



# Dept. of Homeland Security v. Regents of University of California, 140 S.Ct. 1891 (2020)

Topics Covered: Immigration

## **Outcome: Favorable**

### **Issue**

The issue in this Supreme Court appeal (consolidated with two other, similar appeals) was whether the attempted rescission of the Deferred Action for Childhood Arrivals (DACA) Program is valid.

### **AMA Interest**

The AMA supports US health care professionals who are DACA recipients.

### **Case Summary**

On June 15, 2012, the Department of Homeland Security (DHS) issued a memorandum establishing DACA. Under DACA, immigrants brought to the United States as children, who would not otherwise have a right to legal residency, could qualify for indefinite deferral of deportation proceedings. The deferral status would require renewal every two years.

Several times, the June 15, 2012 DHS memorandum observed that it was based on “prosecutorial discretion,” which was to be applied “on an individual” or “case by case” basis and without “assurance that relief will be granted in all cases.” The memorandum concluded with the following admonition:

This memorandum confers no substantive right, immigration status or pathways to citizenship. Only the Congress, acting through its legislative authority, can confer these rights. It remains for the executive branch, however, to set forth policy for the exercise of discretion within the framework of existing law. I [the DHS Secretary] have done so here.

The DACA Program was instituted without prior public notice or opportunity for public comment.

Since inception, approximately 800,000 DACA enrollees have received deferred action. There are now approximately 700,000 active participants.

On September 5, 2017, DHS purported to rescind the DACA Program. The DHS memorandum (entitled a “Memorandum on Rescission”) concluded that the DACA Program was illegal. This conclusion was based on (i) its analysis of court holdings made in connection with a related immigration policy, (ii) an opinion of the Attorney General that DACA was unlawful, and (iii) the President’s independent interpretation of the immigration laws. The Memorandum on Rescission

observed that several states had notified the Attorney General that they, too, considered the DACA Program unlawful and were prepared to sue if it were not rescinded. Because of the complexities of the DACA Program, including the varying effects on individual participants, the Memorandum on Rescission ordered that the DACA Program be rescinded through a gradual “winding down.”

The Memorandum on Rescission characterized DACA as a “program [that] purported to use deferred action ... to confer certain benefits to illegal aliens.” A footnote observed:

Significantly ... USCIS [United States Citizenship and Immigration Services] has not been able to identify specific denial cases where an applicant appeared to satisfy the programmatic categorical criteria as outlined in the June 15, 2012 memorandum, but still had his or her application denied based solely upon discretion.

Like the earlier institution of the DACA Program, its rescission was made without prior public notice or opportunity for comment.

The University of California and several other plaintiffs, including at least one medical student, sued in the United States District Court for the Northern District of California to have the DACA Program reinstated. On January 9, 2018 the trial court found that the rescission was “arbitrary and capricious” under § 706 of the Administrative Procedure Act (APA). The preliminary injunction was appealed to the Ninth Circuit. Although briefing has been long since completed and oral argument was heard on May 15, 2018, the Ninth Circuit has not ruled.

Because of the delay in the Ninth Circuit (and the other Courts of Appeal), the federal government petitioned for certiorari “before judgment,” which the Supreme Court granted. This was the lead case before the Supreme Court (Docket No. 18-587). By a split decision, the Supreme Court held that the Executive Branch had not effectively terminated the DACA program, as it had not followed procedural steps to do so.

### **Litigation Center Involvement**

The Litigation Center, the California Medical Association, and several other health care organizations filed an *amicus* brief opposing the DACA termination. The brief argued that rescission of DACA will adversely impact DACA medical student enrollees, medical schools, and those sectors of the United States population most in need of health care services.

United States Supreme Court brief