

## Supreme Court Blocks Trump's Move to Scrap DACA Program

Mark Walsh

June 18, 2020

In a high-stakes case with multiple implications for education, the U.S. Supreme Court has blocked the Trump administration's decision to unwind deportation relief for nearly 700,000 undocumented immigrants who came to the United States as children.

The court ruled 5-4 that the 2017 rescission of Deferred Action for Childhood Arrivals, a program started in 2012 under President Barack Obama, was carried out in an "arbitrary and capricious" manner in violation of the Administrative Procedure Act.

"We do not decide whether DACA or its rescission are sound policies," Chief Justice John G. Roberts Jr. said in the June 18 majority opinion in *Department of Homeland Security v. Regents of the University of California* (Case No. 18-587). "The wisdom of those decisions is none of our concern. We address only whether the agency [DHS] complied with the procedural requirement that it provide a reasoned explanation for its action."

The decision does not prevent the Trump administration from starting over in trying to properly end the program, but political considerations and the crises on President Donald Trump's plate during this election year may make that difficult.

"Do you get the impression that the Supreme Court doesn't like me?" Trump tweeted Thursday, in apparent reference to both the DACA decision and Monday's 6-3 ruling in *Bostock v. Clayton County, Ga.*, which rejected the administration's arguments and held that federal employment-discrimination law covers sexual orientation and gender identity.

"As President of the United States, I am asking for a legal solution on DACA, not a political one, consistent with the rule of law," Trump said in another tweet. "The Supreme Court is not willing to give us one, so now we have to start this process all over again."

Higher education institutions, the American Federation of Teachers, immigration civil rights groups, and individuals are among the parties that challenged the rescission of DACA, which allows applicants who meet certain age, educational, and other criteria to legally work or attend school. Current DACA recipients range in age from about 18 to 39. Under the litigation, the federal government has processed renewals for existing recipients, but has not allowed those who would have aged into the program at 15 to enroll.

"Today, the Supreme Court told hundreds of thousands of DACA beneficiaries that they can breathe," AFT President Randi Weingarten said in a statement. "It's a temporary reprieve, but it means thousands of educators, nurses, bus drivers, and grocery clerks who are on the frontlines in the coronavirus battle can stay in the United States."

**Considering 'Hardship'**

Roberts said that Homeland Security Department officials failed to properly consider the issues of whether to retain the DACA policy's two-year "forbearance" of deportation and "what if anything to do about the hardship to DACA recipients."

The chief justice cited several briefs by groups supporting DACA for the idea that the original Homeland Security memorandum rescinding the program had failed to take into account ways in which recipients were relying on the programs' relief.

"The consequences of the rescission, [DACA supporters] emphasize, would radiate outward to DACA recipients' families, including their 200,000 U.S.-citizen children, to the schools where DACA recipients study and teach, and to the employers who have invested time and money in training them," Roberts said.

The chief justice was joined on the key holding that the rescission violated administrative law by Justices Ruth Bader Ginsburg, Stephen G. Breyer, Sonia Sotomayor, and Elena Kagan.

Sotomayor did not join a portion of Roberts's opinion that rejected a claim that the rescission violated the equal-protection guarantee of the Fifth Amendment. She wrote a separate opinion saying she would have allowed the plaintiffs' equal-protection claims to go forward based on claims that Trump's frequent anti-immigration statements were motivated by animus.

"They bear on unlawful migration from Mexico—a keystone of President Trump's campaign and a policy priority of his administration—and, according to [DACA supporters], were an animating force behind the rescission of DACA," Sotomayor said.

### **Claims of 'Unilateral' Action**

Justices Clarence Thomas, Samuel A. Alito Jr., Neil M. Gorsuch, and Brett M. Kavanaugh dissented on the question of whether the rescission violated the APA, writing or joining several separate opinions.

"To state it plainly, the Trump administration rescinded DACA the same way that the Obama administration created it: unilaterally, and through a mere memorandum," Thomas wrote, in a dissent joined by Alito and Gorsuch. "Today's decision must be recognized for what it is: an effort to avoid a politically controversial but legally correct decision."

Kavanaugh said in a dissent for himself that "all nine members of the court accept, as do the DACA plaintiffs themselves, that the Executive Branch possesses the legal authority to rescind DACA and to resume pre-DACA enforcement of the immigration laws enacted by Congress."

He said that for 20 years the nation has had "consequential policy, religious, and moral debates" about the young immigrants who were brought to the United States as children.

"They live, go to school, and work here with uncertainty about their futures," Kavanaugh said.

Like Thomas and the other dissenters, Kavanaugh said a later memorandum justifying the rescission by then-Homeland Security Secretary Kirstjen M. Nielsen was not a post-hoc rationalization of the administration's policy.

"Although I disagree with the court's decision to remand, the only practical consequence of the court's decision to remand appears to be some delay," Kavanaugh said. The legislative process, he added, "could produce a sturdy and enduring solution to this issue, one way or the other, and

thereby remove the uncertainty that has persisted for years for these young immigrants and the nation's immigration system.”

### **‘The Proper Hoops’**

Ilya Shapiro, a legal analyst with the libertarian Cato Institute, said the decision was “bad judging on top of bad lawyering that has good short-term practical effects but makes policy reform harder in the longer term.”

“The technical reason for blocking DACA rescission—that the administration didn’t jump through the proper hoops—is debatable, and I think Justice Kavanaugh’s dissent has the better of that argument over Chief Justice Roberts’s majority opinion,” said Shapiro, whose think tank **filed a friend-of-the-court brief** supporting DACA “as a matter of policy,” but the Trump administration “as a matter of law.”

David A. Strauss, a law professor at the University of Chicago, said the Trump administration faced a challenge in arguing that DACA was illegal or unconstitutional.

“So as the cases went through the courts, the Trump people started to backtrack and obfuscate about exactly what was wrong with DACA and why it had to be rescinded completely,” Strauss said. “Today the Supreme Court essentially said: we can’t tell any more what your reason for rescinding DACA is. Go back, reconsider, and if you want to rescind it, come up with a coherent set of reasons.”

Several education groups had filed or joined briefs in support of DACA, including the **National Education Association, the National PTA, the National School Boards Association, AASA, the School Superintendents Association, the National Association of Secondary School Principals, the American School Counselor Association, and Teach for America.**

JoAnn Bartoletti, the executive director of NASSP, said in a statement that “the nation’s principals are relieved to see that Dreamers—many of whom are our students, parents, and teachers—will not be torn from the fabric of their school communities by an ill-conceived effort to rescind DACA.”

Francisco M. Negrón Jr., the general counsel of NSBA, said his group was happy because the decision at least temporarily removes uncertainty for DACA recipients, which include many students and teachers.

“We have many hard-to-fill areas in our teaching ranks, and DACA recipients have been helping to fill those,” he said.

Negrón also was heartened to see Roberts embrace some of the arguments put forth in the brief of NSBA and other school groups, that “there is an important part the Supreme Court plays in reviewing the role of the executive branch in complying with the law.”