



Written by [Steve Byas](#) on September 5, 2017

## Trump Kicks “Dreamer” Question to Congress — Where It Belongs

“If President Trump makes the decision we [Congress] will work to find a legislative solution to their dilemma,” said Senator Lindsey Graham (R-S.C.), in reaction to President Donald Trump’s announcement today that he is ending the Deferred Action for Childhood Arrivals (DACA). DACA was implemented by “executive order” by former President Barack Obama.



Under Obama’s DACA, children brought to the United States illegally by their parents would be allowed to stay. Nothing in the U.S. Constitution gave Obama the legal authority to change U.S. immigration law, but he argued that he was simply deferring prosecution of illegal aliens who were brought to the United States illegally by their parents.

Because of this, Trump’s action simply restores the status quo as it existed before Obama’s constitutionally dubious action.

Oklahoma Senator James Lankford, a Republican, agreed with Trump’s action, saying it should be up to Congress, not the president, to pass laws concerning immigration. “We must confront the nation’s out-of-date immigration policy and finally resolve the issues of strong border enforcement and merit immigration,” Lankford said.

He added, “It is right for there to be consequences for those who intentionally entered this country illegally. However, we as Americans do not hold children legally accountable for the actions of their parents.”

Whatever decision Congress eventually makes on this issue, the bottom line is that it is theirs to make, not Obama, Trump, or any other U.S. president. If Congress chooses to do nothing, that is also its decision to make, despite former President Obama’s assertion that if Congress failed to act, he had to. That is not how the Constitution is supposed to work.

Article I, Section 1 of the Constitution states that *all* legislative power is given to Congress.

Despite the clear wording of the Constitution, presidents and courts have usurped the law-making power of Congress on matters both foreign and domestic. For example, the Iranian Nuclear Deal, regardless of what one thinks of its merits, is obviously a *treaty*. A treaty requires the approval of two-thirds of the U.S. Senate before it is a law in the United States, yet over the past few decades, presidents have made treaties with foreign countries without any approval by either house of Congress. They have managed to do this by calling the treaties “executive agreements,” but calling them by a



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different name does not change what they are — treaties.

Courts have also taken over areas that are clearly legislative. In still other instances, federal bureaucrats have essentially made law. Writing in *Bureaucracy*, the great economist Ludwig von Mises said, “The experts of the various government agencies are certainly fine men. But they are not right in becoming indignant whenever the legislature frustrates their carefully elaborated designs.... But the only question is: Who should run the country? The voters or the bureaucrats?”

Unfortunately, the increasingly prevailing truth is that presidents, courts, and bureaucrats make our public policy decisions — not the people’s elected representatives. Although presidents can be voted out of office, judges and bureaucrats cannot.

But why does Congress allow this situation to continue? Don’t they know that the Constitution gives them, not the president, the courts, and the bureaucracy the power and authority to determine immigration policy and other issues that concern the general public? Aren’t they jealous of this usurpation of their power?

One would think so. No doubt the framers of the Constitution assumed Congress would not allow the president, courts, or bureaucrats to infringe on their constitutional right to make laws.

It is probable that James Madison and the other delegates did not anticipate that members of Congress would cheer a president who takes unconstitutional actions they agree with. If so many members of Congress care little about their oath of office, it is not surprising that they care little about unconstitutional actions by the executive branch, the courts, or the bureaucracy.

Second, if someone else makes a decision on a controversial issue, such as what to do about illegal aliens who were brought here by their parents, then that means they, the members of Congress, do not have to go on record themselves on the issue — and face an angry electorate in the next election.

Trump’s action simply returns the power to make the decision back to Congress. As Jill Colvin of the Associate Press said in her article on this subject, this hands a “political hot potato to Republicans on the Hill.” The dirty little secret is that members of Congress, of either party, would rather someone else make the decision on these political hot potatoes, so they can tell their constituents, “I agree with you on the issue but [insert the culprit: courts, president, bureaucrats] have taken it out of our hands.”

But members of Congress are shirking their duty by allowing important issues to be usurped by others. And if members of Congress are not going to stand up for their constitutional authority, the voters need to replace them with others who will.



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