



GMS Flash Alert



Immigration Edition

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United States - Supreme Court to Review DACA Termination Cases Next Term

The U.S. Supreme Court is set to review three federal court cases blocking the Trump Administration from ending the Deferred Action for Childhood Arrivals (DACA) program.¹ The U.S. Supreme Court will begin reviewing the cases in its upcoming FY2020 session starting October 2019, but a decision is not expected until mid-2020.

DACA beneficiaries may continue to renew their applications for DACA protections and work authorization until further notice, however, no new applications for DACA will be accepted.

WHY THIS MATTERS

An estimated 800,000 individuals are currently enrolled in the DACA program which provides eligible beneficiaries certain protections from deportation and the ability to apply for legal work authorization (i.e., Employment Authorization Document) in the United States. It is estimated that approximately 55 percent to 75 percent of DACA beneficiaries are currently employed. If the U.S. Supreme Court determines the Trump Administration acted lawfully in receding the Obama-era program and terminates DACA related benefits, DACA recipients may find themselves without legal work authorization to continue their employment.

In the meantime, while DACA recipients anxiously await a formal decision from the Supreme Court, the continued push from the Trump Administration to end this program has created a sense of uncertainty and instability for those currently holding DACA status and their employers.

Background

DACA was created by former President Obama in 2012 by executive order. The DACA program was meant to be a temporary solution while awaiting Congress to pass formal legislation that would address the legal status of the undocumented population in the United States.

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Eligible applicants who came to the United States as children and who meet several criteria may request consideration of deferred action, namely protections from deportation, for a period of two years, as well as the ability to apply for legal work authorization in the United States.

In September 2017, the Trump Administration, through then U.S. Attorney General Jeffrey Sessions, announced it would rescind the DACA program with a phase-out timeline beginning March 2018.² The Trump Administration's basis for the decision was that when President Obama created the program, he exceeded his constitutional power. (For prior coverage on this announcement, see GMS [Flash Alert 2017-135](#) (September 13, 2017).)

Several lawsuits were filed by a group of U.S. states, DACA recipients, and human rights groups challenging the legality of the Administration's decision to end DACA. As a result, three federal district court judges issued injunctions which stopped the planned phase-out of the program and ordered the U.S. Citizenship and Immigration Services (USCIS) to continue to accept and process DACA renewal applications while the legal challenges to the program remain pending.³ The USCIS would not, however, be required to accept new applications for DACA benefits from individuals who have not previously been granted deferred action under the program.

Among the various lawsuits, several lower courts have ruled that the Trump Administration acted unlawfully by rescinding the DACA program. In response, the Administration has appealed several of these cases including a request for the U.S. Supreme Court to take up an expedited review of the legality of the program. In February 2018, the U.S. Supreme Court rejected the administration's request for expedited hearing.

For its upcoming FY2020 session, the Supreme Court will now consolidate review of the three federal court cases blocking the Trump Administration from ending the DACA program to determine the constitutionality of the program.

Next Steps

Until a decision by the Supreme Court is made, there will be no changes to the DACA program. As noted earlier, DACA beneficiaries may continue to renew their applications for DACA protections and work authorization until further notice; however, no new applications for DACA will be accepted.

KPMG NOTE

Employers should review and identify the employee population at risk of potentially losing work authorization in the event the DACA program is rescinded and plan for alternate staffing/resourcing.

Employers must be mindful not to treat DACA beneficiaries' employment differently than other similarly employed individuals. Differential treatment between employees based on the type and/or period of validity of an employee's work authorization is considered discriminatory and runs afoul of federal regulations mandating fair employment practices for U.S. employers.

Our office is tracking these matters closely. We will endeavor to keep readers of GMS *Flash Alert* posted on any important developments as and when they occur.

FOOTNOTES:

- 1 For more information about DACA, [click here](#). Also, see A. Howe, "Justices will weigh in on DACA termination (Updated)" (June 28, 2019) on the Supreme Court of the United States blog site ("SCOTUSblog") by clicking [here](#). *Please note this is a third-party (non-governmental, non-KPMG) website. Provision of this link does not represent an endorsement of this site by KPMG.*
- 2 To read Attorney General Sessions' September 5 remarks on DACA, [click here](#).
- 3 To read the U.S. Citizenship and Immigration Services February 14, 2018 update, [click here](#).

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