

# Federal judge rules DACA unconstitutional, blocks new applications

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On Friday, a federal judge in Texas ruled the Obama-era Deferred Action for Childhood Arrivals program (DACA)—which protects those who qualify from deportation and provides work authorization—to be unlawful, halting the ability of the Biden administration to accept new applicants and throwing the lives of hundreds of thousands of undocumented immigrants into uncertainty.

In a 77-page opinion, District Judge Andrew Hanen determined DACA was unlawful because it violates the Administrative Procedure Act, a law which governs federal rulemaking, by circumventing the normal “notice and comment” process in adopting new rules.

The lawsuit was spearheaded by Republican Texas Attorney General Ken Paxton—along with attorneys general in Alabama, Arkansas, Louisiana, Nebraska, South Carolina and West Virginia—who argued the federal program placed an undue burden on states and amounted to executive overreach.

In his ruling, Hanen cited the 2020 Supreme Court decision in *DHS v. Regents of the University of California*, stating the majority determined federal courts have the authority to review the DACA program and its implementation. However, Hanen also borrowed from the dissenting opinion authored by the conservative Justice Clarence Thomas, joined by Justices Alito and Gorsuch, that stated DACA was an “unlawful program.”

“Justice Thomas noted that the majority's failure to address DACA's creation was ‘an effort to avoid a politically controversially but legally correct decision’ that would result in future ‘battles to be fought in this Court,’” Hanen wrote. “While the controversial issue may ultimately return to the Supreme Court, the battle Justice Thomas predicted currently resides here and it is not one this Court can avoid.”

Hanen's ruling will not immediately affect the more than 615,000 people, commonly known as Dreamers, who are currently protected under DACA. However, it does mean that the Department of Homeland Security can no longer approve new DACA applications or grant applicants the protections DACA provides. Furthermore, Dreamers again find themselves in a state of legal limbo and uncertainty for their futures.

Explaining his decision to not immediately terminate the program, Hanen cited the large volume of people benefiting from the program.

“Hundreds of thousands of individual DACA recipients, along with their employers, states, and loved ones, have come to rely on the DACA program,” Hanen wrote in a separate ruling Friday night. “Given those interests, it is not equitable for a government program that has engendered such a significant reliance to terminate suddenly.”

In the Supreme Court's 2020 decision, the court found that the Trump administration's attempt to end DACA in 2017 failed to consider the interests of the more than 600,000 people affected by the change and was an “arbitrary and capricious” violation of the APA. But the court's decision still left an opportunity for future attacks against the program.

The Trump Administration subsequently stopped accepting new DACA applications and sought to impose other limits on the program, but a federal judge in New York struck down those measures.

New applications surged after it was reinstated in December. The volume of applications has overwhelmed the US Citizenship and Immigration Services, which reported a backlog of some 81,000 first-time applications pending as of the end of June. All these hopeful applicants, however, are now in limbo following Hanen's decision and pending appeals.



DACA, established in 2012, protects undocumented immigrants who came to the US as children from deportation, in addition to allowing them to legally work in the US. Currently, the program's protections are renewable and valid for two years at a time. However, in the near decade since it was established, DACA remains one of the few paths to citizenship and employment for immigrants. According to the Migration Policy Institute, as of 2020 there are more than 1.3 million people in the US who are potentially eligible for DACA.

In a statement released Saturday, President Joe Biden stated he will appeal Hanen's decision and claimed the Department of Homeland Security "plans to issue a proposed rule concerning DACA in the near future." Additionally, Biden called on Congress to enact a "permanent solution" for Dreamers.

"I have repeatedly called on Congress to pass the American Dream and Promise Act, and I now renew that call with the greatest urgency," Biden said. "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."

However, previous bills attempting to do so have failed to pass the Senate filibuster, despite the overwhelming popularity of providing a pathway to citizenship for Dreamers. According to a Pew Research Center poll from June 2020, 74 percent of US adults support "granting permanent legal status to immigrants who came to the U.S. illegally when they were children."

Still, the DREAM Act failed in 2010 despite passing the House and winning majority support in the Senate, because of the filibuster. In 2018, the filibuster defeated four possible DACA fixes, although three of the four also won at least 50 votes.

Most recently, the American Dream and Promise Act passed in the House in two different sessions — first in 2019 and more recently in March this year — but has not come to a vote in the Senate. Despite Democratic control of both the House and the Senate, it is unlikely the legislation would survive the filibuster. At any rate, if signed into law, the bill would only provide "conditional permanent resident status" for several categories of immigrants, including Dreamers and Temporary Protected Status beneficiaries, putting them on a long path to citizenship.

Due to the back-and-forth between the courts and the Trump administration, DACA recipients have come of age in a long period of uncertainty. Although many of them have lived and worked their entire adult lives in the US, they still face the possibility of deportation.

Immigration rights groups quickly pointed out this tumultuous reality.

In a statement Friday, the Home Is Here Coalition described Hanen's decision as "cruel and malicious."

"This decision is a reminder that DACA has never been enough to protect immigrant communities who continue to be at risk of deportation," the group said.

The Presidents Alliance on Higher Education and Immigration, a coalition of university presidents and chancellors, also called on Congress to "enact a roadmap to citizenship" for Dreamers "through all available mechanisms—including budget reconciliation," a process that would require a simple majority instead of the 60 required to override a filibuster.

The organization was also joined by the American Business Immigration Coalition in issuing a letter signed by more than 400 university presidents, CEOs and civic leaders urging Congress to take action on the Dreamers' behalf.

"This relief is particularly critical for the 98,000 Dreamers who graduate from high school every year and the 427,000 undocumented students enrolled in institutions of higher education," the letter states.

"These students are working diligently to advance themselves, including pursuing careers in health, STEM, and teaching, notwithstanding the uncertainty they live with regarding whether they will be able to complete their education, invest in beginning careers, businesses, and families, and ultimately become citizens."



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