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5TH CIRCUIT HANDS TEXAS ANOTHER WIN ON IMMIGRATION, RULING DACA IS UNCONSTITUTIONAL

By Bethany Blankley
The Center Square
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(The Center Square) – The Fifth Circuit Court of Appeals upheld a Texas federal judge’s ruling that the Obama-era Deferred Action for Childhood Arrivals (DACA) program is unconstitutional.

The program, created by a Department of Homeland Security memo in 2012, prevents some foreign nationals who were illegally brought into the U.S. as children from being deported. It initially applied to roughly 800,000 individuals. Those in the program were given U.S. Social Security numbers, even though they aren’t U.S. citizens, work authorization, and the ability to renew their DACA status every two years, shielding them from deportation.

“Texas wins big against the lawless, open-borders Biden Administration at the 5th Circuit,” Texas Attorney General Ken Paxton tweeted after the Wednesday ruling. “The appeals court just AFFIRMED my team’s trial court win. DACA – part of Dems’ program to flood our country with aliens – is illegal and will stay enjoined. Huge victory for the Rule of Law in America!”

In 2017, President Donald Trump unsuccessfully tried to rescind DACA. In 2018, Texas and other states sued, arguing the program is unconstitutional.

Last July, U.S. District Judge Andrew Hanen ruled in favor of Texas, affirming that DACA is unconstitutional because immigration law and oversight of deportation is established by Congress, not by a federal agency secretary in the executive branch.

In his ruling, Hanen allowed current DACA recipients to remain in the U.S. but blocked DACA from being applied to minors who continue to be brought into the U.S. illegally.

In upholding Hanen’s ruling, the appeals court also allowed current DACA recipients to remain in the U.S.

It also sent the case back to Hanen to review a new federal rule change proposed by Department of Homeland Security Secretary Alejandro Mayorkas and determine its legality. Mayorkas’ proposal codifies existing DACA policy as a federal regulation. Unless halted, it’s set to go into effect Oct. 31.

Chief Judge Priscilla Richman of the 5th Circuit of Appeals lauded Hanen’s earlier ruling, arguing, “The district court’s excellent opinion correctly identified fundamental substantive defects in the program. The DACA memorandum contracts significant parts of the [Immigration and Naturalization Act].

“DACA creates a new class of otherwise removable aliens who may obtain lawful presence, work authorization, and associated benefits. Congress determined which aliens can receive these benefits, and it did not include DACA recipients among them.”

The court concluded, “We agree with the district court’s reasoning and its conclusions that the DACA Memorandum contravenes comprehensive statutory schemes for removal, allocation of lawful presence, and allocation of work authorization.”

On sending the case back to the lower court, she added, “A district court is in the best position to review the administrative record in the rulemaking proceeding and determine whether our holdings as to the 2012 DACA Memorandum fully resolve issues concerning the Final Rule.”

The Justice Department is expected to appeal the ruling, setting the case to be heard before the U.S. Supreme Court.

Many Texas industries that have historically relied on illegal immigrants, legal migrants, and DACA recipients for

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labor have lobbied for permanent legal status for DACA recipients. They've also expressed opposition to the ruling. Represented by several associations, some Texas employers are urging Congress to establish a permanent solution for DACA recipients, whom they call "Dreamers."

The Texas Association of Business, **Texas Business Leadership Council**, Texas Restaurant Association, Texas Retailers Association, Texas Nursery & Landscaping Association, Rio Grande Valley Partnership, San Antonio Chamber of Commerce, North Texas Commission, and the Greater Houston Partnership issued a joint statement saying the ruling will have "a devastating impact on Texas' workforce, economy, and communities without a permanent legislative solution from Congress that allows Dreamers to continue living, working, and studying in the Lone Star State and nation as a whole. Since DACA was enacted a decade ago, more than 100,000 Texas immigrants have launched businesses, established careers, and built families that help our communities and state succeed."

In August, total nonfarm employment reached a record 13.5 million people employed in Texas, according to state data. DACA recipients represent 0.74% of Texas' total workforce.

The groups argue the decision "is another step closer to the termination of the DACA policy altogether" and "draws out uncertainty for hundreds of thousands of DACA recipients while failing to support the future generation of Dreamers."

"During an already challenging time for Texas' workforce and economy," the groups add, "Texas businesses can't afford any further setbacks to building a robust workforce. We urge Congress to establish a permanent legislative solution for Dreamers to allow these immigrants to live free of fear and continue contributing to our state's prosperity."