

Judge Blocks Trump's DACA Rollback Nationwide

By **Nicole Narea**

Law360, New York (January 10, 2018, 8:24 PM EST) -- A California federal judge issued a nationwide injunction late Tuesday night to prevent the Trump administration from proceeding with its plan to roll back the Deferred Action for Childhood arrivals program, allowing its beneficiaries to reapply for work authorization and deportation protection.

U.S. District Judge William Alsup wrote in the order, which came in five related lawsuits, that those with DACA status will now be able to reapply for benefits indefinitely, but no newly filed initial DACA applications will be accepted. In reaching the conclusion to revive DACA, the judge relied on a tweet from President Donald Trump praising the program — a practice that has become commonplace in courts charged with reviewing this administration's immigration policies.

The decision came on the heels of negotiations earlier in the day among Democratic and Republican leaders at the White House regarding a permanent replacement for DACA in advance of the administration's planned termination of the program on March 5.

"We seem to be in the unusual position wherein the ultimate authority over the [U.S. Department of Homeland Security], the chief executive, publicly favors the very program the agency has ended," the decision states. "For the reasons DACA was instituted, and for the reasons tweeted by President Trump, this order finds that the public interest will be served by DACA's continuation."

The suits were all filed soon after the Trump administration's Sept. 5 announcement that by March 5 it would end the program put in place by former President Barack Obama in 2012, which provides deportation relief and work permits to unauthorized immigrants who came to the U.S. as children. DACA has benefited almost 800,000 immigrants, according to recent government statistics.

To qualify for DACA, an applicant needs to have reached the U.S. before their 16th birthday, have been present in the country and under the age of 31 in June 2012, be currently attending school or be a high school graduate, not have been convicted of felonies or significant misdemeanors, and not be deemed a threat to public safety or national security.

The government moved to dismiss the suits for lack of jurisdiction. It argued that the decision to revoke DACA constituted a discretionary act under the Administrative Procedure Act that could not be subject to review and that the Immigration and Nationality Act also barred review. Additionally, it argued that only the individual plaintiffs in the case have standing.

But Judge Alsup disagreed on all of those fronts, also finding that the plaintiffs in the suits were entitled to a preliminary injunction restoring DACA on the basis that they had shown likelihood of succeeding in their claims, that they would be irreparably harmed absent an injunction, and that an injunction would serve the public interest. He emphasized that the order does not prohibit the government from deporting any individual DACA enrollees if they pose a threat to national security or public safety.

He determined that the plaintiffs in the suits were likely to succeed in their claim that the government's decision to terminate DACA was based on a flawed legal premise that DHS did not have the authority to implement the program. He asserted that Congress and the U.S. Supreme Court have both recognized the agency's authority to grant relief from removal such as deferred action.

Moreover, Judge Alsup determined that the plaintiffs were likely to succeed in their claim that the government's rationalization for its decision to terminate DACA on the basis that it posed "litigation risk" was arbitrary and capricious.

The government asserted that DACA had the same "legal and constitutional defects" as another program known as Deferred Action for Parents of Americans and Lawful Permanent Residents, which was enjoined in 2015 in a decision that was affirmed on appeal at the Fifth Circuit. But Judge Alsup said the programs could not be equated with each other due to their differences.

The decision also recognized that the individual DACA recipient plaintiffs in the cases, as well as their employers, would face irreparable harm absent an injunction. Judge Alsup said that the individuals would be barred from the mainstream workforce and may face deportation if the program were terminated. Their employers, furthermore, would see a detrimental impact on their workforce, he said.

And finally, the court found that the revival of DACA would be in the public interest, noting that Trump himself seemed to support the program per a September tweet: "Does anybody really want to throw out good, educated and accomplished young people who have jobs, some serving in the military? Really!" Several courts similarly took into consideration Trump's public statements when adjudicating challenges to his travel ban on individuals from seven Muslim-majority nations last year.

Nevertheless, Trump took to Twitter once again on Wednesday to denounce the district court's decision.

"It just shows everyone how broken and unfair our Court System is when the opposing side in a case (such as DACA) almost always wins before being reversed by higher courts," Trump tweeted.

Jeff Davidson, counsel for the University of California, one of the plaintiffs in the case, said in a statement that he was pleased that the decision recognized the administration's flawed approach to the revocation of DACA.

"Congressional action is still needed to provide a permanent solution, but in the meantime, this decision will protect the nearly 800,000 DACA recipients against deportation or losing their jobs," he said.

The plaintiffs are represented by Jeffrey Michael Davidson of Covington & Burling LLP, Ethan Dettmer of Gibson Dunn & Crutcher LLP, and Mark D. Rosenbaum of Public Counsel.

The U.S. Department of Justice is represented by Brad Rosenberg and Brett A. Shumate.

The cases are State of California et al. v. Department of Homeland Security et al., case number 3:17-cv-05235, Regents of University of California et al. v. United States Department of Homeland Security et al., case number 3:17-cv-05211, Garcia et al. v. United States of America et al., case number 3:17-cv-05380, County of Santa Clara et al. v. Trump et al., case number 3:17-cv-05813, and City of San Jose v. Trump et al., case number 5:17-cv-05329, all in the U.S. District Court for the Northern District of California.

--Additional reporting by Cara Bayles. Editing by Stephen Berg.

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