

ALERT**Supreme Court Overturns Trump Administration's Termination of DACA**

JUNE 22, 2020

ON JUNE 18, 2020, the **U.S. Supreme Court** issued a **5-4 decision** finding that the Trump administration's termination of Deferred Action for Childhood Arrivals (DACA) was (1) judicially reviewable and (2) done in an arbitrary and capricious manner, in violation of the Administrative Procedure Act (APA).¹

Violations of the Administrative Procedure Act

In concluding that the DACA termination violated the APA, the Court reasoned, first, that the U.S. Department of Homeland Security (DHS) failed to distinguish between the protections from deportation ("forbearance from removal") and the benefits (such as work authorization) that come with DACA. DHS did not consider whether to retain the protections from deportation even if the benefits were terminated. Second, DHS did not consider the hardship rescission would cause to DACA recipients and its farreaching consequences — and the enormous "reliance interests" at stake. The Court specifically noted the respondents' words:

Respondents and their amici assert that there was much for DHS to consider. They stress that, since 2012, DACA recipients have "enrolled in degree programs, embarked on careers, started businesses, purchased homes, and even married and had children, all in reliance" on the DACA program. Brief for Respondent Regents of Univ. of California et al. in No. 18–587, p. 41 (Brief for Regents). The consequences of the rescission, respondents emphasize, would "radiate outward" to DACA recipients' families, including their 200,000 U.S.-citizen children, to the schools where DACA recipients study and teach, and to the employers who have invested time and money in training them. *See id.*, at 41–42; Brief for Respondent State of New York et al. in No.18–589, p. 42 (Brief for New York). See also Brief for 143 Businesses as Amici Curiae 17 (estimating that hiring and training replacements would cost employers \$6.3 billion).

Memo Rescinding DACA Vacated

The Court affirmed the opinion of the *NAACP* case filed in the D.C. federal district court and vacated former Acting DHS Secretary Duke's memo rescinding DACA. In the Court's words:

¹ https://www.supremecourt.gov/opinions/19pdf/18-587_5ifl.pdf. A Court majority concluded that the equal protection claims did not raise a plausible inference that the decision to end DACA was motivated by racial animus. Justice Sotomayor dissented.

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Here the agency failed to consider the conspicuous issues 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.

Implications of the Decision

This was a tremendous win for DACA recipients, their friends, families, and communities, and for everyone who has supported them in their challenge to the Trump administration's unlawful ending of DACA. In light of this decision:

- U.S. Citizenship and Immigration Services (USCIS) will **continue to accept DACA renewal applications from anyone who previously has had DACA**.
- USCIS should begin to accept first-time DACA applications (that is, applications from people who have not previously had DACA) and advance parole applications from current DACA recipients. **HOWEVER**, we do not know whether the Trump administration will take action to try to limit these options.
- Whether you want to apply to *renew* your DACA or apply for DACA for the first time, we encourage you to **speak first with an immigration attorney or Office of Legal Access Programs (OLAP)–accredited representative**. If you decide to proceed with a renewal or first-time application, **we urge that you be represented** by an attorney or accredited representative (a **Form G-28** should be filed with your application).²

What Comes Next?

While this is a tremendous victory for the over 700,000 young immigrants whose home is here — and a testament to their indefatigable organizing efforts — it is clear from the Supreme Court's opinion that it is within the Trump administration's power to decide to terminate DACA again. In addition, Texas and several other states brought a legal challenge to DACA itself that continues in federal district court in Texas. After the Supreme Court issued its decision, the district court judge in that case ordered the parties to file a joint status report by July 24, 2020, to resume proceedings in the case.

In coming days, check NILC's website for more information, as we will continue updating it with additional analysis and guidance.

² <https://www.uscis.gov/g-28>.