

Mobility: immigration alert

June 2020

United States

U.S. Supreme Court rules the federal government's move to rescind the DACA Program unlawful

Executive summary

On 18 June 2020, in a 5-4 decision, the U.S. Supreme Court found the administration's 2017 move to end the Deferred Action for Childhood Arrivals (DACA) program as unlawful. The decision means that until further federal court action—likely many months away, if at all—DACA recipients will continue to be able to receive protection from deportation under the program. They will be able to continue working on their current Employment Authorization Documents (EAD), permitted to apply for initial EADs as well as to renew an EAD. Employers will continue to be able to accept work authorization granted under DACA rules.

Created by the Obama administration in 2012, the DACA program offers protection from deportation and work authorization to qualified individuals brought to the U.S. illegally as children. Some 700,000 young people, often known as "Dreamers", have received DACA protection since then.

The Supreme Court made their ruling based on procedural grounds, rather than the merits of the program. The justices found that the administration's actions were "arbitrary and capricious" as they did not provide a reasonable explanation for cancelling the program, both as to the deportation protection and work authorization aspects. The Court also faulted the administration for failing to

assess whether or how to mitigate the impact of the program cancellation on the DACA recipients. Chief Justice John Roberts wrote, "[w]e do not decide whether DACA or its rescission are sound policies. We address only whether the agency complied with the procedural requirement that it provide a reasoned explanation for its action."

In response to today's decision, the administration may return to the lower federal courts and attempt to provide fuller, more comprehensive reasons in support of its 2017 decision for DACA cancellation. Or they may issue a new Executive Order cancelling DACA again for new and different reasons. Either of these steps will likely meet with new court challenges by the Dreamers and their advocates. The cases will therefore probably continue in court for many months to come, extending beyond the November 2020 federal elections.

In the meantime, the Trump administration will need to fully reinstate the DACA program as it was originally created in 2012. This means that the federal immigration authorities will have to accept new DACA applications, applications for DACA renewals, and applications for advance parole, a foreign travel benefit that attaches to a DACA grant.

For further information on how this impacts you or your employees, please contact your EY Law LLP professional.



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EYG no. 004411-20GbI

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