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Trump's Termination of DACA Program Unlawful, 4th Cir. Rules (2)

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The Trump administration's decision to end the Deferred Action for Childhood Arrivals program was illegal because it wasn't adequately explained, a split federal appeals court in Richmond, Va., ruled.

The May 17 decision from the U.S. Court of Appeals for the Fourth Circuit overturns a lower court's determination that the administration hadn't done anything wrong either in ending DACA or in the way it went about doing it. That determination was the only federal court to rule in favor of the administration after a host of lawsuits were filed over the DACA termination.

In a 2-1 decision, the appeals court said the Department of Homeland Security didn't adequately explain its rationale for ending the Obama-era program, a requirement of the Administrative Procedure Act.

"Many DACA participants have lived in the United States for most of their lives, have built lives here, and are valued members of our community," the Washington Lawyers' Committee for Civil Rights and Urban Affairs said in a statement. "The increased racialization of immigration policy placed the DACA program in the cross hairs," said the committee, which represented the individuals and groups who brought the lawsuit.

"We have a chorus of courts saying not only that the decision to end DACA was unlawful, but largely for the same reasons," said Shoba Sivaprasad Wadhia, a professor at Penn State Law and director of the school's Center for Immigrants' Rights Clinic.

The DHS declined to comment on the decision. The Justice Department, which represented the agency, also declined to comment.

DACA provides deportation protection and work permits to young, undocumented immigrants who came to the U.S. as children. There are approximately 673,340 immigrants currently in the program.

Supreme Court Action?

The Fourth Circuit joins the Ninth Circuit in San Francisco in finding that the decision to end DACA was unlawful. The current lack of a split among the federal appeals courts decreases the chance that the U.S. Supreme Court will take up the issue.

In November, the administration asked the Supreme Court to hear the DACA arguments, bypassing the Ninth Circuit as well as two cases pending before the Second and District of

Columbia circuits. The Ninth Circuit decision came three days after the government's request. The justices haven't said one way or another what they will do with the cases.

"Maybe they were waiting to see how the circuit courts ultimately came out, or maybe this was a more delicate policy for them," Wadhia said. The DACA cases also don't involve the "same set of factors" as the travel ban case, which involved a grant of broad authority to the president and judicial avoidance of political matters involving foreign policy and national security, she said.

But Christopher Hajec, director of litigation for the Immigration Reform Law Institute, thinks the Fourth Circuit decision may put the justices over the edge toward taking the case. It "strikes the public as bizarre" that one president can set up a program that his successor can't rescind, he said.

"It's kind of a replay of the travel ban litigation," although "with less urgency," said Ilya Shapiro, director of the Robert A. Levy Center for Constitutional Studies at the libertarian Cato Institute. There's no circuit split, but at the same time the justices tend to weigh in when the lower courts have stopped the government from taking a certain action, he said.

The decision comes a day after President Donald Trump formally announced the White House's new immigration plan, which would overhaul the legal immigration system to shift emphasis from family unification to a "merit-based" system. The plan, which is widely considered dead on arrival, is devoid of any mention of DACA or other undocumented immigrants already in the U.S.

Prior attempts at legislation that would provide DACA recipients with legal status—coupled with increased border security and/or reductions in legal immigration—have failed in both the House and the Senate.

Bills to protect DACA recipients as well as immigrants covered by other administrative programs were introduced in the House and Senate earlier this year, but haven't seen any committee or floor action.

Didn't Explain Shift

The DHS's brief arguments for why it believed DACA was unlawful and therefore needed to be terminated weren't enough, the Fourth Circuit said.

"The point is that the Department had before it at the time it rescinded DACA a reasoned analysis from the office tasked with providing legal advice to all executive branch agencies that supported the policy's legality," Judge Albert Diaz wrote. "Yet the Department changed course without any explanation for why that analysis was faulty."

"Nor did the Department adequately account for the reliance interests that would be affected by its decision," he said. "Hundreds of thousands of people had structured their lives on the availability of deferred action during the over five years between the implementation of DACA and the decision to rescind."

But the court said the DHS wasn't required to provide public notice and an opportunity to comment before ending DACA. It also wasn't required to adhere to a 2012 policy preventing the sharing of information about DACA applicants for immigration enforcement purposes.

Judge Robert B. King joined the majority decision.

Judge Julius N. Richardson dissented, arguing that the court doesn't have power to review the administration's decisions with respect to DACA. He agreed, however, with the majority's finding that the DHS can change its information sharing policies.

Willkie, Farr & Gallagher; Arnold & Porter; and the NAACP Legal Defense and Educational Fund also represented the DACA recipients.

The case is Casa De Maryland v. Dep't of Homeland Sec., 2019 BL 179965, 4th Cir., No. 18-1521, 5/17/19.