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STANDPOINT

Attorneys & advocates against domestic & sexual violence

Update for Immigrant Victims/Survivors on Recent Court Cases and USCIS Updated

This newsletter will be covering the recent Supreme Court decisions regarding Deferred Action for Childhood Arrivals (DACA) and Asylum as well as recent Department of Homeland Security (DHS) updates and how these might affect immigrant victims/survivors of domestic and sexual violence. This information is meant to provide domestic and sexual violence advocates with general information on working with immigrant victims/survivors. It is recommended that anyone applying for an immigration benefit or getting legal advice related to immigration status work with an experienced immigration attorney.

Asylum Supreme Court Case: *Department of Homeland Security et al. v. Thuraissigiam*, 591 U.S. __ (2020)

Ruling:

- Those who enter the United States seeking asylum from persecution have no right to a federal court hearing.

Background

- A Tamil farmer from Sri Lanka fled his country due to violence against him. He was arrested going across the southern border and placed in **expedited removal*** proceedings. He failed his **credible fear interview*** and his asylum was denied by the immigration officer and then by an immigration judge after a 13-minute hearing. He was not allowed to appeal to federal court because he was in **expedited removal** proceedings.

- The Ninth Circuit Court of Appeals intervened, saying that those detained still have the right to **habeas corpus***, which is the right to challenge detentions or **expedited removal** orders by appealing to the federal court, and that this right cannot be taken away, except for in times of invasion or rebellion.¹

Supreme Court Decision

- Neither the right to **habeas corpus** nor **due process rule of law*** requires those turned down in an initial asylum screening to get a hearing before a federal judge.
- **Read the full decision [here](#).**

What Does This Mean?

- If an asylum seeker fails their **credible fear interview**, they can be deported without having the opportunity to appeal their case to federal court.
- Few people have successfully appealed their case up to federal court after being denied while in **expedited removal**, so this is not a very big change from what has been done in the past.
- This won't have immediate impact because most asylum seekers are currently barred from entering the country due to coronavirus restrictions. Read more about the COVID-19 impact on immigrants **[here](#)**.
- People facing flawed deportation orders can be removed with no judicial oversight.

Effect on Immigrant Victims/Survivors of Domestic and Sexual Violence

- Victims/survivors who cross the border will not get a chance to appeal their case after a failed credible fear interview.
- Victims/survivors should get advice from an immigration attorney as to what other forms of immigration relief they may be eligible for other than asylum.

***Definitions**

What is Expedited Removal? Undocumented immigrants who are caught within 100 miles of a land border and within 14 days of arrival in the United States are subject to something called “expedited removal.” This means that they can be removed from the U.S. without further hearing or review. If the individual declares that they are seeking asylum, they will get screened by an asylum officer, a supervisory officer, and an immigration judge to determine whether their asylum claim could potentially be granted. The asylum seeker can then stay in the country as they wait for a full decision on their asylum case.²

What is a Credible Fear Interview? Credible fear interviews are when an immigration officer determines whether an asylum seeker is able to demonstrate that he or she has a credible fear of returning to his or her home country. If they pass the interview, they cannot be subject to deportation from the United States until the person's asylum case is processed.

What is Habeas Corpus? Habeas corpus is a right that allows a person under arrest to be brought before a judge or into court to ask for the person's release unless lawful grounds are shown for their detention.

What is Due Process Rule of Law? Due process is the fair treatment of individuals through the normal judicial system.

¹ <https://www.npr.org/2020/06/25/883312496/supreme-court-sides-with-trump-administration-in-deportation-case>.

² <https://www.cnn.com/2020/06/25/politics/asylum-request-thuraissigiam-supreme-court/index.html>.

[DACA Supreme Court Case: Department of Homeland Security et al. v. Regents of the University of California et al., 591 U.S. __ \(2020\)](#)

Ruling:

- Rejected the Trump administration's 2017 attempt to terminate the **Deferred Action for Childhood Arrivals (DACA) program***. The decision restores **DACA** and theoretically allows for initial and renewal applications to be accepted by United States Citizenship and Immigration Services (USCIS). Despite this, the USCIS website maintains that they are not accepting initial DACA applications and some denials of initial applications have been reported since the Supreme Court Decision.

Background

- In 2012, the Department of Homeland Security (DHS) adopted the **DACA** program based on an Obama executive order to postpone the deportation of undocumented immigrants brought to the United States as children.
- In 2017, DHS began a phase-out of **DACA** based on a Trump executive order.
- A lawsuit was filed saying that the termination of DACA violated the Administrative Procedure Act (APA) because it did not comply with the requirements imposed on agencies when they make new rules.
- The Ninth Circuit Court of Appeals granted a **preliminary injunction*** restoring DACA.

Supreme Court Decision

- The court ruled that the termination of **DACA** was subject to **judicial review*** and that the way in which the Trump administration rescinded the **DACA** program was in violation of the APA. They said that when the Trump administration ended the program, they failed to provide good enough reason for it as required by administrative law, under the APA.
- **Read the full decision [here](#).**

What Does This Mean?³

- Current **DACA** recipients are still protected from deportation and eligible for benefits, such as work authorization.
- Eligible **DACA** recipients can continue to apply to renew their **DACA**, but DHS is limiting the period of **DACA** to one year for all renewals.
- Although the decision implied that initial **DACA** applications would be accepted by DHS, the newest DHS **memo** says that DHS is currently rejecting all initial **DACA** requests.
- **DACA** recipients are no longer allowed to request permission to travel outside of the United States, except for those who have already been granted that permission.
- USCIS has claimed that "Today's court opinion has no basis in law and merely delays the President's lawful ability to end the illegal Deferred Action for Childhood Arrivals amnesty program."⁴
- This decision does not protect **DACA** from being terminated. It was a very narrow decision based on the fact that the ending of the program was not done correctly. The Trump administration may still end the program if they are able to adjust the termination to have good enough reasons under administrative law. Learn more about this **[here](#)**. If an individual

³ https://www.ilrc.org/understanding-2020-supreme-court-decision-daca?gclid=CjwKCAjwxev3BRBBEiwAiB_PWE7M2WJxUJVV17J1lK4-elC1mK9vaJoBapSlojniWtSrGOO9vo2hNRoCApIQAvD_BwE;

https://www.dhs.gov/sites/default/files/publications/20_0728_s1_daca-reconsideration-memo.pdf.

⁴ <https://www.uscis.gov/news/news-releases/uscis-statement-supreme-courts-daca-decision>.

believes they may qualify for **DACA**, they should speak to an immigration attorney to learn more about **DACA** and other immigration options that might be available to them.

Effect on Immigrant Victims/Survivors of Domestic and Sexual Violence

- Victims/survivors who are eligible for **DACA** or who have undocumented children who are eligible may renew their **DACA** application, but they are not able to apply for **DACA** for the first time. Victims/survivors should speak to an immigration attorney to learn more about **DACA** renewals.

***Definitions**

What is DACA? Deferred Action for Childhood Arrivals is a program that allows individuals brought to the United States as children and are undocumented to receive a renewable two-year period in which USCIS delays their deportation and allows them to have a work permit.

What is a Preliminary Injunction? A preliminary injunction is an order from a judge that is made early in a lawsuit that prohibits an act in order to preserve the status quo while a ruling is still pending and the judge has yet to make a final decision.

What is Judicial Review? Judicial review is the ability of a court to make a ruling on the actions of an agency or other public body

Other Updates from USCIS, DHS, and ICE

- Students on F-1 nonimmigrant student visas must attend most classes in person. In response to COVID, on March 13th, United States Immigration and Customs Enforcement (“ICE”) granted an exception to the rule that students on F-1 nonimmigrant student visas must attend most classes in person. ICE said that students holding those nonimmigrant visas could attend remote classes while retaining their visa status “for the duration of the emergency.”⁵ On July 6th, ICE announced that it was taking back the COVID-19 exception for international students and would require all students on an F-1 visa whose university curricula was all online to depart the United States and bar any such students from entering or reentering the United States.⁶ MIT and Harvard started a lawsuit against DHS and ICE over this.⁷ On July 14th, ICE rescinded the rule and will now allow foreign students remain in the United States under the exception that they may take remote classes and remain in legitimate visa status.⁸ **The takeaway:** If you are an international student, ICE is currently providing you an exception of the requirement that you attend most classes in-person. This will last “for the duration of the emergency” brought on by the COVID-19 pandemic.
- On June 22, 2020, USCIS released a new rule making it more difficult for asylum seekers to be eligible for employment authorization cards (work permits). It makes it nearly impossible for immigrants who crossed the border without documentation to get a work permit based on an asylum application. Before this, most asylum seekers were able to get work permits while they waited for their asylum application to be decided. It can sometimes take years to

⁵ https://www.ice.gov/sites/default/files/documents/Document/2020/Coronavirus%20Guidance_3.13.20.pdf.

⁶ <https://www.ice.gov/doclib/sevis/pdf/bcm2007-01.pdf>.

⁷ https://www.harvard.edu/sites/default/files/content/sevp_filing.pdf

⁸ <https://thehill.com/homenews/administration/507293-trump-administration-rescinds-policy-to-strip-visas-from-foreign>.

receive an asylum decision. The rule also bars more asylum seekers from getting work permits based on criminal history. It also increases the time asylum seekers must wait after submitting their asylum application before they can get a work permit from 150 days to 365 days and limits work permits to only a two-year maximum.⁹

- USCIS will continue to allow an extension for responses to certain requests, such as Requests for Evidence (which is where USCIS asks for additional documentation for an application) within 60 days of receiving one. The extension will apply to requests dated between March 1 and September 11.¹⁰
- The Trump administration has suspended all new temporary work visas until the end of 2020.¹¹
- USCIS reopened some of its field offices and asylum offices on June 4.¹² These offices are where applicants for asylum or other immigration statuses go for interviews and fingerprinting during the adjudication of their applications. Reopening will allow for certain applications to continue processing, though the closures will likely result in many delays to applications requiring fingerprints or interviews.
- DHS announced that travel restrictions to Canada and Mexico have been extended 30 more days, when they were originally only going to be in effect until June 22, 2020.¹³

If you have any questions about this newsletter or would like to discuss in more detail any of the topics discussed, please do not hesitate to contact Standpoint. We are happy to have a conversation about ways in which advocates can assist immigrants in light of all the changes happening due to COVID-19 and recent policy changes. You can contact Rachel Kohler, Standpoint's immigration attorney, at 612-767-8926 or at rachel@standpointmn.org.

⁹ <https://www.uscis.gov/news/news-releases/uscis-rule-strengthens-employment-eligibility-requirements-asylum-seekers>.

¹⁰ <https://www.uscis.gov/news/alerts/uscis-extends-flexibility-responding-agency-requests-0>.

¹¹ <https://immigrationview.foxrothschild.com/general-immigration-news-and-updates/trumps-executive-order-suspends-nonimmigrant-visas-including-h-1b-l-1-and-j-1-for-the-rest-of-the-year/>.

¹² <https://www.boundless.com/blog/coronavirus-immigration/>.

¹³ <https://immigrationview.foxrothschild.com/consular-issues/covid-19-update-travel-restrictions-with-canada-and-mexico/>.