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### **U.S. Supreme Court Issues Decision on DACA: What Employers Need to Know**

#### **Background on DACA**

The Deferred Action for Childhood Arrivals policy (DACA) was announced by former President Barack Obama in June 2012 and implemented by then-Secretary of Homeland Security Janet Napolitano. The policy has enabled people who came to the United States before the age of 16 to apply for “deferred action,” a form of prosecutorial discretion, and employment authorization. The DACA program has been available for over 700,000 people in the United States. In September 2017, then-Attorney General Jeff Sessions announced that DACA would be rescinded. After that announcement, several litigants challenged DACA’s termination, and three cases were consolidated for review by the United States Supreme Court.

#### **The Supreme Court’s Decision on DACA**

On June 18, 2020, the Supreme Court held, in a 5-4 decision, that the decision by DHS to terminate DACA was reviewable in federal court and also “arbitrary and capricious” under the Administrative Procedure Act (APA). On the merits, the Court reasoned that the “agency must defend its actions based on the reasons it gave when it acted” and further that DHS failed to consider “reliance” interests such as a broader renewal period for DACA recipients or a more accommodating termination date. The Court said that while DHS was not required to consider all of the policy alternatives, “it *was* required to assess whether there were reliance interests, determine whether they were significant, and weigh any such interests against competing policy concerns.”

The Court remanded all three consolidated cases for further proceedings. The Court rejected the claim that the termination of DACA was motivated by animus in violation of the Equal Protection Clause of the U.S. Constitution.

**Does the Supreme Court’s decision mean DACA can continue indefinitely?**

No. The Court's decision is limited to how DHS terminated DACA in 2017. Specifically, the Court held that DHS failed to provide a reasonable explanation for terminating DACA. How and if DHS chooses to proceed in the future (i.e., retaining DACA, issuing a new memorandum/explanation ending DACA, etc.) remains to be seen.

**Did the Supreme Court decide whether DACA is lawful?**

No. The Court did not decide if DACA is lawful or a good policy. The decision is limited to "whether the agency complied with the procedural requirement that it provide a reasoned explanation for its action."

**Can those who qualify for DACA submit an application for the first time?**

The Supreme Court's decision means that DACA should be fully reinstated, allowing for first time DACA requests.

With that said, DHS will need to reopen the DACA policy for new requests consistent with today's decision. However, this may not happen immediately. New DACA Applicants are eligible for an Employment Authorization Document (EAD).

**Can employees who currently have DACA renew their DACA applications and Employment Authorization Documents?**

Yes. If employees have been granted DACA previously, they should be able to submit an application to renew DACA and receive a new EAD to maintain employment. Employers should be aware that their DACA employees must continue to renew their EADs in order to have continued work authorization.

**If an employer learns that one of its employees has been working under someone else's identity, but that the individual qualifies for employment authorization because he or she can now apply for DACA, can the employer continue to employ this individual?**

This is a complicated situation and requires a discussion with a qualified immigration attorney.

We will continue to provide updates on this decision as USCIS issues additional guidance related to DACA. In the meantime, if you have any questions arising from the DACA Supreme Court decision, please reach out to [Daniel Oldenburg](#) or another a member of Cline Williams' Labor and Employment Law Section at [www.clinewilliams.com](http://www.clinewilliams.com).



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