On June 18, 2020, the U.S. Supreme Court barred the Trump Administration from ending Deferred Action for Childhood Arrivals (“DACA”), a program that has benefitted an estimated 700,000 undocumented immigrants brought to the United States as children, an estimated 185,000 of whom live in California. In reaching its decision in Department of Homeland Security, et al. v. Regents of the University of California, et al.,[1] the Court held, in part, that the Trump Administration’s decision to end DACA was “arbitrary and capricious” in violation of the Administrative Procedure Act (the “APA”).

The Court’s decision means that the DACA program remains intact for now and that the federal agency charged with administering the DACA program, U.S. Citizenship and Immigration Services (“USCIS”) of the U.S. Department of Homeland Security (“DHS”), is to continue to accept renewal applications from DACA recipients. DACA recipients also continue to be eligible for work authorization for a two-year period that could be renewed upon expiration. Consistent with the Supreme Court’s ruling, the USCIS should also begin accepting first-time DACA applications, consistent with DACA’s 2012 eligibility requirements. AALRR will continue to monitor actions taken by USCIS in this regard.

In delivering the majority opinion of the Court, Chief Justice John Roberts made clear that the “dispute before the Court [was] not whether the DHS may rescind DACA,” but was “instead primarily about the procedure DHS followed in doing so.” Accordingly, it is important to underscore that the Trump Administration could decide to rescind or end DACA once again in the future, but, if such action were to be taken, it would have to be done in a lawful manner under the APA. Legal challenges are likely if the Trump Administration were to take this
U.S. Supreme Court Bars the Trump Administration from Ending DACA

course of action.

Background:

On June 15, 2012, the Obama Administration announced the creation of the DACA program, which deferred for a two-year period, subject to renewal, the removal/deportation of certain qualifying undocumented immigrants who came to this country as children. Under DACA, recipients have also been eligible to receive work authorization for a two-year period, which can be renewed upon expiration. To date, an estimated 700,000 individuals have been the beneficiaries of DACA and their households have contributed an estimated $5.7 billion in federal taxes and $3.1 billion in state and local taxes.

On September 5, 2017, then U.S. Attorney General Jeff Sessions announced the federal government’s decision to rescind the DACA program based on his conclusion that the program was unlawful. In response to the rescission of the DACA program, several lawsuits were filed in federal court, including lawsuits filed by California Attorney General Xavier Becerra along with attorneys general for Maine, Maryland, and Minnesota, the University of California, certain DACA recipients, and others. Three federal cases worked their way through the federal appellate court system and the Court granted certiorari on June 28, 2019 to address the following three issues: “(1) whether the APA claims are reviewable; (2) if so, whether the rescission was arbitrary and capricious in violation of the APA; and (3) whether the plaintiffs have stated an equal protection claim” under the Due Process Clause of the Fifth Amendment of the United States Constitution. The Court heard oral arguments on November 12, 2019 and issued its decision on June 18, 2020.

Supreme Court’s Decision:

Chief Justice Roberts delivered the opinion of the Court, which held, as a preliminary matter, that the federal government’s decision to rescind DACA was reviewable under the APA and within the Court’s jurisdiction.

With regard to the second issue presented, the Court held that the Trump Administration’s rescission of DACA was done in an “arbitrary and capricious” manner in violation of the APA. In reaching its decision, the Court relied, in part, on the federal government’s deficient
reasoning set forth in then-Acting DHS Secretary Elaine Duke’s rescission memorandum calling for the termination of DACA, in addition to the federal government’s position that it purportedly did not need to consider potential reliance interests of DACA beneficiaries when it decided to rescind DACA, which, in the end, the Court found to be unpersuasive. The Court also highlighted the arguments advanced by respondents that “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” or that the exclusion of DACA recipients from the “lawful labor force” would “result in a loss of $215 billion in economic activity and an associated $60 billion in federal tax revenue over the next ten years.” The Court made clear that the DHS was “required to assess whether there were reliance interests, determine whether they were significant, and weigh any such interests against competing policy concerns,” and its failure to do so was “arbitrary and capricious in violation of the APA.” The Court explained:

We do not decide whether DACA or its rescission are sound policies. . . . We address only whether the agency complied with the procedural requirements that it provide a reasoned explanation for its action. Here the agency failed to consider the conspicuous issues whether to retain forbearance [of removal/deportation] and what if anything to do about the hardship of 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 Court decided that the appropriate course of action was to remand the matter to DHS so that it could address the matter “anew” consistent with the Court’s opinion.

Finally, with regard to the third issue before it, the Court held that respondents did not establish an equal protection claim under the Due Process Clause of the Fifth Amendment because the allegations were “insufficient” to “raise a plausible inference that an ‘invidious discriminatory purpose was a motivating factor’ in the relevant decision.” In support of its argument, respondents alleged that animus was a motivating factor, as evidenced by: (1) the disparate impact of the rescission on Latinos from Mexico, who represent 78% of DACA recipients; (2) the unusual history behind the rescission; and (3) pre- and post-election statements by President Trump.” Justice Sotomayor did not join this part of the opinion and did not concur in the corresponding part of the judgment based on her view that the Court prematurely disposed of these equal protection claims by overlooking the strengths of the respondents’ complaints.

Conclusion:

At this time, the DACA program remains intact. AALRR will continue to monitor closely this critically important issue and keep you advised of any developments regarding DACA, including any actions taken by the White House, DHS, or USCIS in response to the Supreme Court’s decision.

Please also be advised that immigration matters are complex and fact specific. Therefore, it is highly advisable that a trusted immigration attorney or nonprofit organization is consulted when undocumented students, including DACA recipients, and their families consider matters involving their immigration status in

U.S. Supreme Court Bars the Trump Administration from Ending DACA
the United States. They should also be mindful of the dangers of fraud committed by immigration consultants/notarios. For more information about how to protect oneself from immigration consultant/notario fraud, please review the following informational resources from the Office of Attorney General Xavier Becerra:

- https://oag.ca.gov/sites/all/files/agweb/pdfs/consumers/consumer-alert.pdf (English)
- https://oag.ca.gov/sites/all/files/agweb/pdfs/consumers/consumer-alert-spanish.pdf (Spanish)


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