

DACA recipients get their day at the Supreme Court

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Like countless teenagers across the country, Maria Valencia is trying to figure out what she wants to do with her life.

She knows she wants to help people. After caring for her sick mother and volunteering at a nursing home, she is now studying to become a nurse.

Five years ago, that wouldn't have been possible. But since applying for the Deferred Action for Childhood Arrivals (DACA) program and being granted deferred status from deportation, as well as temporary work authorization, Ms. Valencia has been able to navigate high school and college. She has been able to work, apply for internships, visit relatives, and spend a spring break cleaning up a North Carolina town ravaged by Hurricane Florence.

The Obama administration implemented DACA to protect from immediate deportation people who had come as children, had not committed crimes, and were students or in the military – a lawful exercise of prosecutorial discretion by the executive branch, the administration argued at the time. An estimated 700,000 young people have benefited from the program.

In late 2017 the Trump administration moved to end DACA. Several lower courts have blocked the program's termination, however, and on Tuesday, the U.S. Supreme Court heard oral arguments in the administration's appeal of that ruling. The court's decision could have major consequences both for presidential power and for the hundreds of thousands of Dreamers like Ms. Valencia who have earned DACA status.

She's studying at the University of Houston. Whether she will be able to pursue a career in the U.S. after graduating is a question the Supreme Court will have to answer.

"Not only was I able to get a scholarship [because of DACA], I got a lot of jobs, internships. I got experience. I was able to give back to my community," she adds. "If it was taken away I wouldn't be able to do that."

Maria Valencia, a DACA recipient who is studying nursing at the University of Houston. The U.S. Supreme Court will rule this term on whether the Trump administration's termination of the DACA program, which shields certain undocumented immigrants brought to the U.S. as children from deportation, is lawful.

Immigration and administrative law

While a legal case about DACA may appear, on the surface, to be about immigration, this week's case delves into the similarly murky realm of administrative law.

The first question, then, is whether the courts are able to review the Trump administration's decision at all. The U.S. Court of Appeals for the Ninth Circuit rejected the idea that courts

couldn't, ruling that the government "may not simultaneously both assert that its actions are legally compelled ... and avoid review of that assertion by the judicial branch.

The second, and final, question is then whether the Trump administration's decision to end the program was lawful. In 2017, then-Attorney General Jeff Sessions said in a brief memo, which has been rejected by lower courts, that the government could not enforce DACA because of "constitutional defects."

The administration's core argument that DACA is unlawful centers on a 2015 ruling by the Fifth Circuit Court of Appeals.

In that case the appeals court ruled DAPA, a similar Obama-era program for unauthorized immigrants with lawfully present children, and a DACA expansion violated executive powers Congress delegated in the Immigration and Nationality Act. That statute, the Fifth Circuit wrote, applied to "narrow classes of aliens" and not those of "vast 'economic and political significance.'"

That ruling was appealed to the Supreme Court, but only eight justices decided the case and they could not find a majority. Their 4-4 ruling affirmed the appeals court ruling without addressing the merits.

No court has ruled on the legality of the original DACA policy, but the Fifth Circuit's decision "holding DAPA and the DACA expansion unlawful equally applies to DACA itself," the Trump administration wrote in its petition to the high court.

DACA is a popular policy – 87% of Americans support it, one 2018 poll found – but even among some supporters, the Trump administration's arguments carry weight.

"We affirmatively support [DACA] as a matter of policy," write law professors Josh Blackman and Ilya Shapiro in a blog post, but not as a matter of law. "The president cannot unilaterally make such a fundamental change to our immigration policy."

How much deference for executive power?

A core argument in support of DACA is that the policy is no different from any deferred action previous administrations have used in the past.

The Ninth Circuit leaned on that history in ruling that the government's decision to end DACA was "arbitrary and capricious," writing that the reality "always has been" that the government doesn't "have the resources required to deport every single person [unlawfully] present in this country."

"To date no one has really successfully questioned the legality of DACA. No court has found the policy to be unconstitutional," says Shoba Sivaprasad Wadhia, a professor at Penn State Law. "By contrast there's a litany of legal authority, foundation, and history to support deferred action."

The judiciary, and the Supreme Court in particular, has grown increasingly deferential to executive power in recent decades. The Trump administration has benefited from this on several occasions, notably when the court upheld the third travel ban from predominantly Muslim countries, in spite of evidence it was motivated by his campaign promise of "a total and complete shutdown of Muslims entering the United States."

The legal justifications for ending DACA are a similar smokescreen for political reasons, critics say – on this occasion, as leverage to obtain congressional approval to build a southern border wall, Mr. Trump’s signature campaign promise. (“The Democrats have been told,” he tweeted months after rescinding the policy, “that there can be no DACA without the desperately needed WALL at the southern border.”)

In this sense, some experts believe the DACA case could mirror a decision the Supreme Court made just a few months ago: the ruling in June to strike a citizenship question from the 2020 Census.

“The court was not willing to defer to the president in that circumstance,” says Steven Schwinn, a professor at the University of Illinois, Chicago, John Marshall Law School.

A month before that decision, documents found on a deceased Republican strategist’s hard drive directly linked a citizenship question to advantaging the GOP in redistricting. The DACA case doesn’t “raise the same kinds of concerns about executive decision-making,” adds Professor Schwinn, “but we have seen the court willing to push back against the president when things get outrageous.”

Justices under the political microscope

More than any executive branch in recent history, the Trump administration has sought emergency stays from the Supreme Court. Mr. Trump often has been successful, fueling a view that the high court – and its conservative majority, solidified with two of his appointees – is essentially his court.

The justices will be under the political microscope again with this case, even besides the fact that on a legal and human level, their ruling will have tremendous consequences.

For one, the case could have major implications for executive power and the ability of a president to adapt or abandon the policies of previous presidents.

“The court doesn’t have to say DACA was illegal to rule for President Trump,” says Professor Schwinn. But “it doesn’t seem right that one president’s actions should hinder all future [presidential] actions, and my guess is we’re going to see language like that in the opinion.”

A ruling in favor of the Trump administration, even if it doesn’t declare DACA unlawful, would almost immediately jeopardize the futures of hundreds of thousands of young people who have been living and working in the U.S. for almost their entire lives.

“We can talk a lot about policies and legal briefs but ultimately this is about people,” says Professor Wadhia. “Many people with DACA are parents to U.S. citizens. Many people with DACA are teachers in American public schools.”

Ms. Valencia recently learned that two of her co-workers at Best Buy also are DACA recipients. She wants to finish her nursing degree, but if DACA is rescinded she won’t be able to get a job here. Would she go back to Mexico?

“No,” she says. “I don’t really know anything over there. Things are not good over there – a lot of shootings and stuff like that.”

“I just want to help people, I’ve always known that,” she says. “If [DACA] is taken out, of course I’ll be devastated. ... All the things that I like to do, they’ll just be taken away.”