Pennsylvania Immigration & Citizenship Coalition Summary of DACA decision

Short Summary & Key Points:

- The Supreme Court ruled (5-4) that the Department of Homeland Security’s rescission of DACA violated the Administrative Procedure Act because the agency did not provide a reasoned explanation for its action.
- Chief Justice Roberts wrote the opinion. He was joined by Justices Ginsburg, Breyer, Kagan, and Sotomayor (Sotomayor dissented from the small portion of the opinion that addresses Equal Protection).
  - Justices Thomas (joined by Alito and Gorsuch), Alito, and Kavanaugh each penned dissents.
- The Court concluded that they had the ability to review DHS’s rescission of DACA.
  - The Court reasoned that the decision was not committed to agency discretion by law as DACA is not simply a non-enforcement policy.
- The Court’s conclusion that DHS’s rescission of DACA is arbitrary and capricious, in violation of the APA, rested on two primary grounds:
  - First, the agency failed to distinguish between the protections from deportation (“forbearance from removal”) and the benefits (like work authorization) that came with DACA. They did not consider whether to retain the protections from deportation, even if the benefits were terminated.
  - Second, the agency did not consider the consequences of rescission -- and the enormous reliance interests at stake. In the Court’s words:
    
    “[S]ince 2012, DACA recipients have ‘enrolled in degree programs, embarked on careers, started businesses, purchased homes, and even married and had children, all in reliance’ on the DACA program. . . . The consequences of the rescission, respondents 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. . . . [Additionally,] excluding DACA recipients from the lawful labor force may, they tell us, result in the loss of $215 billion in economic activity and an associated $60 billion in federal tax revenue over the next ten years.”

- A plurality of the Court (Roberts, Ginsburg, Breyer, and Kagan) (Sotomayor dissented from this part) also determined that the equal protection claims were not sufficiently pled and do not raise a plausible inference that the rescission was motivated by racial animus.
- As a result, the Court affirms the opinion from NAACP (the cases filed in D.C.) and vacates former Acting DHS Secretary Duke’s memo rescinding DACA.
In the Court’s words:

- “Here the agency failed to consider the conspicuous issues of whether to retain forbearance and what if anything to do about the hardship to DACA recipients. That dual failure raises doubts about whether the agency appreciated the scope of its discretion or exercised that discretion in a reasonable manner. The appropriate recourse is therefore to remand to DHS so that it may consider the problem anew.”

This means that the DACA program stands, as established through the Memo by DHS Secretary Napolitano in 2012.

- The Court does NOT address:
  - Whether DACA or its rescission are sound policies
  - Whether DACA itself is legal (but note that these are addressed by Justice Thomas and Justice Alito, who deem DACA unlawful)
    - The Court explicitly states: “The dispute is instead primarily about the procedure the agency followed in [rescinding DACA].”
  - Whether nationwide injunctions are appropriate (the NAACP court issued a final judgment vacating the Duke Memo, rather than issuing a preliminary injunction as the courts located in California and New York did)

- What this mean for DACA recipients:
  - USCIS can continue accepting and processing renewal applications.
  - The Supreme Court decision requires DHS to again begin accepting initial applications and advance parole applications but we do not know whether the Trump administration will take action limiting these options.
  - The Information for DACA Recipients and Practitioners Workgroup will share guidance shortly.