

# CLIENT NEWS BRIEF

## Supreme Court Keeps DACA in Place, Emphasizing Importance of Procedural Requirements for the Program's Rescission

On June 18, 2020, in *Department of Homeland Security v. Regents of the University of California* (June 18, 2020, Nos. 18-587, 18-588, and 18-589) \_\_ U.S. \_\_[2020 U.S. LEXIS 3254], the United States Supreme Court found unlawful the way in which the Trump Administration sought to rescind the Deferred Action for Childhood Arrivals (DACA) program. Specifically, in the 5-4 majority opinion, the Supreme Court held that the Department of Homeland Security's (DHS) original analysis and explanation for rescinding DACA failed to address whether DACA's process in granting forbearance in deferring removal of Dreamers was actually a legal exercise of prosecutorial discretion. While the DACA program itself has been the source of headlines in relation to the opinion, the Supreme Court's decision is not based on the legal merits of DACA, but instead focused on the requirements of the federal Administrative Procedure Act (APA). As a result, while DACA presently remains in place and operative, the merits of DACA's legality may have yet to be decided, and DHS could continue its quest to rescind DACA in future proceedings.

The effort by DHS to end DACA has been a long process, starting with DHS's September 5, 2017 memorandum rescinding DACA. (See [2017 Client News Brief Number 57](#).) That action was quickly the subject of numerous legal challenges, the results of which were eventually reviewed by the Supreme Court.

At the heart of the court's opinion are three holdings: (1) claims that DHS's rescission of DACA violated the APA are reviewable; (2) DHS's attempted rescission of DACA was arbitrary and capricious, in violation of APA; and (3) the parties challenging DACA's rescission failed to state a claim for violation of the equal protection clause of the United States Constitution.

In ruling, the court quickly dismissed arguments that APA review was not applicable in the case, holding that rescission of DACA was not merely an act of non-enforcement on the part of DHS. The court then focused on DHS's initial 2017 reasoning for rescinding DACA under APA. The court dismissed DHS's subsequent DACA analysis, affirming past precedent that "[a]n agency must defend its actions based on the reasons it gave when it acted." In analyzing DACA, the court found that the program is comprised of two parts: (1) granting eligibility for benefits; and, (2) forbearance on removal. Each part is subject to review for legality under the Immigration and Nationality Act (INA), and DHS failed to consider the second part. As a result, the court found DHS's failure to consider the forbearance component of DACA, in its initial decision to rescind DACA, was arbitrary and capricious, and a failure to fulfill its obligations under the APA.

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Additionally, while not impacting the current status of DACA, the court's opinion dismissed the claim that the rescission of DACA violated constitutional equal protection, reasoning there was no evidence that the rescission was motivated by discriminatory animus. The court noted that DHS had previously rescinded the related Deferred Action for Parents of Americans (DAPA) and sought to rescind DACA on similar grounds. Thus, challenges to any future rescission of DACA are likely limited to APA-like procedural claims.

## Takeaways

For the foreseeable future, DACA remains in place. Yet, the federal government may again attempt to rescind DACA under the parameters set forth in the opinion.

California public agencies are encouraged to continue following the law; avoiding discriminatory practices; and informing students and parents of DACA students' education and privacy rights. Additionally, public agencies should further refer to the State's Attorney General's guide on the rights of undocumented immigrant students and families. (See [2018 Client News Brief Number 17](#).)

If you have any questions about the Supreme Court's decision, or about DACA and its impact on public agencies, please contact the authors of this Client News Brief or an attorney at one of our [nine offices](#) located statewide. You can also subscribe to our [podcast](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).