



The Supreme Court Extends A Life-Support Line For 'Dreamers'

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NPR legal affairs correspondent Nina Totenberg has been following this case as it made its way through the courts.

NINA TOTENBERG, BYLINE: Chief Justice Roberts' opinion for the court was a narrow but powerful rejection of the way the Trump administration went about trying to revoke the program known as Deferred Action for Childhood Arrivals, or DACA. Writing for the court majority, the chief justice said, we do not decide whether DACA or its rescission are sound policies. The wisdom of those decisions is none of our concern. Here, we address only whether the administration complied with the procedural requirements in the law that insist on a reasoned explanation for its actions.

Initially, the chief justice observed, the attorney general offered no detailed justification for the rescission, nor did the secretary of homeland security. As Roberts noted, she didn't address the fact that thousands of young people who'd come out of the shadows were enrolled in degree programs, had embarked on careers, had started businesses, bought homes and even married and had some 200,000 children of their own who are U.S. citizens.

Joining the Roberts opinion were the court's four liberals. Justice Clarence Thomas wrote the principal dissent, accusing Roberts of writing a political, rather than a legal, opinion. In tweets, President Trump condemned what he called horrible and politically charged decisions coming out of the court. Do you get the impression the Supreme Court doesn't like me? He added.

So what is the future of DACA? The consensus among immigration experts is that there's not enough time for President Trump to try to abolish the program before January. Cornell law professor Stephen Yale-Loehr is the author of a 21-volume treatise on immigration law.

STEPHEN YALE-LOEHR: It's not remotely possible before the election.

TOTENBERG: But if Trump is reelected, he almost certainly will try again. For now, though, more individuals eligible for DACA status may be able to apply. Marisol Orihuela, co-director of the Yale Law School Immigration Clinic, notes that until today, the administration had refused to accept new applications. She thinks that will have to change now.

MARISOL ORIHUELA: Our understanding is the program is restored to what it was in 2012, when it went into effect, up until 2017.

TOTENBERG: Politically, today's decision played out as expected, with anti-immigration groups condemning the decision and DACA recipients jubilant and relieved. But aside from Trump, lots of Republicans are relieved as well. If today's decision had gone the other way, the pressure on congressional Republicans in an election year to pass legislation protecting the DREAMers would have been intense. DACA is an astonishingly popular program, with recent polls showing up to 85% among Democratic and independent voters and huge majorities also among Republican voters as well.

Indeed, 200 major corporations filed briefs in the Supreme Court supporting the DACA recipients - among them, Microsoft and its president, Brad Smith.

BRAD SMITH: There's more than 30,000 DACA registrants working in the health care space alone. So we've never needed these people more than we do today. And every time I meet with them, I have the same reaction - we are lucky, as a country, to have them.

TOTENBERG: Not all DACA critics, of course, are against DACA; they're against the fact that President Obama, frustrated with congressional inaction, put the program into effect by executive order, and they warn of unforeseen consequences. Here's Ilya Shapiro of the Cato Institute.

ILYA SHAPIRO: This raises profound issues of executive power and, in effect, sets out a ratchet whereby statutory changes can be enacted by presidential executive order but can only be rescinded through jumping through various administrative law hoops.

TOTENBERG: At the end of the day, of course, the man of the hour is Chief Justice Roberts. Amid a politicized and polarized society, he repeatedly tries to portray the court as apolitical. He sees the growth of organizations on the hard right, like the Judicial Crisis Network, and on the hard left, like Demand Justice, each trying to stack the court with like-minded justices or to pack the court by expanding the number of justices. Harvard law professor Richard Lazarus has known the chief justice for decades.

RICHARD LAZARUS: What these decisions this week underscore is we have a chief justice who is, plainly, working hard to try to demonstrate to the American people that the court, unlike the other two branches, is doing its job. He wants the American people to believe there's a thing called law, and a justice's job is to apply it.

TOTENBERG: Nina Totenberg, NPR News, Washington.