



## Judge Rules DACA Illegal, but Leaves It in Place for Appeal

President Barack Obama’s amnesty for illegal-alien children, which he hoped would flood the country with millions of potential Democratic voters, is as illegal as the aliens it seeks to protect.

That’s what a federal court in Texas ruled in a decision released on Friday, pursuant to the request of Texas and 10 other states for a preliminary injunction to stop the federal government from continuing the amnesty, called [DACA](#) — Deferred Action on Childhood Arrivals.



But the judge did not grant the injunction and stop the program. Instead, his ruling sets up an appeal, most likely to the U.S. Supreme Court.

### The Ruling

[The ruling came](#) from Judge Andrew Hanen of the U.S. District Court for the Southern District of Texas. Breitbart.com seems to have been the one media outlet to take note of Hanen’s decision.

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In his 117-page opinion, [Breitbart reported](#) Hanen “agreed that the attorneys general, led by Paxton, were correct in their interpretation of the law — that the Obama administration’s controversial 2012 executive action violates the Administrative Procedure Act (APA) and impermissibly orders the federal government to ignore American immigration laws.”

Because the APA, which regulates the actions of federal agencies, was enough for him to find DACA illegal, Hanen did not address the attorneys general’s arguments based on the Take Care Clause of the U.S. Constitution.

Rather than strike the program down himself with an injunction, however, Hanen left the program in place while setting up an appeal to higher courts — first the U.S. Court of Appeals for the Fifth Circuit and then, in all likelihood, the U.S. Supreme Court, where the issue of DACA’s legality will finally be decided.

One of Hanen’s key points, from page 71, is that Obama did not have the authority to implement the program:

This court, guided by Fifth Circuit precedent, holds that none of the claimed statutory provisions give the DHS the authority to implement DACA. While the provisions certainly grant some authority to the agency they do not extend to include the power to Institute a program that gives lawful presence, work authorization, and multiple other benefits the 1.5 million people.

Thus, Hanen concluded, he could not, and would not substitute his judgment for that of the nation’s elected officials on a matter that requires a legislative remedy. “This court will not succumb to the temptation to set aside legal principles and to substitute its judgment in lieu of legislative action,” he wrote in rejecting the defendants’ claim that DACA was legal. “If the nation truly wants to have a DACA



Written by [R. Cort Kirkwood](#) on September 2, 2018

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program, it is up to Congress to say so.”

The timing of the lawsuit, Hanen wrote, stopped him from striking down DACA altogether. The coalition led by Texas waited too long to file it. But Texas [Attorney General Ken Paxton observed](#) that Hanen followed precedent. In 2015, the U.S. Circuit Court of Appeals for the Fifth Circuit, also a case brought by Texas and other states, [upheld Hanen’s injunction](#) that stopped Obama’s other illegal amnesty, [DAPA](#) — Deferred Action for Parents of Americans. The U.S. Supreme Court [let the circuit court’s ruling](#) stand.

“These laws ‘cannot be reasonably construed as assigning decisions of vast economic and political significance such as [DACA] to an agency,’” Hanen wrote, quoting the Fifth Circuit’s decision. Because DACA is essentially the same as DAPA, it could not withstand a similar legal challenge.

“We’re now very confident that DACA will soon meet the same fate as the Obama-era Deferred Action for Parents of Americans program, which the courts blocked after I led another state coalition challenging its constitutionality,” Paxton said. “President Obama used DACA to rewrite federal law without congressional approval. Our lawsuit is vital to restoring the rule of law to our nation’s immigration system. The debate over DACA as policy is a question for lawmakers, and any solution must come from Congress, as the Constitution requires.”

## **Who Made This Mess**

The origin of this legal morass was, as [The New American reported](#) at the time, President Obama’s unilateral declaration of the DACA amnesty. Before DACA, in 2011, Attorney General Janet Napolitano [stated that the DREAM Act was](#), for all intents and purposes, the law of the land.

So DACA was merely the culmination of Obama’s using “executive authority” to change immigration law in the hope of importing more Democratic voters. Although [he declared DACA the law of the land in 2012](#), his underlings [had been observing it](#) in practice for at least a year.

[President Trump ordered](#) the program ended in September 2017, but in August a [federal court said](#) Trump’s rescission of Obama’s illegal order was itself illegal.

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