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Article: TODAY'S 9TH CIRCUIT COURT DECISION ON DACA. What does it mean for those with DACA?

By: Christopher A. Kerosky

Today the Ninth Circuit Court of Appeals in San Francisco told the Trump Administration it acted without legal basis when it sought to closed down DACA.

<https://www.cnn.com/2018/11/08/politics/daca-9th-circuit/index.html>

To read the decision: https://www.ca9.uscourts.gov/content/view.php?pk_id=0000000927

Here's a summary of where DACA stands now and where things go from here:

The Fight over DACA and today's Decision.

On September 5, 2017, Donald Trump announced the rescission of the DACA program. Those who have DACA status were to begin to lose their status on March 5, 2018, but a San Francisco District Court judge ordered the government to continue renewals. While that case was pending, two other federal judges issued similar injunctions against Trump.

Earlier this year, the Administration asked the U.S. Supreme Court to expedite its review of these rulings but the Supreme Court refused. In the meantime, the San Francisco judge's decision was appealed to the Ninth Circuit Court of Appeals.

Today, that Court ruled in favor of the DACA recipients and against the Trump Administration. The decision of the three-judge panel was unanimous. While this is not a final decision, it affirms the lower court's injunction requiring the administration to keep the program open for renewals.

"We conclude that plaintiffs are likely to succeed on their claim that the rescission of DACA -- at least as justified on this record -- is arbitrary, capricious, or otherwise not in accordance with law," reads the opinion.

What does this mean for DACA?

This decision means the San Francisco federal judge's order requiring the Trump Administration to continue DACA renewals will remain in place for the indefinite future. The Administration will now have to seek reversal in the U.S. Supreme Court. That begins with a Petition for Certiorari requesting that the high court take the case. That will likely come soon. There probably is sufficient time for the Supreme Court to consider this case in its current term. A decision would likely then come at the end of its term in June 2019.

With the current composition of the Court, a ruling in favor of DACA recipients is unlikely. Earlier this year in its ruling on the Muslim Ban, the Supreme Court granted the Trump

Administration wide latitude over executive action on immigration issues. Now the Court is even more likely to endorse these powers since Brett Kavanaugh has joined the bench.

For now, persons who already have DACA can continue filing renewals. We recommend that applicants do so 150 days before their DACA expires.

Unfortunately, new applicants are still not eligible.

Will this week's election results lead to DACA legislation?

The current Congress failed to act on DACA this year. After devoting a week to debating solutions for DACA holders, the Senate did not approve any of several proposals it considered. None of the proposals received the 60 votes necessary to become law in the Senate, largely due to the efforts of the Trump Administration to oppose all proposals except one that would eliminate much of family sponsorship and slash legal immigration in half.

A vote for a Dream Act law never occurred in the current House of Representatives. That will almost certainly change now that the Democrats will control the House in January. The new House of Representatives will likely pass a law offering a path to permanent residence for DACA holders. Then it will be up to the Senate to consider a bill already approved by the House.

Hopefully, before a decision by the U.S. Supreme Court in June, political pressure can be brought to bear to force the Senate and Trump to finally approve DREAM Act legislation that has been considered by Congress since 2006 but never passed.

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About the author:

Christopher A. Kerosky of the law firm of KEROSKY PURVES & BOGUE LLP has practiced law since 1984 and has been recognized as one of the top immigration lawyers in Northern California for the last seven years by San Francisco Magazine "Super Lawyers" edition (2006-2012). He graduated from University of California, Berkeley Law School and was a former counsel for the U.S. Department of Justice in Washington D.C.

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