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What the Supreme Court's punt on DACA means

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The Post reports:

The Supreme Court on Monday declined to enter the national controversy over “dreamers,” turning down the Trump administration’s request to immediately review lower court decisions that keep in place the program that protects undocumented immigrants brought here as children from deportation. ...

Federal district judges in California and New York have issued nationwide injunctions against ending the program, siding with states and organizations challenging the administration’s rescission. The court orders effectively block the Trump administration from ending the program on March 5, as planned.

No appellate court has reviewed those decisions, and it would have been exceedingly rare for the Supreme Court to take up a case without that interim step. In the past, the court has granted such cases only in matters of grave national importance, such as the controversy over President Richard Nixon’s White House tapes or solving the Iranian hostage crisis.

It bears repeating that this is not a decision on the merits. Appellate courts can lift the injunctions at any time, even before a ruling on the merits. At best it is a momentary pause for beneficiaries of the Deferred Action for Childhood Arrivals (DACA) program, as well as for Congress and President Trump.

Trump and the anti-immigrant far right took a victory lap when the president’s veto threat helped quash the only viable bill to provide relief for the dreamers. Now, however, they face a political nightmare. If they do nothing and the court injunctions lift, they’ll be faced with the prospect that the midterms will come amidst poignant scenes of family separation. Just like the teenagers from Parkland, Fla., have demolished the National Rifle Association’s media spin, sympathetic dreamers who have spent virtually their whole lives in the United States will be on TV nonstop describing their contributions to America and their loyalty to this country. It’s one more political nightmare, especially for Republicans running in states such as Nevada, Florida, California and Arizona, where mobilized Hispanic voters can deliver knockout punches to the anti-DACA party.

Barring a miraculous conversion of House and Senate Republicans, the only solution that seems possible with GOP majorities in the House and Senate is a temporary fix. Republicans cannot drive too hard a bargain without running the risk of setting off the deportation nightmare. They also know that after November, there may be a Democratic majority in one or both houses. Therefore, it's in their interest to strike a deal now.

One path would be for Trump, who started the entire debacle by rescinding DACA, to extend the deadline. Sure, Attorney General Jeff Sessions claimed DACA was unconstitutional, but if it was nevertheless constitutional for the administration to let the program run through March 5, 2018, why not March 5, 2019, or 2020? Trump can claim to be the great savior and also spare his party a PR disaster.

Alternatively, Congress could put together a temporary fix. The Hill reports:

Sen. Jeff Flake (R-Ariz.) is in talks with Sen. Heidi Heitkamp (D-N.D.) about a plan to tie a three-year extension of protections for Deferred Action for Childhood Arrivals (DACA) recipients with roughly \$7.6 billion in border security.

"I can promise that I'll be back on the floor, again and again, motioning for a vote until we pass a bill providing relief for those struggling due to our inaction," Flake said, outlining his plan.

Procrastination — like serial continuing resolutions — has become a favorite tactic for a dysfunctional White House and inept Congress. "A temporary DACA fix is our only option for this Congress," says Cato Institute's Alex Nowrasteh, who favors a plan to legalize dreamers. "It kicks the legislative can down the road but at least it doesn't kick 700,000 people out of the country." The temporary patch won't satisfy immigration activists, but it seems to be the least horrible alternative. "In a world where congress functions in the interest of the American people, we would have a permanent solution for border security and for Dreamers. Sadly, that is not the world we live in," Ali Noorani of the National Immigration Forum tells me. "It seems likely the most the legislative market can bear is a temporary solution for Dreamers and the border. While we hope Congress can get to a permanent fix, a three-year patch brings stability to worksites and homes."

A temporary deal also would spare Trump from a confrontation with his anti-immigrant base. He could then claim the border money was effectively a "down payment" on the wall (or something like that).

Nevertheless, even a short-term fix is no slam dunk. Frank Sharry, who heads the progressive, pro-immigration group America's Voice, tells me. "I wish I could be optimistic but I'm not. Even a two- or three-year extension for current DACA recipients requires Republican leaders to grow a backbone and Trump to release the hostages." He adds, "I'm not holding my breath."

The GOP has revealed that its anti-immigrant contingent has a stranglehold on the party. Whether the GOP is prepared to court political disaster to satisfy that contingent remains to be seen.