



The Daily Dish

Immigration Policy Moves Back to the Executive Branch

DOUGLAS HOLTZ-EAKIN | SEPTEMBER 30, 2021

Eakinomics: Immigration Policy Moves Back to the Executive Branch

Immigration policy has moved back to the executive branch. Specifically, the Biden Administration's Department of Homeland Security (DHS) has proposed a [new rule](#) – open to comment by the public – that recreates the Deferred Action for Childhood Arrivals (DACA) program. The year began with hope of serious progress on immigration reform passing the Congress. The return to executive action is driven by failures on both the legislative and judicial fronts.

On the legislative front, there was never a serious attempt to marry legalization efforts with a realistic strategy for the southern border and reforms of the core visa-granting criteria. Without the latter, there was no way to attract pro-growth conservatives to the effort. And the failure of the former created a political firestorm that made immigration reform nearly impossible. Democrats pressed ahead with a broad legalization effort intended to be included in the Build Back Better reconciliation effort. It made no sense to simply legalize those here unlawfully without fixing the conditions that produced so much illegal immigration in the first place. An effort doomed to policy failure was cut short legislatively when the Senate Parliamentarian [ruled](#) that it could not proceed in reconciliation.

For the record, this was substantively the right call. [Reconciliation](#) is a budgetary device, and the test for inclusion is whether the provision is primarily budgetary in nature. Clearly, the primary goal of legalization is legalization; any budgetary impacts are fundamentally secondary. Legislation on immigration looks to be at a dead end for 2021.

Meanwhile, a federal judge [invalidated](#) the Obama-era DACA rule on essentially two grounds. First, the administration did not have the authority to create DACA on its own. With legislation not in the offing, the Biden Administration is appealing the ruling in hopes of the appeal supporting its authority to issue a DACA rule. Second, the old rule had been finalized without adequate public comment and consideration of the impact on states. Hence, the new rule is substantively the same, but has been created in consultation with the states and is now open for comment.

Stepping back, the “best” outcome is that a legal DACA program will be in place at the end of the year. This constitutes merely treading water on the immigration front. Given the [need for immigration reform](#), one can only hope for greater and more permanent success in the future.