



The DACA decision and regulatory rule of law

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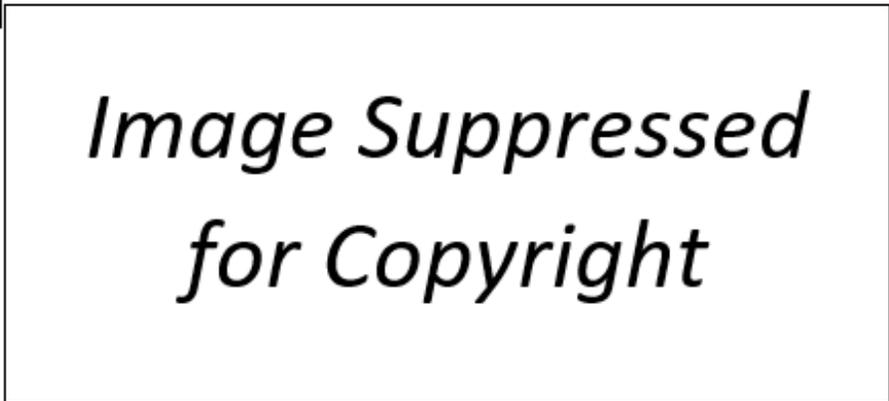
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The Supreme Court's decision to strike down the Trump administration's hardline treatment of child immigrants — "Dreamers" — was a major setback for the administration. The ruling, however, did more than just send the Trump administration back to the drawing board on the Deferred Action for Childhood Arrivals (DACA) program. The court majority, in an opinion by Chief Justice John Roberts, rejected the Trump administration's brazen efforts to evade judicial scrutiny, while also strengthening the regulatory rule of law fundamentals that the administration has louted with regularity. This ruling will become central to dozens of pending battles over other Trump regulatory rollbacks.

In rolling back DACA, the Trump administration offered little justification, with the initial explanation a vague assertion that the Obama administration lacked the legal authority for the DACA policy. Pressed by lower courts, Trump's regulators later offered a few more justifications, but stuck with the earlier action. The administration's strategy seemed heavily banked on hopes that the conservative majority of the Supreme Court would ignore the administration's failures to provide a "reasoned" justification, as required by decades of court precedent. The court majority, however, refused to go along. Speaking for the court, Roberts explained that public accountability demands that agencies remain stuck with their "contemporaneous explanation," unable later to provide new rationales for an earlier choice. While agencies often have legal room to adjust their policies, they cannot skirt their legal obligations to provide a

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single reasoned explanation, grappling correctly with the law and providing frank analysis of effects.

Significantly, that "lack of authority" argument has been a frequent go-to rationale for the Trump administration. For example, in rollbacks of the [Obama Clean Power Plan](#) regulating greenhouse gas emissions from power plants, as well as the [Obama Clean Water Rule](#) defining what is a protected "water of the United States," the Trump administration similarly [argued](#) that EPA never had the statutory power it asserted during the Obama administration. The DACA case makes clear that this is a perilous strategy. If the [agency](#) "fails to appreciate the full scope of [its] discretion," then the decision is "arbitrary and capricious" and the agency must start over.

Similarly, the court concluded that the administration had illegally ignored "reliance interests" in its justification for rolling back DACA. The administration mentioned this as an "asserted" factor, but did not do the tougher work of actually gathering data and analyzing the rollback's implications for immigrants who'd built a life in the United States because of the DACA policy, or the implications for the many businesses and institutions benefitting from the contributions of Dreamers. Vast personal and economic costs are identified by the court as at stake but were illegally ignored by the Trump officials.

If the Trump administration expected that its many fast-tracked and poorly reasoned deregulatory actions would be affirmed by a conservative Supreme Court, this rejection dashes that expectation. The Supreme Court similarly dashed hopes for easy regulatory policy shifts when last year it [rejected](#) the administration's effort to add a citizenship question to the census, calling it rooted in a "contrived" rationale.

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DHS v. Regents will now become a central precedent in the dozens of cases challenging Trump administration rollbacks. This case's affirmation of regulatory rule of law fundamentals will also have good government effects, pressing regulators to provide full and honest analysis of their legal authority and effects of regulatory actions.

Unsurprisingly, the administration has [indicated](#) it will try again to rescind the DACA Dreamers' policy. Due to this Supreme Court decision, this time around it cannot again try to do so on the cheap. It must provide a much more complete legal explanation and also do the hard — and more politically accountable and perilous — work of publicly admitting the human costs flowing from its choices. And through this court-executive branch give-and-take, accountability and the rule of law have both been enhanced.

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