



POLICY MATTERS

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April 26, 2018

Third Judge Rules Against Administration's Termination of DACA. On Tuesday, U.S. District Judge John D. Bates issued a ruling against the termination of the Deferred Action for Childhood Arrivals (DACA) program, the third such federal judge to do so. In his [opinion](#), Bates stated that the rescission of DACA was arbitrary and capricious under the Administrative Procedure Act since the Department of Homeland Security (DHS) failed to adequately explain why the program was unlawful. "Neither the meager legal reasoning nor the assessment of litigation risk provided by DHS to support its rescission decision is sufficient to sustain termination of the DACA program."

The decision goes [further than the first two rulings](#) since not only does it compel DHS to continue processing DACA renewals, but DHS would also have to start processing new DACA applications if a better explanation for the rescission was not received within 90 days. Of note, Judge Bates is the first Republican appointee (appointed by President George W. Bush) to rule against President Trump's decision to end DACA.

New STEM OPT Guidance on Third-Party Worksites. Recently, immigration lawyers have become aware of changed guidance for STEM students or graduates pursuing "Optional Practical Training" (OPT). The guidance was apparently updated in January with no announcements either to media or U.S. Citizenship and Immigration Services (USCIS) listservs. The [new guidance](#) appears to significantly change policy with respect to work at third-party sites. Apparently for the first time, USCIS has functionally prohibited employers from placing its STEM OPT employees "at the place of business or worksite of the employer's clients or customers," as it requires that training may only occur at the employer's worksite, unless the external training site is accessible to agents of Immigration and Customs Enforcement (ICE) seeking to conduct an inspection of the off-site location. Several business groups have asked USCIS for clarity on this guidance—stay tuned.

House Hearing on the Modernization of Labor Laws. A subcommittee of the House Education and Workforce Committee held a [hearing](#) earlier today on the need to "modernize" outdated labor laws. The hearing focused on how much of the National Labor Relations Act (NLRA) is unchanged since 1947 and how organized labor has used "worker centers" as a means to circumvent laws regulating traditional unions.

The U.S. Chamber of Commerce issued a [report](#) yesterday arguing that worker centers have evolved from non-profit organizations that offered their members education, training, and advocacy services to "labor organizations" (unions) which now directly engage specific employers on wage issues and working conditions on behalf of their members. As such, the Chamber is pushing for these worker centers to be subject to the same regulation as unions under the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA).

SCOTUS Hears Arguments on the Administration’s “Travel Ban.” The Supreme Court heard oral arguments yesterday on the merits of the administration’s “travel ban” policy. Released in September 2017, the [third version of the policy](#) placed a variety of travel restrictions on individuals from Iran, Libya, Syria, Yemen, and Somalia, as well as North Korea and Venezuela. (Chad was originally on the list as well, but has since [been removed after meeting certain security benchmarks](#).) Early speculation is that the justices [will side with the administration](#), as a [federal statute](#) passed in 1952 gives the president authority to suspend the entry of any class of foreigner deemed detrimental to U.S. interests “for such period as he shall deem necessary.” A decision is expected in June.

Employees at Portland Restaurant Vote to Unionize. Workers at Burgerville, a fast-food chain restaurant in Portland, Oregon, [voted to unionize](#) on Monday. With a vote backed by the National Labor Relations Board (NLRB), they are the first fast-food chain workers to gain formal union recognition. Workers from at least one other Burgerville plan to follow suit.

HELP Committee Vote on Gustafson Delayed. The Senate HELP Committee [delayed a vote](#) on the nomination of Sharon Fast Gustafson to become general counsel of the Equal Employment Opportunity Commission (EEOC). The vote, which was previously scheduled for April 24, is set to take place off the floor sometime later today or tomorrow, according to Chairman Alexander (R-TN).

If approved by the Committee, Gustafson would join Trump EEOC nominees Janet Dhillon and Daniel Gade who are still currently awaiting confirmation votes from the full Senate. Dhillon and Gade would fill the two remaining seats on the EEOC and give the commission a Republican majority for the first time in nine years.

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Seyfarth Shaw LLP | Policy Matters | April 26, 2018

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