

<https://www.heritage.org/border-security/commentary/daca-unconstitutional-obama-admitted>

DACA Is Unconstitutional, as Obama Admitted

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COMMENTARY BY

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March in support of the Dreamers in Tucson after President Trump announced his decision to end the Obama policy known as DACA in 6 months unless Congress acts to enact it into law. Christopher Brown/Polaris/Newscom

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President Donald Trump has caught a lot of heat for rescinding the Deferred Action for Childhood Arrivals program with a six-month wind-down. Few people seem aware that he's ending an administrative amnesty for illegal aliens that President Barack Obama lacked the constitutional and legal authority to implement.

How do we know? Because even Obama admitted it – repeatedly.

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.

And he did this despite the fact that the immigration laws passed by Congress do not give the president the ability to do this. Indeed, Congress specifically rejected bills to provide such benefits.

As Attorney General Jeff Sessions pointed out this week, DACA "contributed to a surge of unaccompanied minors on the southern border that yielded terrible humanitarian consequences." Since most DACA beneficiaries are now adults, "it also denied jobs to hundreds of thousands of Americans by allowing those same jobs to go to illegal aliens," Sessions said.

The unconstitutionality of Obama's actions were confirmed when Obama tried to implement a second, similar program in 2014 called the Deferred Action for Parents of

Americans and Lawful Permanent Residents program, or DAPA. Like DACA, DAPA provided an administrative amnesty for illegal aliens who came to the U.S. as adults and gave them work authorizations and access to government benefits.

The Fifth Circuit Court of Appeals upheld a nationwide injunction against DAPA, which the Supreme Court allowed to stand. As the Fifth Circuit said, the fact that the president declined to enforce the law and remove illegal aliens "does not transform presence deemed unlawful by Congress into lawful presence and confer eligibility for otherwise unavailable benefits based on that change."

Under our Constitution, Congress has plenary authority over immigration. The president only has the authority delegated to him by Congress – and Congress has never given the president the power to provide a pseudo-amnesty and government benefits to illegal aliens.

The DACA program suffers from exactly the same constitutional infirmities as DAPA. A number of states have threatened to sue the administration to stop the DACA program. In the face of that threat, Trump really had no choice. General Sessions' legal conclusion was that DACA "is vulnerable to the same legal and constitutional challenges that the courts recognized with respect to the DAPA program."

The place to have the debate about what to do about illegal aliens who were minors when they came to this country is in the halls of Congress, not the White House. Failure to correct this unilateral, unconstitutional overreach would set a dangerous precedent that weakens our constitutional balance of powers. As law professor Jonathan Turley said, "If a president can claim sweeping discretion to suspend key federal laws, the entire legislative process becomes little more than a pretense."

When it comes to immigration, Attorney General Sessions was correct when he said that the "compassionate thing is to end the lawlessness, enforce our laws, and, if Congress chooses to make changes to those laws, to do so through the process set forth by our Founders in a way that advances the interests of the nation." That is essential to preserving our constitutional republic.

This piece originally appeared in the Sacramento Bee

FEDERAL COURTS RULED 2012 DACA PROGRAM UNLAWFUL AND UNCONSTITUTIONAL

Federal courts, led by a Texas District Judge and upheld by the Fifth Circuit, have ruled the 2012 [DACA program](#) unlawful, finding it violates immigration law. While the program is deemed illegal, current recipients can still renew their status, but no new applications are accepted.

U.S. SUPREME COURT JUSTICES RACKETEERING

HARBORING AND HIRING MILLIONS OF ILLEGAL IMMIGRATES IN VIOLATION OF 8 USC SECTION 1324 FOR THEIR ACTS OR OMISSIONS



U.S. SUPREME COURT AIDING, ABETTING – OBAMA AND TRUMP BY FAILING TO DO THEIR LEGAL DUTIES AND THEIR ACTS OR OMISSIONS CONSTITUTE HARBORING MILLIONS OF ILLEGAL IMMIGRATES BY FAILING TO ACT IN VIOLATION OF 8 USC SECTION 1324 AND ALLOWING(BARRY SOERTOES- OBAMA-AN ILLEGAL IMMIGRATE WHO ADMITTED DACA IS UNCONSTITUTIONAL) IMMIGRATION DACA POLICY TO CONTINUE

In 2020, the U.S. Supreme Court ruled (5-4) in [Department of Homeland Security v. Regents of the University of California](#) that the Trump administration's 2017 attempt to end the Deferred Action for Childhood Arrivals (DACA) program was "arbitrary and capricious" under the Administrative Procedure Act, allowing the program to continue.

Key Aspects of the Supreme Court DACA Decision:

- **The Ruling:** The Court did not rule on whether DACA itself is constitutional, but rather that the *method* used to rescind it was unlawful.

- **Current Status:** USCIS continues to accept renewal requests from current DACA recipients, but legal challenges regarding the program’s legality remain active in lower courts.
- **Impact:** The decision protected roughly 650,000–800,000 recipients ("Dreamers") from deportation and allowed them to renew work authorizations.

<https://www.nilc.org/articles/supreme-court-overtuns-trump-administrations-termination-of-daca/>

Supreme Court Overturns Trump Administration’s Termination of DACA

Jun 22, 2020

DACA

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On June 18, 2020, the [U.S. Supreme Court issued a 5-4 decision](#) finding that the Trump administration’s termination of Deferred Action for Childhood Arrivals (DACA) was (1) judicially reviewable and (2) done in an arbitrary and capricious manner, in violation of the Administrative Procedure Act (APA).

Violations of the Administrative Procedure Act

In concluding that the DACA termination violated the APA, the Court reasoned, first, that the U.S. Department of Homeland Security (DHS) failed to distinguish between the protections from deportation (“forbearance from removal”) and the benefits (such as work authorization) that come with DACA. DHS did not consider whether to retain the protections from deportation even if the benefits were terminated. Second, DHS did not consider the hardship rescission would cause to DACA recipients and its farreaching consequences — and the enormous “reliance interests” at stake. The Court specifically noted the respondents’ words:

Respondents and their amici assert that there was much for DHS to consider. They stress that, since 2012, DACA recipients have “enrolled in degree programs, embarked on careers, started businesses, purchased homes, and even married and had children, all in reliance” on the DACA program. Brief for Respondent Regents of Univ. of California et al. in No. 18–587, p. 41 (Brief for Regents). The consequences of the rescission, respondents emphasize, would “radiate outward” to DACA recipients’ families, including their 200,000 U.S.-citizen children, to the schools where DACA recipients study and teach, and to the employers who have invested time and money in training them. *See id.*, at 41–42; Brief for Respondent State of New York et al. in No.18–589, p. 42 (Brief for New York). See also Brief for 143 Businesses as Amici Curiae

17 (estimating that hiring and training replacements would cost employers \$6.3 billion).

Memo Rescinding DACA Vacated

The Court affirmed the opinion of the **NAACP** case filed in the D.C. federal district court and vacated former Acting DHS Secretary Duke's memo rescinding DACA. In the Court's words:

Here the agency failed to consider the conspicuous issues of whether to retain forbearance and what if anything to do about the hardship to DACA recipients. That dual failure raises doubts about whether the agency appreciated the scope of its discretion or exercised that discretion in a reasonable manner. The appropriate recourse is therefore to remand to DHS so that it may consider the problem anew.

Implications of the Decision

This was a tremendous win for DACA recipients, their friends, families, and communities, and for everyone who has supported them in their challenge to the Trump administration's unlawful ending of DACA. In light of this decision:

- U.S. Citizenship and Immigration Services (USCIS) will **continue to accept DACA renewal applications from anyone who previously has had DACA.**
- USCIS should begin to accept first-time DACA applications (that is, applications from people who have not previously had DACA) and

advance parole applications from current DACA recipients. HOWEVER, we do not know whether the Trump administration will take action to try to limit these options.

- Whether you want to apply to **renew** your DACA or apply for DACA for the first time, we encourage you to **Speak first with an immigration attorney or Office of Legal Access Programs (OLAP)-accredited representative**. If you decide to proceed with a renewal or first-time application, **we urge that you be represented** by an attorney or accredited representative (a **Form G-28** should be filed with your application).

What Comes Next?

While this is a tremendous victory for the over 700,000 young immigrants whose home is here — and a testament to their indefatigable organizing efforts — it is clear from the Supreme Court’s opinion that it is within the Trump administration’s power to decide to terminate DACA again. In addition, Texas and several other states brought a legal challenge to DACA itself that continues in federal district court in Texas. After the Supreme Court issued its decision, the district court judge in that case ordered the parties to file a joint status report by July 24, 2020, to resume proceedings in the case.

THE LATEST

U.S. SUPREME COURT JUSTICES RACKETEERING

AIDING, ABETTING DONALD
TRUMP IN REBELLION AND
INSURRECTION AND THEY ARE
LIABLE AS PRINCIPLE (ALL ARE
DISQUALIFIED AND INELIBLE TO
HOLD OFFICE AS U.S. SUPREME
COURT JUDGES) -SEE THIS SITE
FOR MULTIPLE OTHER “OVERT
JUDGMENTS, ORDERS ETC.
ISSUED BY RICO JUDGES”

[HTTPS://WWW.SCOTUSBLOG.COM/2024/03/SUPREME-COURT-RULES-STATES-CANNOT-REMOVE-TRUMP-FROM-BALLOT-FOR-INSURRECTION/](https://www.scotusblog.com/2024/03/supreme-court-rules-states-cannot-remove-trump-from-ballot-for-insurrection/)

OPINION ANALYSIS

Supreme Court rules states cannot remove Trump from ballot for insurrection



By [Amy Howe](#)

on Mar 4, 2024

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Although the court did not say so expressly, decisions in Maine and Illinois will presumably also be reversed in light of Monday's decision. (Gage Skidmore via Flickr)

The Supreme Court on Monday ruled that states cannot disqualify former President Donald Trump from the ballot for his role in the Jan. 6, 2021, attacks on the U.S. Capitol. In an unsigned opinion, a majority of the justices held

that only Congress – and not the states – can enforce Section 3 of the 14th Amendment, which was enacted in the wake of the Civil War to disqualify individuals from holding office who had previously served in the federal or state government before the war but then supported the Confederacy, against candidates for federal offices.

All nine justices agreed that Colorado cannot remove Trump from the ballot. But four justices – Justice Amy Coney Barrett in a separate opinion and Justices Sonia Sotomayor, Elena Kagan, and Ketanji Brown Jackson in a joint opinion – argued that their colleagues should have stopped there and not decided anything more.

The court's decision comes just one day before Super Tuesday, when 16 states and one territory will hold their primary elections. Trump currently holds an overwhelming lead in the race for the Republican nomination.

The dispute leading to Monday's opinion began last year in a state court in Colorado. A group of voters in that state argued that Trump was ineligible to appear on the ballot under Section 3, which provides (as relevant here) that no one "shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State," if that person had previously sworn, "as a member of Congress, or as an officer of the United States," to support the Constitution but then "engaged in insurrection or rebellion" against the federal government.

A state trial court concluded that Trump had "engaged in insurrection," but it rejected the voters' request to remove him from the ballot. The presidency, that court ruled, is not an "office ... under the United States," and the president is not an "officer of the United States."

The voters appealed to the Colorado Supreme Court, which agreed that Trump is ineligible to appear on the ballot under Section 3. But that court put its ruling on hold to give Trump time to go to the Supreme Court, which agreed early this year to weigh in.

In a 13-page unsigned opinion released shortly after 10 a.m., the justices reversed the state supreme court's decision. The justices explained that the 14th Amendment was intended to expand the federal government's power at the states' expense. And in particular, they noted, Section 3 was designed to "help ensure an enduring Union by preventing former Confederates from returning to power in the aftermath of the Civil War."

But before disqualifying someone under Section 3, the justices observed, there must be a determination that the provision actually applies to that person. And Section 5 of the 14th Amendment gives the power to make that determination to Congress, by authorizing it to pass "appropriate legislation" to "enforce" the 14th Amendment. Nothing in the 14th Amendment, the court stressed, gives states the power to enforce Section 3 against candidates for federal office, nor was there any history of states doing so in the years after the amendment was ratified.

Moreover, the court added, allowing states to enforce Section 3 against candidates for federal office could create a variety of problems. First, although Section 5 requires Congress to tailor any legislation that it enacts to implement Section 3 so that it specifically targets the conduct that Section 3 was adopted to prevent, state efforts to enforce Section 3 would not face this same limitation. "But the notion that the Constitution grants the States freer rein than Congress to decide how Section 3 should be enforced with respect to federal offices is simply implausible," the court concluded.

Allowing states to enforce Section 3 for federal candidates could result in a scenario in which "a single candidate would be declared ineligible in some States, but not others, based on the same conduct (and perhaps even the same factual record)," the court warned. And that could create a "patchwork" that could "dramatically change the behavior of voters, parties, and States across the country, in different ways and at different times." "Nothing in the Constitution," the court wrote, "requires that we endure such chaos."

The court did not reach some of the other issues that Trump had urged them to decide in his brief on the merits – such as whether Trump “engaged in insurrection” on Jan. 6.

Barrett penned a one-page opinion concurring in part and concurring in the judgment. In her view, the court’s holding that states cannot enforce Section 3 against presidential candidates was “sufficient to resolve this case.” The court should not, she suggested, have weighed in on “the complicated question whether federal legislation is the exclusive vehicle through which Section 3 can be enforced.”

And in a relatively rare move, she appeared to criticize the tone of the joint opinion filed by Sotomayor, Kagan, and Jackson, asserting that “this is not the time to amplify disagreement with stridency. The Court has settled a politically charged issue in the volatile season of a Presidential election. Particularly in this circumstance, writings on the Court should turn the national temperature down, not up.”

In their six-page joint opinion, Sotomayor, Kagan, and Jackson agreed with the result that the per curiam opinion reached – that Colorado cannot disqualify Trump – but not its reasoning. The three justices acknowledged that permitting Colorado to remove Trump from the ballot “would ... create a chaotic state-by-state patchwork.”

But the majority should not, in their view, have gone on to decide who can enforce Section 3 and how. Nothing in Section 3 indicates that it must be enforced through legislation enacted by Congress pursuant to Section 5, they contended. And by resolving “many unsettled questions about Section 3,” the three justices complained, “the majority goes beyond the necessities of this case to limit how Section 3 can bar an oathbreaking insurrectionist from becoming President.”

On Dec. 28, Maine’s secretary of state, Shenna Bellows, ruled that Trump was ineligible to appear on the ballot there. But a state court judge put that ruling on hold in light of the Supreme Court’s decision to hear Trump’s appeal

in the Colorado case. A judge in Illinois issued a similar decision last week, but that case is also on hold awaiting the outcome of the Supreme Court proceedings. Although the court did not say so expressly, those decisions will presumably be reversed in light of Monday's decision.

Monday's decision comes less than a week after the justices agreed to take up another case involving the former president. On Wednesday, the justices announced that they will hear argument in late April on whether Trump can be tried on charges that he conspired to overturn the results of the 2020 election. That decision is expected by late June or early July.

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Posted in Merits Cases

Cases: Trump v. Anderson