

# Mobility: immigration alert

June 2020

## United States

### U.S. Supreme Court rules the federal government's move to rescind the DACA Program unlawful

#### Executive summary

On 18 June 2020, in a 5-4 decision, the U.S. Supreme Court found the administration's 2017 move to end the Deferred Action for Childhood Arrivals (DACA) program as unlawful. The decision means that until further federal court action—likely many months away, if at all—DACA recipients will continue to be able to receive protection from deportation under the program. They will be able to continue working on their current Employment Authorization Documents (EAD), permitted to apply for initial EADs as well as to renew an EAD. Employers will continue to be able to accept work authorization granted under DACA rules.

Created by the Obama administration in 2012, the DACA program offers protection from deportation and work authorization to qualified individuals brought to the U.S. illegally as children. Some 700,000 young people, often known as “Dreamers”, have received DACA protection since then.

The Supreme Court made their ruling based on procedural grounds, rather than the merits of the program. The justices found that the administration's actions were “arbitrary and capricious” as they did not provide a reasonable explanation for cancelling the program, both as to the deportation protection and work authorization aspects. The Court also faulted the administration for failing to

assess whether or how to mitigate the impact of the program cancellation on the DACA recipients. Chief Justice John Roberts wrote, “[w]e do not decide whether DACA or its rescission are sound policies. We address only whether the agency complied with the procedural requirement that it provide a reasoned explanation for its action.”

In response to today's decision, the administration may return to the lower federal courts and attempt to provide fuller, more comprehensive reasons in support of its 2017 decision for DACA cancellation. Or they may issue a new Executive Order cancelling DACA again for new and different reasons. Either of these steps will likely meet with new court challenges by the Dreamers and their advocates. The cases will therefore probably continue in court for many months to come, extending beyond the November 2020 federal elections.

In the meantime, the Trump administration will need to fully reinstate the DACA program as it was originally created in 2012. This means that the federal immigration authorities will have to accept new DACA applications, applications for DACA renewals, and applications for advance parole, a foreign travel benefit that attaches to a DACA grant.

For further information on how this impacts you or your employees, please contact your EY Law LLP professional.



**EY Law LLP**

#### About EY

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

For more information, please visit [ey.com/ca](https://ey.com/ca).

Follow us on Twitter @EYCanada.

EY refers to the global organization and may refer to one or more of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit [ey.com](https://ey.com).

#### About EY Law LLP

EY Law LLP is a Canadian law firm, affiliated with Ernst & Young LLP in Canada. Both EY Law LLP and Ernst & Young LLP are Ontario limited liability partnerships. EY Law LLP has no association or relationship with Ernst & Young LLP in the US, or any of its members. Ernst & Young LLP in the US does not practice law, nor does it provide immigration or legal services. For more information, please visit [EYLaw.ca](https://EYLaw.ca).

© 2020 EY Law LLP.

All Rights Reserved.

A member firm of Ernst & Young Global Limited.

EYG no. 004411-20Gbl

This publication contains information in summary form, current as of the date of publication, and is intended for general guidance only. It should not be regarded as comprehensive or a substitute for professional advice. Before taking any particular course of action, contact EY or another professional advisor to discuss these matters in the context of your particular circumstances. We accept no responsibility for any loss or damage occasioned by your reliance on information contained in this publication.

[ey.com/en\\_ca](https://ey.com/en_ca)

**George Reis, Managing Partner**  
+1 416 943 2535  
[george.reis@ca.ey.com](mailto:george.reis@ca.ey.com)

**Batia Stein, Partner**  
+1 416 943 3593  
[batia.j.stein@ca.ey.com](mailto:batia.j.stein@ca.ey.com)

**Roxanne Israel, Partner**  
+1 403 206 5086  
[roxanne.n.israel@ca.ey.com](mailto:roxanne.n.israel@ca.ey.com)

**Alex Israel, Partner**  
+1 416 943 2698  
[alex.d.israel@ca.ey.com](mailto:alex.d.israel@ca.ey.com)

**Christopher Gordon, Partner**  
+1 416 943 2544  
[christopher.d.gordon@ca.ey.com](mailto:christopher.d.gordon@ca.ey.com)

**Jonathan Leebosh, Partner**  
+1 604 899 3560  
[jonathan.e.leebosh@ca.ey.com](mailto:jonathan.e.leebosh@ca.ey.com)