



GMS Flash Alert

Immigration Edition

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United States - Supreme Court Blocks Attempt to Terminate DACA Program

On June 18, 2020, the United States Supreme Court ruled that the Trump Administration's attempt to rescind the Deferred Action for Childhood Arrivals (DACA) program was unlawful, as it failed to provide adequate justification for dismantling the program.¹ (For prior coverage, see GMS [Flash Alert 2019-117](#), July 16, 2019.)

This long-awaited decision means that DACA will remain in place for now, allowing current and previous program participants to renew their DACA benefits. It is less clear, however, whether U.S. Citizenship and Immigration Services (USCIS) will accept initial DACA applications or applications for travel authorization as a result of the Supreme Court's recent decision.

DACA beneficiaries should also keep in mind that the Administration may still undertake efforts to terminate the program through legislation.

WHY THIS MATTERS

According to statistics published by the USCIS, there were approximately 649,070 active DACA beneficiaries as of December 2019.² The Supreme Court's recent ruling comes as a relief to these individuals.

For DACA individuals who are currently employed in the US, this decision should bring a certain degree of certainty in their ability to continue residing and working in the country.

Given that the Administration may make further changes to the DACA program consequent to the Court's decision, it is prudent for current DACA beneficiaries to renew their DACA benefits as soon as possible. Individuals who wish to submit initial DACA applications and DACA beneficiaries who wish to travel outside of the U.S. are advised to first consult with immigration legal counsel, as it is unclear how initial DACA applications and applications for DACA-related travel documents will be impacted by the Supreme Court decision at this time.

Background

The DACA program provides certain undocumented migrants temporary protection from deportation. Program participants may also be eligible for temporary employment authorization. The program originally allowed beneficiaries to secure a temporary travel document known as “Advance Parole” to permit return to the U.S. following international travel. Issuance of the DACA-related travel documents has been suspended since 2017. Initial applications for DACA benefits have also been suspended since 2017.

Upshot of Court’s Decision

In the June 18, 2020 decision, the Supreme Court held that the Trump Administration’s attempt to dismantle the DACA program violated the legislative procedure requirements under the Administrative Procedure Act. Specifically, the Court found that the DHS did not provide adequate justification for the rescission of DACA. It also found that the DHS failed to consider the hardship that program rescission would impose on DACA beneficiaries.

The Supreme Court’s ruling allows for current DACA beneficiaries to renew their benefits. Current DACA beneficiaries will also continue to be protected from deportation as a result of the decision. The Court’s ruling is less clear on DACA eligibility for those who have not been previously granted protection under the program. It is, therefore, not yet known if the USCIS will begin accepting and processing *initial* DACA applications. The Court’s decision did not specifically address DACA-related Advance Parole eligibility either.

It is important to note that the Supreme Court’s ruling was limited to the manner in which the Trump Administration attempted to terminate the DACA program, and it did not address the legality or constitutionality of the DACA program. This leaves open the possibility that the Administration will attempt to terminate the DACA program through legislative efforts.

KPMG NOTE

KPMG Law LLP in Canada is closely monitoring the Administration’s response to the Supreme Court’s ruling, as well as any changes to the DACA program. We will endeavor to keep readers of *GMS Flash Alert* posted on any important developments as and when they occur.

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.

FOOTNOTES:

- 1 To read the Supreme Court ruling issued on June 18, 2020, [click here](#).
- 2 For the U.S. Citizenship and Immigration Services’ statistics on the Deferred Action for Childhood Arrivals (DACA) program, [click here](#).

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Contact us

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