

Federal Judge Rules DACA “Unlawful,” Suspending New Applicants

A Texas federal judge put the brakes on an Obama-era law protecting immigrants who came to the U.S. as minors, leaving their fate uncertain. by Nadia El-Yaouti

NEW YORK CITY, NEW YORK, UNITED STATES, July 26, 2021 /EINPresswire.com/ -- A Texas federal judge ruled on Friday that the Obama-era program DACA was unlawfully created and would no longer serve as a protection for thousands of undocumented immigrants seeking to live and work in the United States.

Judge Andrew S. Hanen of the United States District Court in Houston, Texas, wrote that former president Obama exceeded his presidential power when he created DACA in 2012 by executive order.

What Is DACA?

DACA or the Deferred Action for Childhood Arrivals was put in place for immigrant children who were brought to the states illegally. Although the program does not offer a path to citizenship for individuals enrolled in it, it allows undocumented immigrants to live in the United States without fear of deportation.

DACA recipients are given a two-year renewable stay against deportation and are granted the ability to work within the United States. Recipients are not given a social security number, however, and they do not have access to federal financial benefits such as Social Security, financial aid for college, or food stamps. Although they do not receive federal benefits, recipients are still required to pay federal income taxes.

Obama’s institution of DACA was aimed at helping “eligible individuals who do not present a risk to national security or public safety.” In his 2012 announcement of the program, Obama called it “a temporary stopgap measure that lets us focus our resources wisely while giving a degree of relief and hope to talented, driven, patriotic young people.”

For many DACA recipients, the program has allowed these undocumented immigrants to build a life in America with many going on to complete school and attain professions that contribute to the growth of the American economy. Since its creation nearly a decade ago, the program has



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allowed an estimated 800,000 individuals to live and work in the country without fear of deportation. The program has largely worked.

The program has largely helped undocumented migrants find a foothold in the U.S. workforce with many steering away from construction careers and into roles where there is upward economic mobility. According to the Migration Policy research group, the program has been largely beneficial with the most recent stats including the following:

□ 44% of recipients have completed secondary school

while 40% are still in secondary school.

□ 55% are employed and amount to just under 400,000 workers, making up .25% of US workers.

□ 62% who are not working are enrolled in schools.

□ Many enter professional careers, while other popular occupations include hospitality, retail trade, education, and health and social services.

DACA Ruling Throws Recipients Back Into Limbo

On Friday, Judge Hanen wrote that the program violated the Administrative Procedure Act. He explained that the program was not legally created because it never sought commentary from the general public. After the Obama-supported DREAM Act failed to pass through Congress, Obama’s executive order of DACA put into place a temporary remedy to the looming burden many undocumented minors faced. In his ruling, Judge Hanen explained that “D.H.S. failed to engage in the statutorily mandated process, so DACA never gained status as a legally binding policy that could impose duties or obligations.”

This latest ruling has sent recipients back into a state of limbo. Following Trump’s election, his administration sought to phase out the program. However, multiple lawsuits put an end to any phase-out plans after three separate district courts established injunctions that would keep a phase-out from happening until congress worked to pass either the DREAM Act or a type of legislation that would offer a pathway to citizenship for recipients. Such legislation never unfolded. During Biden’s first 100 days in office, his push for a legal framework that would provide a pathway to citizenship for DACA recipients has largely received bipartisan support.

Given the ups and downs of DACA through changing administrations, do DACA recipients have any legal standing to sue the government for this back and forth uncertainty with the program? As immigration attorney Raymond G. Lahoud of [Norris McLaughlin, P.A.](#), explains, “DACA was created through an executive order during President Barack Obama’s administration to “defer” removal proceedings against those who entered the United States as children and meet other

eligibility criteria. It is the exercise of prosecutorial discretion by the Executive Branch and nothing more.” Mr. Lahoud continues, “DACA can be taken away by the next President, the same way that President Donald Trump’s administration attempted to end the DACA program. While DACA recipients can file claims seeking recourse, the only real recourse is through the action of Congress in passing comprehensive immigration reform.”

What is The Future of DACA?

Judge Hanen’s ruling virtually undoes Biden’s executive action that was signed on January 20, 2021, reinstating DACA. While the ruling puts a stop to the program, it does not totally abandon current recipients.

Individuals who are receiving protection from the program will not be immediately impacted. Hanen explained that the current recipients would not lose their benefits and would not be deported. Hanen adds that the federal government should not “take any immigration, deportation or criminal action” against recipients that it “would not otherwise take.”

While this statement provides temporary relief for recipients, those under DACA face a future of uncertainty as there is no clear-cut legal path forward for them for the time being. For many DACA recipients, this uncertainty spells fear of the unknown. Many recipients have no recollection of their home country because they were brought here when they were very young children, many of them as young as infants and toddlers.

Attorney Lahoud expresses hope that the court’s decision will encourage Congress to take action now and pass a comprehensive reform bill. He does not feel that such an action is likely to happen, however. “The politicians in Washington have had decades to fix the U.S. immigration system,” says Lahoud, “but have, time and again, simply shrugged off the responsibility by relying on executive orders to remedy immigration law issues.” The result? “Temporary fixes and uncertainty for millions across the United States,” Lahoud laments.

While current enrollees will not be deported unless the current administration can move forward with legislation addressing their status, Hanen wrote that the program will not be accepting new applicants. Regardless, attorney Lahoud points out that it is important to remember that DACA is not a path to citizenship; rather it is the temporary deferral of removal proceedings through the exercise of prosecutorial discretion. “The DACA program, alone, is not a pathway to lawful permanent residence and citizenship,” according to Lahoud. However, he does point out that current DACA recipients may have an underlying basis to adjust their status to that of a lawful permanent resident, which then leads to citizenship. There are, in fact, a number of different ways a DACA recipient could have a pathway to citizenship, but it is a very case-specific inquiry that would need to be reviewed by a competent immigration attorney.

Over the weekend, President Biden called the ruling “deeply disappointing.” Biden shared in his statement, “The Department of Justice intends to appeal this decision in order to preserve and

fortify DACA.” He adds, “Only Congress can ensure a permanent solution by granting a path to citizenship for Dreamers that will provide the certainty and stability that these young people need and deserve. I have repeatedly called on Congress to pass the American Dream and Promise Act, and I now renew that call with the greatest urgency. It is my fervent hope that through reconciliation or other means, Congress will finally provide security to all Dreamers, who have lived too long in fear.”

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