



Written by [Luis Miguel](#) on September 14, 2023

Federal Judge Again Rules DACA Illegal, Setting Up Possible SCOTUS Showdown

As the migration crisis continues to have far-reaching effects on communities throughout the United States, the future of one of the most controversial immigration policies hangs in the balance.

On Wednesday, a federal judge of the U.S. District Court for the Southern District of Texas [ruled](#) that Joe Biden's attempt to codify the Obama-era Deferred Action for Childhood Arrivals (DACA) was illegal. Nevertheless, the judge, George W. Bush appointee Andrew Hanen, did not order DACA's termination.



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As [CBS News](#) reports, Hanen's decision came at the request of several red states, which seek an end to the program granting 580,000 foreign nationals work permits and protection from deportation. The 5th Circuit Court of Appeals also held DACA to be unconstitutional last year.

Hanen had also handled a DACA case in 2021, when he ruled to close the program to new applicants, but allowed existing beneficiaries to continue renewing their two-year work permits. In response to Wednesday's decision, the Biden administration is expected to file an appeal that is likely to make its way to the Supreme Court.

Under DACA, which was originally enacted via executive branch memorandum by Barack Obama in 2012 after he was unable to get Congress to pass his controversial DREAM Act immigration overhaul, allows illegal aliens who came into the country as minors to stay if they fulfill certain requirements, such as arriving in the country before June 2007, lacking a serious criminal record, and having a high school degree or engaging in military service.

President Donald Trump tried axing DACA in fulfillment of his campaign promises, but federal courts kept it alive, and the Supreme Court ruled in 2020 that Trump had not properly ended the program.

In January 2021, Joe Biden signed an executive order directing federal agencies to "preserve and fortify DACA," prompting legal challenges from Republican-led states.

CBS noted that the judge emphasized that "the fate of DACA recipients needs to be decided by Congress, not federal courts or the president":

"Congress's alleged failure to pass, or, stated differently, its decision not to enact legislation, does not empower the Executive Branch to "legislate" on its own — specially [sic] when that "legislation" is contrary to actual existing legislation," Hanen wrote. "The Executive Branch cannot usurp the power bestowed on Congress by the Constitution — even to fill a void."

Hanen further argued that Biden's program exhibits no "material differences" from the Obama



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administration's 2012 policy and, as such, "suffers from the same legal impediments."

Homeland Security Secretary Alejandro Mayorkas fired back at the judge.

"As the Secretary of Homeland Security who promulgated a final rule to preserve and fortify DACA last year, and as the former Director of U.S. Citizenship and Immigration Services (USCIS) who, in 2012, led the development and implementation of DACA, I am deeply disappointed by the ruling and uniquely qualified to say that DHS believes DACA is lawful and Constitutional," he said in a statement.

Biden's press secretary, Karine Jean-Pierre, said: "We are committed to protecting all the Dreamers who have throughout their lives enriched our communities and our country, and we continue to call on Congress to provide permanent protection to the hundreds of thousands of Dreamers in the United States."

The DACA ruling comes amid a massive surge in illicit border crossings, which is driving a crisis in several parts of the country as communities struggle to find housing and other resources for the new arrivals.

Some of the cities and states most affected by the migrant crisis are ones that formally declared themselves welcoming to illegal aliens, even identifying themselves as sanctuary cities and states.

Now, these places are adopting policies more in line with their Republican counterparts. In Massachusetts, for example, Democratic Gov. Maura Healey has [mobilized the national guard](#) to deal with the massive surge in migrants since Biden suspended Title 42.

And while Democrats have often criticized GOP elected officials such as Florida Gov. Ron DeSantis and Texas Gov. Greg Abbott for busing migrants out of their states, Democrats such as New York City Mayor Eric Adams and Colorado Gov. Jared Polis have done the same thing.

In recent days, Adams has gone so far as to say that the migrant issue will "destroy New York City." Like his counterparts in other cities and states, Adams has indulged in hawkish rhetoric recently, explicitly [saying](#) that "Any [migration] plan that does not include stopping the flow at the border, that's a failed plan."

In the Big Apple, migrants have displaced homeless in the city's shelters and are now sleeping on the streets, as the more-than 100,000 migrants who have entered the city this year stretch it beyond capacity.

Meanwhile, New York Governor Kathy Hochul has refused to grant Adams' request to use the suburbs as a relief valve for the excess of migrants in the city — putting the two Democrats at odds with one another. And even if Hochul does give in, local leaders in those suburban communities have already vowed to resist the move in court.

Mass migration may have seemed palatable to Democrats when it was mere rhetoric. But now that they actually have to deal with its realities, they're not so enthusiastic.

To learn more about the immigration crisis and what can be done about it, [click here](#).



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