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High Court Rulings Highlight Trump's Administrative Law Stumbles

Kimberly Strawbridge Robinson

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The U.S. Supreme Court's ruling allowing the Obama-era DACA program to continue is merely the latest legal setback for federal agencies under the Trump administration.

In a 5-4 ruling Thursday, the justices said the Department of Homeland Security hadn't done enough to explain why it was rolling back immigration protections for Dreamers—longtime U.S. residents who were brought to the country illegally when they were kids.

A year ago, the high court rejected as “contrived,” the administration's reasoning for adding a citizenship question to the 2020 census, and the effort to do was soon abandoned. Taken together, the two decisions represent the highest profile failures of the Trump administration—of which there are many—in the arena of federal regulation litigation.

Both opinions were written by Chief Justice John G. Roberts, a 2005 nominee of Republican President George W. Bush. He's one of four members of the high court who previously served on the U.S. Court of Appeals for the District of Columbia Circuit, which sees a steady diet of administrative cases.

“Do you get the impression that the Supreme Court doesn't like me?” the president tweeted in the aftermath of the Deferred Action for Childhood Arrivals ruling.

Upon taking office, Trump vowed to rescind at least two federal regulations for each new one added. But, in his nearly three and a half years in office, agencies attempting to pass new regulations, or undo old ones, have been rebuffed by courts more than 90% of the time, according to NYU Law's Institute for Policy Integrity. Perhaps ironically, though, he defeated a lawsuit challenging the 2-for-1 initiative itself.

Since the beginning of 2020, U.S. courts have:

- reversed an Environmental Protection Agency decision on coal-fired plants;
- undone a series of oil and gas leases by the Bureau of Land Management
- rejected the EPA's interpretation of groundwater pollution;
- required greater protections for pollution from pulp mills;
- struck down a critical permit for the Keystone XL pipeline;
- revived Obama-era nutrition standards for school breakfast and lunch programs;
- reinstated restrictions on climate-warming chemicals;

- blocked more stringent requirements for the distribution of Supplemental Nutrition Assistance Program, or SNAP, benefits;
- barred the administration from enforcing new rules on 3D printed guns; and
- expanded who may sit on EPA's science advisory committees.

To be sure, during the same period, courts have also handed the administration victories in its rollback of fracking regulations and restrictions on what family planning clinics can say about abortion.

Still, Trump's record stands in contrast to other administrations, who tend to win 70% of their admin law cases, said Georgetown administrative law professor William Buzbee.

Bethany Davis Noll, who directs NYU's Institute for Policy Integrity, noted that "Republican-appointed judges are finding against the administration at a similar rate to the Democratic judges."

And these losses at the hands of Republican appointees run the gamut, from immigration to environment to health care.

Both the census and DACA cases "went against the administration even though the Supreme Court is majority Republican," Noll said.

Buzbee attributed the defeats to the administration's hasty efforts in trying to overturn Obama-era regulations and its failure to strictly adhere to the Administrative Procedure Act rules for doing so, rather than courts taking a closer look at Trump administration policies.

Ilya Shapiro, from the Cato Institute, said it's probably a little of both.

The Trump administration has certainly been aggressive in the policies it pushes, Shapiro said. But he said courts have also been more skeptical of agency action under the current administration, referring to such thinking as the "judicial resistance."

Cutting Corners

Other administrations, both Democratic and Republican, tend to give careful consideration to these administrative actions, Buzbee said.

The Trump administration, though, has been unable to put together the kinds of "records needed to sustain administrative action or seriously engage with the science and facts," said Gillian Metzger, who teaches administrative law at Columbia Law School.

That's in part due to the administration's dismissal of longtime government lawyers and staff, she said.

But it's also a function of "the administration's patent unwillingness to come clean about its real motives," Metzger said, referring to the census litigation.

"We cannot ignore the disconnect between the decision made and the explanation given," Roberts wrote in last year's census case majority opinion. "Our review is deferential, but we are 'not required to exhibit a naiveté from which ordinary citizens are free.'"

The Supreme Court made clear in the DACA ruling that agencies really do need to explain themselves fully and honestly, Buzbee said. “There’s no cutting corners.”

To contact the reporter on this story: Kimberly Strawbridge Robinson in Washington at krobinson@bloomberglaw.com

To contact the editors responsible for this story: Seth Stern at sstern@bloomberglaw.com;
Andrew Harris at aharris@bloomberglaw.com; John Crawley at jcrawley@bloomberglaw.com