, or three misdemeanor convictions).

In 2017, acting Department of Homeland Security (DHS) Secretary Elaine C. Duke terminated the DACA program. Her memorandum indicated that U.S. Citizenship and Immigration Services (USCIS) would reject all initial DACA applications and associated applications for work authorization received after September 5, 2017, as well as all renewal applications received after October 5, 2017 from current DACA recipients. Any other renewal applications from DACA recipients would be rejected.

After several organizations challenged the actions taken to terminate DACA, several federal courts issued injunctions that limited the ability of the government to phase out DACA. In early 2018, a California federal court issued a preliminary injunction requiring the federal government to maintain the DACA program on a nationwide basis. This set the stage for an ultimate appeal to the U.S. Supreme Court, as the Court agreed to review three DACA cases: *DHS v. Regents of the Univ. of California* (9th Cir.), *Trump v. NAACP* (D.C. Dist. Ct.), and *McAleenan v. Vidal* (E.D.N.Y.).

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Today, the U.S. Supreme Court ruled that the DHS's decision to end DACA was "arbitrary and capricious in violation of the Administrative Procedures Act." Siding with the lower court's rationale, the Supreme Court held that the agency did not appropriately consider the reliance on the policy that had been created not only for the individuals but also for their employers, their community, the economy, or the nation. Specifically, the Supreme Court stated that "When an agency changes course, as DHS did here, it must 'be cognizant that longstanding policies may have 'engendered serious reliance interest that must be taken into account.'"

Additionally, the Court stated: "The basic rule here is clear: An Agency must defend its actions based on the reasons it gave when it acted. This is not the case for cutting corners to allow DHS to rely upon reasons absent from its original decision." In so doing, the Court gave new life to the dreams of those working and living in the U.S. under the DACA policy, keeping intact many workplaces that otherwise would have been impacted by the program's termination.

In the decision, the Supreme Court found that the notification and rationalization provided by the agency for terminating the program were insufficient. The Court could not identify a solid argument for the rational and process taken by the agency to end the policy. Specifically, the Supreme Court stated, "We do not decide whether DACA or its rescission are sound policies. 'The wisdom' of those decisions 'is none of our concern.' We address only whether the agency complied with the procedural requirements that it provided a reasoned explanation for its action. Here the agency failed to consider the conspicuous issue of whether to retain forbearance and what if anything to do about the hardship to DACA recipients. That dual failure raises doubts about whether the agency appreciated the scope of its discretion or exercised that discretion in a reasonable manner. The appropriate recourse is therefore to remand to DHS so that it may consider the problem anew."

What Impact Does The Decision Have For Employers?

What does this decision mean for employers? Depending upon the number of employees currently within your organization that have depended on DACA employment authorization, the impact could be significant.

With the reinstatement of the DACA policy, you can expect a potential increase in eligible employees who benefit from the policy and make themselves available to work in your organization. The decision will also bring peace of mind for current DACA recipients – who have been living in a state of uncertainty for several years now – and the employers who have grown to rely upon them. The Trump administration may, however, still take new actions to terminate DACA, but must follow the proper procedures for doing so.

If you have questions and would like to discuss how to best prepare your organization, please contact your Fisher Phillips attorney or any member of the firm's [Global Immigration Practice Group](#).

This Legal Alert provides an overview of a specific Supreme Court decision. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

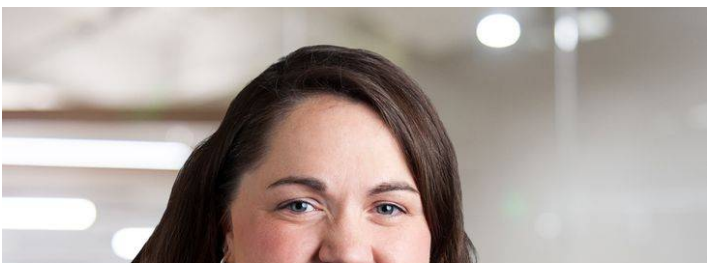
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