Despite Supreme Court ruling, Trump administration rejects new DACA applications

Deferred Action for Childhood Arrivals (DACA) recipient Roberto Martinez, left, celebrates with other DACA recipients in front of the Supreme Court in Washington. (AP Photo/Manuel Balce Ceneta) (ASSOCIATED PRESS)

By MOLLY O’TOOLE  |  STAFF WRITER
JULY 16, 2020  |  9:34 AM

WASHINGTON — President Trump is venturing onto increasingly shaky legal ground as officials reject new applications for the Deferred Action for Childhood Arrivals program,
sidestepping a Supreme Court ruling reinstating DACA, legal experts and lawmakers say.

The court ruled last month that the Trump administration hadn’t followed federal procedural law or justified terminating DACA in 2017, calling the rescission “arbitrary and capricious.”

DACA grants protection from deportation to so-called Dreamers brought to the United States as children. The Obama-era program, which has bipartisan support, has given temporary relief to some 700,000 young immigrants, with nearly 200,000 DACA recipients in California.

The court did not decide on Trump’s executive authority to rescind DACA, and offered the administration a road map for how to try to end it for good.

But despite threatening another attempt to shut down the program, the president hasn’t tried again. Monday, 25 days after the ruling, was the deadline for the administration to file for a rehearing — it didn’t.

The White House’s refusal to either act or restart the program sets up a potential showdown with the court with little precedent, says Muneer Ahmad, clinical professor at Yale Law School, who was involved in a New York-based DACA suit against the administration.

“The longer the administration refuses to accept and adjudicate new applications and declines to issue a new rescission order,” said Ahmad, “the more of a legal concern that becomes.”

The White House declined to respond to requests for comment Thursday, and the Justice Department did not immediately respond.
Immediately after the court ruled, Trump and his officials rejected the decision as “politically charged.”

“The Supreme Court asked us to resubmit on DACA, nothing was lost or won,” Trump tweeted, trying to reframe the high-profile defeat on immigration, his signature campaign issue.

Since then, the administration has refused to process new DACA applications, advocates and lawmakers say, despite widespread legal consensus — including from Trump’s supporters and former officials — that slow-rolling the restarting of the program violates the court’s order.

On Tuesday, Democratic Sens. Kamala Harris of California and Dick Durbin of Illinois, as well as 31 other senators, wrote to the acting Homeland Security secretary demanding the department “immediately comply” with the court’s ruling and “fully reinstate DACA protections, as the Court’s decision unequivocally requires.”

The Citizenship and Immigration Services agency — which administers DACA — has rejected new applications, or confirmed receipt but then not acted on them, according to lawyers. Jaclyn Kelley-Widmer, associate clinical professor of law at Cornell law school and an immigration attorney, said USCIS is sending these new applicants notices saying the agency is “not accepting initial filings.”

Meanwhile, other USCIS employees say they’ve received no guidance on the Supreme Court ruling or new DACA applications. The agency did not immediately respond to requests for comment Thursday.

The Trump administration has eschewed traditional policymaking and repeatedly sought to end-run Congress with immigration orders. Yet the president’s comments in recent days have only added to the confusion.
Last Friday in an interview with Telemundo, he contradicted himself, saying he would be issuing an executive order on DACA, then saying instead it was a bill that would “give them a road to citizenship.” The White House followed up with a statement saying Trump supports a legislative solution for DACA, potentially including citizenship, but not “amnesty.”

Then on Tuesday in a Rose Garden press conference, Trump said he’s working on DACA “because we want to make people happy.”

“We’ll be taking care of people from DACA in a very Republican way,” he said. “I’ve spoken to many Republicans, and some would like to leave it out, but, really, they understand that it’s the right thing to do.”

In 2017, then-Atty. Gen. Jeff Sessions declared DACA unconstitutional and lower courts issued orders that froze the program while the Trump administration appealed directly to the Supreme Court.

The administration was required to renew existing DACA cases, but has blocked tens of thousands from applying for DACA for the first time who became eligible once they turned 15.

In a statement published the day after the ruling, USCIS deputy director for policy Joseph Edlow said that the decision “merely delays the President’s lawful ability to end the illegal Deferred Action for Childhood Arrivals amnesty program.”

In early July, Democratic senators wrote to Ken Cuccinelli, the acting deputy Homeland Security secretary, demanding USCIS take down the statement from its website, including the “egregiously false claim” that the Supreme Court ruling “has no basis in law” which they wrote “can only be read as a threat that USCIS will not comply with the Court’s order.” Cuccinelli has not responded, said Maria McElwain, a spokeswoman for Sen. Richard Blumenthal, D-Conn., one of the letter’s authors.
“We should not need to tell you that defying the Supreme Court is completely unacceptable,” the senators wrote.

According to historians, a president defying the court has little precedent.

Only a few cases come close. President Lincoln suspended habeas corpus to try and foil a potential takeover of Maryland’s government by Confederates, and when Chief Justice Roger B. Taney ruled only Congress could suspend the writ, Lincoln defied the court, scholars say (others dispute that reading.)

Before that, when the court sided with Native Americans in Georgia against white settlers who tried to kick them off their lands, President Andrew Jackson — infamous in his ruthless treatment of Native Americans — showed no eagerness to threaten the state into compliance, according to the historical record. But he ultimately acknowledged the court's authority.

With Congress eager to avoid the long-festering issue of immigration reform, the ultimate decision on DACA may come on Election Day.

Former Vice President Joe Biden, Trump’s Democratic opponent, has pledged to make DACA permanent on “day one” of his potential administration, and to shield their families from removal as well.

In November, Biden said in a statement following the court’s ruling, “we will reject the President who tried to rip so many of our family members, friends, and coworkers out of our lives.”
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