

U.S. Supreme Court to Decide on Legal Status for Immigrants

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Just last month, the Supreme Court heard oral arguments in the case of *United States v. Texas*, a challenge to President Obama's 2014 executive action on immigration. The decision will affect

the legal status of millions of individuals. Specifically, the case concerns the Deferred Action for Childhood Arrivals (DACA) and Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) policies. These policies would allow certain undocumented immigrant children and certain undocumented immigrant parents of citizen and permanent resident children to temporarily remain in the United States, respectively. The Court will decide whether these policies exceeded the executive branch's authority by skirting the immigration laws passed by Congress.

The seminal question the Court will answer is when does the executive branch have the option of choosing how it applies a law passed by Congress, without violating Congress's basic power to legislate, and when does Congress have the authority to take away that discretion, without intruding on executive authority? The Administration maintains it moved forward with executive action because something had to be done, on humanitarian grounds as well as an efficiency-of-government grounds, about the situation involving the millions of undocumented immigrants, and Congress failed to address those problems with new legislation. Critics, on the other hand, counter that the delayed deportation programs are just another part of Obama's style of governing by going it alone rather than in a joint enterprise with Congress.

If the President's executive action is allowed to stand, qualifying individuals under DAPA

or DACA would not be guaranteed a path to citizenship, or even a path to permanent residence, but would qualify for "lawful presence" in the U.S. for three years (a period which could be renewed), and would be eligible to apply for a work permit.

Yet all of this may be for naught – after oral arguments, the Justices appeared to be split 4-4 along ideological lines. A tied decision would mean the President's immigration initiatives would be blocked – and the legal questions will receive no definitive answers. The Court is expected to issue a decision in late June or early July. We will distribute an update at that time.

If you have any questions in the interim or need assistance addressing other immigration matters related to your business, please contact your Davis & Kuelthau attorney or the author, Hugo P. Rojas, at hrojas@dkattorneys.com or call 414.225.1413.

