ALERT: DACA AFTER THE RECENT SUPREME COURT DECISION

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On June 18, 2020, in Department of Homeland Security v. Regents of University of California, the U.S. Supreme Court struck down the Trump administration’s termination of the Deferred Action for Childhood Arrivals (DACA) program. The Court held that the termination of DACA was arbitrary and capricious under the Administrative Procedures Act (APA). Notably, the Court did not rule on whether or not DACA itself is lawful. The ruling merely held that the Trump administration did not follow the law when it tried to terminate the program. However, nothing in the ruling prevents the Trump administration from trying again to terminate the DACA program in a way that complies with the APA.

What does the decision mean for DACA recipients/applicants now?

- Under the decision, and per the U.S. Citizenship and Immigration Services (USCIS) guidance, USCIS will continue to accept DACA renewal applications for people who previously had DACA. Please note that recipients whose DACA expired one year ago or less can request DACA as renewal applicants and should follow the instructions for renewals. For applicants whose DACA expired more than one year ago, or was terminated, those applicants may request a DACA renewal, but must follow the instructions for an initial DACA application and must include the required supporting documents for an initial application in their filing.

- In addition, under the Supreme Court’s decision, USCIS should now begin to accept first-time DACA applications (i.e., applications from people who have never had DACA before) as well as advance parole applications from DACA recipients. That said, USCIS has not confirmed that it is accepting and processing such applications and has not issued new guidance addressing such requests. In fact, its website still states that: “USCIS is not accepting requests from individuals who have never before been granted deferred action under DACA.” In short, it is unclear what USCIS will do with any applications filed for first time applicants. It may choose reject or even deny such applications. We continue to await additional guidance as to how USCIS will handle such DACA requests.
• Whether you want to apply to renew your DACA or apply for DACA for the first time, you should speak with an attorney first to assess any risks in filing.

What's next?

Although the DACA decision is good news, the government still has authority over the DACA program and, according to the Court, can still terminate DACA provided it does so lawfully. In the short term, USCIS must continue the program and processing applications as noted above, but it remains to be seen how USCIS will comply with the Supreme Court's order.

Ultimately, the best solution for all Dreamers is for Congress to pass bipartisan legislation granting Dreamers permanent legal status.