



**FAIR** FEDERATION FOR AMERICAN IMMIGRATION REFORM

# Immigration

## REPORT

OCTOBER 2017

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## Unconstitutional DACA Amnesty to End in March, But What Comes Next?

**A**t the conclusion of the Labor Day weekend, Attorney General Jeff Sessions announced President Trump's decision to wind down the Deferred Action for Childhood Arrivals (DACA) program. DACA was an unconstitutional amnesty program implemented by former President Obama in 2012 that granted immunity from deportation and work authorization to illegal aliens who came to the United States as minors. Some 800,000 illegal aliens, some as old as 36, have enjoyed DACA protection.

The move by the Trump administration belatedly fulfilled a campaign pledge that the president made as a candidate. The action was also spurred by a threatened lawsuit by ten states, spearheaded by Texas Attorney General Ken Paxton, challenging the constitutionality of DACA. A similar suit resulted in two subsequent Obama executive amnesty programs being struck down by the courts.

Rather than simply terminating DACA, the Trump administration opted

*DACA END continued on page 3*

## Supreme Court Allows Parts of Executive Order on Travel and Refugees to Go Into Effect...For Now

**I**n September, the U.S. Supreme Court reversed a ruling by a Hawaiian judge and the Ninth Circuit Court of Appeals that prevented the Trump administration from limiting refugee resettlement from six nations that pose a high risk of terrorism. The brief Supreme Court order, issued without dissent, will prevent the resettlement of some 24,000 refugees from the designated countries for now. The Court apparently rejected the argument from refugee resettlement groups that their own "formal assurance" that they



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EXECUTIVE ORDER *continued from page 1*

were prepared to receive these 24,000 refugees was sufficient to allow them to enter the country.

In addition to protecting national security, the Supreme Court's reversal of the highly politicized Ninth Circuit at least temporarily reaffirms numerous previous rulings which grant the Executive Branch broad latitude in matters of national security and in determining who may enter the country and under what condi-

tions. These are political and policy questions that are with the constitutional purview of the president.

Other parts of the executive order remain blocked. In June, the Court declined to lift the Ninth Circuit's ruling that the president could not bar entry of foreigners with a bona fide relationship to a person or entity in the United States, even though there is nothing in the statutes that say such people must be admitted. The

Ninth Circuit also broadly defined "close" family relationships to include grandparents and cousins.

The Supreme Court is expected to hear arguments this month about the constitutionality of the president's March 6 executive order, including both refugee resettlement and the temporary travel restrictions for citizens of these countries.

## No, the Economy Will Not Collapse if DACA is Rescinded

From the reaction of the business-funded amnesty lobby, one might get the sense that the September 5 announcement that DACA would be phased out would trigger an economic cataclysm on a par with the collapse of the housing market in 2008, or the crash of the stock market in 1929.

Microsoft president Brad Smith, speaking on National Public Radio, drew a line in the sand over the repeal

of DACA. "There is nothing that we will be pushing on more strongly for Congress to act on. We put a stake in the ground. We care about a tax reform bill. The entire business community cares about a tax reform. And yet it is very clear today a tax reform bill needs to be set aside until the DREAMers are taken care of. They have a deadline that expires in six months. Tax reform can wait."

FWD.us, the mass immigration lobby group funded by Facebook's Mark Zuckerberg and other high tech billionaires, sent out an urgent email warning that DACA recipients losing work authorization could cost the U.S. economy \$460 billion over the coming decade. For those who may not know how to divide by 10, that works out to \$46 billion a year in an \$18.57 trillion economy – or less than two-thirds of Zuckerberg's estimated net worth. For those who may not own a calculator, the claimed loss of \$46 billion of economic output amounts to one-quarter of 1 percent of current GDP.



The impact on Smith's Microsoft? It would mean the loss of 39 DACA employees, or about .00063 percent of its U.S.-based workforce of 61,030. It is hard to believe that a company of that size doesn't have a turnover of 39 employees every single day.

Hysteria aside, the real loss of economic output would, at worst, be zero. All of the jobs now held by DACA beneficiaries and all of their economic output would be easily refilled by citizens and legal immigrants. A best case scenario would see those jobs filled by struggling Millennials who are trying to gain a foothold in a very competitive labor market, allowing them to become fully contributing members of the U.S. economy.

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DACA END *continued from page 1*

to sunset the program beginning in March 2018. The six month grace period, in the words of the White House, is to allow Congress a window of opportunity to figure out what comes next. If Congress does not act, current beneficiaries could begin losing their DACA protection and work authorization as their two-year deferments expire. In the weeks after the Sessions announcement, however, the administration's position became even less clear, with the president suggesting that the March 5 deadline for resolving the matter might not be a firm one.

In addition to being unconstitutional, DACA is also bad public policy. It was significantly responsible for the surge of unaccompanied minors and families with children who streamed across the southern border almost immediately after the program was implemented. The president was correct in ending it and deferring to Congress's absolute constitutional authority over immigration matters. But the White House has been very vague about what it expects Congress to do, or what it will do if Congress fumbles the ball.

Just eight days after the Sessions announcement, things became murkier still. President Trump had dinner with Senate Minority Leader Chuck Schumer (D-N.Y.) and House Minority Leader Nancy Pelosi (D-Calif.), after which the two Democratic leaders announced that they had struck a deal with the president to allow DACA recipients to remain in the country in exchange for undefined border security measures that did not include funding for the border security fence. The president and his

**FAIR Prerequisites for a DACA Deal**

- Full funding for border security, including secure border fencing (something Schumer voted for in 2006).
- Mandatory E-Verify for all U.S. employers.
- Passage of the No Sanctuary for Criminal Aliens Act.
- Passage of the Davis-Oliver Act, meant to deter and punish criminal aliens from returning to the country.
- Passage of the RAISE Act, which would cut immigration by half, end family chain migration and establish a merit-based selection process.

senior staff's account of the meeting and what was agreed to was vague and inconsistent.

While the Democrats have a clear and united position about what ought to come next, the Republicans, as a party, have none. Speaker of the House Paul Ryan (R-Wis.) has spoken cryptically about pairing "border security" with a DREAM Act, an amnesty bill that is much broader than DACA. In the Senate, where Democrats have enough votes to block legislation from coming to the floor, there has been silence from Majority Leader Mitch McConnell (R-Ky.).

In the absence of clarity from the White House and leadership in Congress it will likely be up to FAIR, the coalition of true immigration reformers in Congress, and activists to ensure that the immigration reform discussion remains focused on the interests and concerns of the American people. President Trump was not elected on a platform of amnesty to DACA beneficiaries. He was elected because he promised to deliver immigration reforms and

enforcement that serve the interests of the nation.

In the coming months FAIR will be working to ensure that the long list of unfulfilled promises to the American people are kept as a prerequisite to any final special consideration for DACA recipients.

The American people have been promised true immigration reform for decades. None of those promises have been kept. DACA recipients were promised nothing. President Obama stated clearly that there were no guarantees that the program would outlast his administration.

The upcoming months are an opportunity for the president and the Republican leadership to force the Democratic leadership to come to the table and address the American people's immigration reform agenda in exchange for future considerations for DACA recipients.



## Appeals Court Allows Key Provisions of Texas Anti-Sanctuary Law to Take Effect

In May, Gov. Greg Abbott signed SB 4, a bill prohibiting all jurisdiction in Texas from implementing so-called sanctuary policies, into law. The law was scheduled to go into effect on September 1, but like just about all laws pertaining to immigration enforcement, it was challenged by an army of well-funded illegal alien advocacy groups and several sanctuary jurisdictions around the state.

On August 30, Federal District Court Judge Orlando Garcia issued an injunction barring implementation of SB 4. Garcia, a Clinton appointee, has a history of judicial activism on immigration. Less than two months earlier, Garcia ruled that Bexar County had acted unconstitutionally by complying with detainer requests by Immigration and Customs Enforcement (ICE).

In his 94-page ruling on SB 4, Garcia acknowledged that “the Court’s role is limited to determining the constitutionality of a statute, not its wisdom or necessity. That is within the sole discretion and prerogative of the

Legislature,” and that “the Legislature is free to ignore the pleas of city and county officials” that oppose the measure. The judge then promptly injected his own “wisdom” on the matter. Citing “overwhelming” evidence that police cooperation with federal immigration enforcement authorities would “erode public trust and make many communities and neighborhoods less safe” and there is “ample evidence that localities will suffer adverse economic consequences,” as a result of SB 4.

The evidence of erosion of trust – which is a political, not a constitutional matter – is subjective at best. Moreover, the adverse economic consequences to sanctuary jurisdictions, in the form of lost state funding, was precisely the political intent of the Legislature. Garcia’s conclusion that SB 4 would erode public trust is predicated on the self-serving attestations of those who are in the country illegally and advocates who oppose virtually all

*JUDGE continued on page 7*

## DACA to Be Rescinded: Let the Lawsuits Commence



It seems that nowadays, every political issue winds up in the courts. Thus it is not surprising that Attorney General Jeff Sessions had barely walked off the podium after announcing the phase out of DACA than the lawsuits to prevent that from happening were filed.

That’s lawsuits, plural. Fifteen states – Washington, New York, Massachusetts, Connecticut, Delaware, Hawaii, Illinois, Iowa, New Mexico, North Carolina, Oregon,

Pennsylvania, Rhode Island, Vermont, Virginia, plus the District of Columbia – were first out of the gate with a lawsuit making the absurd claim that it is unconstitutional for President Trump to rescind an unconstitutional policy instituted by his predecessor.

But when it comes to protecting illegal aliens, one lawsuit is not enough. A few days later, California, home to about one-quarter of all DACA beneficiaries, filed its own suit aimed at blocking the repeal of DACA. California was joined by Maine, Maryland and Minnesota. And, if the suit filed by California Attorney General Xavier Becerra was not sufficient, the University of California also showed up at the courthouse with a lawsuit of its own.

All of the lawsuits contend, without a shred of evidence, that the repeal of DACA violates the illegal aliens’ Fifth Amendment protections against self-incrimination, as the information they provided to the federal government could be used to identify and deport them. Not

*LAWSUITS continued on page 6*

# NEWS FROM OUR State & Local Operations

## California

If you thought there was nothing further California could do to cement its position as a 163,696 square mile sanctuary for illegal aliens, you'd be wrong. In September, the California legislature gave final approval to S.B. 54. Under S.B. 54, police and sheriffs would be prohibited from asking about people's immigration status, even if there is probably cause for an officer to believe they are in the country illegally. Police and sheriffs' departments would be prohibited from honoring ICE detainer requests, and law enforcement agencies would be prohibited from participating in the federal 287(g) program that trains local police to identify and detain illegal aliens. And this is the watered down version, because Gov. Jerry Brown demanded some revisions of the bill. But, of course, the "watered down" version of the state sanctuary policy leaves the legislature room to make California even more of an illegal alien sanctuary in the future and, perhaps, keep pace with Oregon...

## Oregon

In September, Gov. Kate Brown signed H.B. 3464, a law that makes it nearly impossible for state and local law enforcement to cooperate with federal immigration officials and allows criminal aliens, even those convicted of the most serious crimes, to escape immigration enforcement. H.B. 3464 prohibits state and local agencies in Oregon from sharing information about individuals including their contact information, time and location of their public appointments, the identity of relatives, and their place of employment. The law also prohibits these institutions from requesting information about a person's immigration or citizenship status. If they already have that information, they "may decline to disclose" the status to federal authorities unless required by law or court order, according to the new law.

## Illinois

Republican Governor Bruce Rauner was elected in solid blue Illinois in 2014, in part, to serve as a firewall against radical policies coming out of the state legislature. In early September, he flunked the test when he signed a radical statewide sanctuary bill into law. The Illinois "Trust Act" prohibits local law enforcement officials from inquiring about the citizenship or immigration status of any individual they encounter. It also stops law enforcement from arresting, searching, or detaining any person based on their immigration status, the presence of a detainer, or an administrative warrant that may be issued by the federal government.

## The RAISE Act has a House Companion

**T**he RAISE Act, the Senate bill designed to scrap our current family chain migration policy and replace it with a leaner merit-based system, now has a companion version in the House. The House bill, The Immigration in the National Interest Act (H.R. 3775), was introduced on September 14 by Rep. Lamar Smith (R-Texas).

Like the RAISE Act, S. 1720, the Immigration in the National Interest Act would limit family based immigration to nuclear family members, i.e. spouses and unmarried minor children. Smith's bill would create a points system that gives immigration priority to applicants who have the skills and abilities needed to contribute to our U.S. economy.

"The Immigration in the National Interest Act ensures that our legal immigration system prioritizes those with the highest skills and education necessary to boost economic growth, spur innovation, and create jobs in our country. It will also reduce the number of low-skilled and under-educated immigrants. Studies have shown that these individuals typically depress wages or take jobs from Americans, and receive four times as much in government assistance than they pay in taxes," Smith said.

THIS BILL "ENSURES THAT OUR LEGAL IMMIGRATION SYSTEM PRIORITIZES THOSE WITH THE HIGHEST SKILLS AND EDUCATION NECESSARY TO BOOST ECONOMIC GROWTH, SPUR INNOVATION, AND CREATE JOBS IN OUR COUNTRY."

-Rep Lamar S. Smith

Creating a merit-based immigration process and ending family chain migration would allow people from anywhere in the world to compete for the opportunity to come to the United States, and would better serve our national interests. Enactment of such a system is made all the more essential by discussions about providing some kind of permanent status to DACA beneficiaries. Under the current family chain migration system, an amnesty program for the 800,000 DACA recipients could balloon into a much more extensive amnesty encompassing millions of illegal aliens.

### LAWSUITS *continued from page 4*

only is there no suggestion on the part of the Trump administration that they will use information in DACA applications to track down beneficiaries whose protections have lapsed, but the administration has stated clearly that it does not intend to target this group of illegal aliens for enforcement.

The most likely aim of these lawsuits is to try to run out the clock on President Trump's term in office. By delaying the onset of the two and half year period during which DACA deferments expire, they hope to extend the timeline right up until (what they hope will be) the end of Trump's presidency.

Adding to the absurdity is the fact that DACA was created by nothing more than a policy memo issued by the Obama administration. It was not even an executive order, much less a law. There is no legal or ethical requirement that the new administration maintain the policies of the previous administration – a point that President Obama made when he established DACA in 2012.

But wait, there's more! When Sessions announced the phase out of DACA, the ten states that had threatened to challenge the constitutionality of the program (a suit they would likely win), they decided not to move ahead with the suit. Not so

fast said U.S. District Court Judge Andrew Hanen. He told Texas and the nine other states that the "extensive and hard-fought clashes over the merits" of DACA cannot simply be dropped and that he found their "notice of dismissal to be ineffective."

Thus, the best case scenario is that DACA is allowed to expire, while the Texas lawsuit moves through the judicial process. With the addition of Justice Neil Gorsuch, a likely 5-4 Supreme Court ruling declaring broad executive amnesty programs to be unconstitutional would be a precedent setting one that would prevent future presidents from implementing similar policies. Stay tuned...

JUDGE *continued from page 4*

forms of immigration enforcement. For one thing, police do not ask or collect information about people's immigration status when they are victims of crimes or come forward with evidence about a crime. Other evidence, and common sense, suggest that people are less likely to trust the police or provide information if they believe that the criminals they are identifying – often gang members – could be turned loose by local sanctuary policies.

Gov. Abbott and Attorney General Ken Paxton immediately indicated that they would appeal Judge Garcia's ruling before the Fifth Circuit Court of Appeals – the same court that upheld a lower court's ruling that two of President Obama's executive amnesty programs were unconstitutional. Once again, the Fifth Circuit handed down a legally sound ruling lifting the lower court's injunction on several key provisions of SB 4. A three-judge appellate court panel

unanimously ruled that provisions requiring jurisdictions in Texas to comply with ICE detainer requests and which prohibit local policies that bar local cooperation with federal authorities could go into effect.

"We conclude that [Texas is] likely to succeed on the merits of two of the claims," the decision states. "As to those, we find no significant injury to the plaintiffs, but we do find irreparable injury to Texas."

## New FAIR Polling Finds Anti-Sanctuary Legislation is a No-Brainer (Even for Congress)



**N**ews flash: Not many people want to see their state and local governments shield criminal aliens from deportation. It shouldn't really require polling for politicians in Washington (or in state and local government for that matter) to figure this out, but apparently it does. So FAIR did it.

In June, the House approved the No Sanctuary for Criminals Act (H.R. 3003) that would rein in dangerous sanctuary policies. With that legislation now languishing in the Senate, FAIR commissioned polling in ten key 2018 Senate battleground states (and Majority Leader Mitch McConnell's home state of Kentucky) to gauge popular support for the key provisions of the bill. In addition to Kentucky, the poll included likely voters from Florida, Indiana, Michigan, Missouri, Montana,

North Dakota, Ohio, Pennsylvania, West Virginia, and Wisconsin.

The poll, conducted by Zogby Analytics on behalf of FAIR, found that in those states that will determine control of the Senate in the next Congress, 77.6 percent of voters support the bill's requirement that police and sheriff's departments comply with detainer requests from ICE rather than release deportable aliens in their custody back into the community. Additionally, 73.4 percent of respondents agree that victims of crimes committed by aliens who were released as a result of sanctuary policies should have the right to sue those jurisdictions.

Under Senate rules, 60 votes are necessary to prevent a filibuster and bring a bill to the floor for final passage. Assuming that all 52 Republican senators support ending the debate period for H.R. 3003, at least eight Democrats will have to break ranks with their party leadership to allow a final vote on the bill. In each of the states (with the exception of Kentucky) where incumbent Democrats are hoping to hold on to their seats in 2018, voters overwhelmingly responded that their senators' stance on this bill would influence their voting decision in next year's elections.

The results of the polling in these eleven states can be found on FAIR's website, [www.fairus.org](http://www.fairus.org).



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The fight against illegal immigration and out-of-control immigration policies is a joint effort. We would not be able to do what we do without your generous support. Through the Combined Federal Campaign (CFC), Federal employees from all over the country can easily make a tax deductible donation by payroll deduction, credit card, check or cash.

The immigration problems we face in the U.S. have never been bigger. Your support of FAIR is needed now more than ever. The CFC is the largest workplace giving campaign in the world and an opportunity for you to join other like-minded individuals to have a major impact on American immigration reform.

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