Written by **Selwyn Duke** on April 25, 2018

Imperial Judiciary: Acting Unconstitutionally, Judge Orders Restart of DACA

Another judge has signaled that he doesn't like the law — so he's just going to ignore it. On Tuesday, Judge John D. Bates of the United States District Court for the District of Columbia "ruled" that last year's revocation of the Obama-era Deferred Action for Childhood Arrivals (DACA) was illegal and that the whole program must be restarted. It was the most radical decision yet among a series of judicial opinions that, ignoring constitutionally granted executive power, seek to hobble immigration enforcement.

The *Washington Times* reports on the story, writing that the usurpative opinion "goes beyond other judges, who had also ruled the phaseout illegal but had only ordered Homeland Security to accept renewal applications from people who'd already been awarded DACA before. Judge John D. Bates's ruling would require a full restart, meaning even illegal immigrant 'Dreamers' who'd never been approved before would now be able to apply for DACA."

"The judge imposed a 90-day delay on his own ruling to give the government a chance to reargue its case, but for now the ruling stands as the most severe blow yet to Mr. Trump's phaseout," the paper continued.

Outrageously, Judge Bates sang a republic-rending tune we've heard before, claiming that "the government never gave an adequate justification for revoking DACA, so its decision seemed 'arbitrary and capricious,'" the *Times* further informs. This echoes the opinion earlier this year by Judge Nicholas Garaufis of the United States District Court for the Eastern District of New York, who wrote that if President Trump wanted to end the program, he must provide what the court considers "adequate reasons for doing so."

While the president has no obligation to provide justification for enforcing the law, the justification is plain: DACA illegals are just that — illegal. Yet it's clear why this eluded Judge Bates. Telegraphing his biases, he wrote that he would use illegal-migrant activists' politically correct term for illegals: "undocumented." Of course, calling an illegal migrant an undocumented worker is like calling a rapist an undocumented husband.

Yet a justification for ending the program was also provided by what Judge Bates may consider an unimpeachable source. As The Heritage Foundation wrote last year in "DACA Is Unconstitutional, as Obama Admitted":

> Responding in October 2010 to demands that he implement immigration reforms unilaterally, Obama declared, "I am not king. I can't do these things just by myself." In March 2011, he said that with "respect to the notion that I can just suspend deportations through executive order, that's just

> not the case." In May 2011, he acknowledged that he couldn't "just bypass Congress and change the (immigration) law myself.... That's not how a democracy works."
>
> Yet in 2012, he did it anyway. He put DACA in place to provide pseudo-legal status to illegal aliens brought to the U.S. as minors, including as teenagers. He promised them that they wouldn't be deported and provided them with work authorizations and access to Social Security and other government benefits.

So the judges' positions are staggering: What one president, Obama, instituted unconstitutionally (DACA) via executive order, his successor cannot undo via executive order. Note that Congress would never pass a DACA amnesty, despite Obama's prodding of them to do so for years — it was *never* "law."

It is the judges' decisions that are "arbitrary and capricious," "lacking even a thin veneer of law," to quote late Justice Antonin Scalia. The notion that chief executives have to provide judges with "good reasons" to enforce the law is to trade the rule of law for the rule of lawyers. In fact, judges have even struck down presidential applications of law — Trump's travel bans — under the pretext that the motives behind it were impure (alleged anti-Muslim sentiment expressed on the campaign trail).

Yet if this approach is valid, let's apply it to other actions. Can Trump be prevented from placing tariffs on Chinese goods because he engaged in anti-China rhetoric on the campaign trail? Or, before prosecuting a bank robber, perhaps a district attorney should have to explain his reasoning. Can he show that the thief really didn't need the money or didn't have an upbringing that "destined him for a life of crime"?

Allowing judges to impose their own beliefs on the country through their rulings is not only subverting the rule of law but is also rendering elections meaningless. After all, what is the point of electing political candidates who promise to implement the conservative agenda, when activist judges can declare their agenda unconstitutional when they succeed?

But it is the activist judges who are behaving unconstitutionally, their claims to the contrary notwithstanding. Note that judicial supremacy — the idea that courts have the power to determine what law means and thus constrain not only their own branch, but the other two as well — is *not in the Constitution*. Rather, the power was *unilaterally declared by the courts themselves*, most notably in the *Marbury v. Madison* decision (1803).

And tolerating this extra-constitutional judicial supremacy has made the courts supremely dangerous. As I wrote last year:

> Consider: As Dr. Alan Keyes explained in 2005, they have their judicial power. Yet if they can strike down laws, contrary to the legislature's will, they've also arrogated to themselves the legislative power. And if they can tell the chief executive that an action must or mustn't be executed, then they've arrogated to themselves the executive power as well. Now note what James Madison, the "Father of the Constitution," said about having the executive, legislative, and judicial powers all in one entity's hands: It is the very definition of tyranny.

This is why Founding Father Thomas Jefferson said that if the theory of judicial supremacy is valid, then indeed is our Constitution a *felo de se* — an act of suicide.

The shame of this, and Congress' shame, is that its legislators could tame the courts but refuse to do so. As I also pointed out last year:

> Under the Constitution's Article III, Congress can eliminate any and every federal court, except for

> the Supreme Court; and can limit the appellate jurisdiction of the SCOTUS, meaning, SCOTUS' ability to hear cases brought up through lower courts. It thus could mostly eliminate judicial review.
>
> Why doesn't Congress do this? Because it means taking a stand on contentious issues and possibly suffering electoral consequences. It's far easier for legislators to just posture, puff up their chests, and then throw up their hands saying, "Hey, we tried. But the courts have ruled!" This brings no electoral consequences because most Americans don't know civics and are never aware that Congress is shirking its power-balancing duty.

Of course, since judicial supremacy is extra-constitutional and enjoyed only at the pleasure of the other two branches, Trump could simply and lawfully ignore rogue court rulings. Sadly, though, today's climate ensures that such a move would be used as a pretext for impeaching him.

Yet without pushback, judicial tyranny will be our lot. *American Thinker's* Rick Moran, lamenting Judge Bates' opinion, wrote, "I guess the federal courts don't believe that the chief executive is in charge of the Executive Branch." But their beliefs are irrelevant. They're imposing their will for the oldest possible reason: because they can.

Expecting the courts to willingly stop stealing the people's government is like expecting thieves to willingly stop stealing. The way it is, has been, and always will be is that only power negates power.

Photo: Kuzma/iStock/Getty Images Plus