

UNITED STATES V. TEXAS

What Might Happen in *U.S. v. Texas* Now That the Supreme Court Has Heard the Oral Argument?

MAY 2016

In December 2014, shortly after President Obama announced two new immigration initiatives, Texas and 25 other states filed a lawsuit in a federal district court to stop them from being implemented. The two initiatives are an expansion of Deferred Action for Childhood Arrivals (DACA+) and the creation of Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA). The federal district court issued an order that blocks the initiatives from going forward. That case, *United States v. Texas*, is now before the U.S. Supreme Court.

The Court heard oral argument in the case on April 18, 2016. Currently, there are only eight Supreme Court justices (usually there are nine), which makes it possible that the Court's final decision will involve a tie vote. The Court is expected to issue its decision by the end of its current term (which ends in late June 2016). While it is impossible to know ahead of time how the Court will rule, here are some possible outcomes:

Court Majority Upholds DACA+/DAPA

There are two primary ways the Supreme Court could rule that would allow the DACA+ and DAPA initiatives to be implemented. Under the first possibility, a majority of the eight justices may decide that, in this specific case, Texas and the 25 other states lack "standing" to sue the federal government. This would have the effect of reversing the lower courts' decisions in the case. The lower courts then would have to dismiss the case and allow the federal government to start implementing DACA+ and DAPA. (If the Court finds that the plaintiff states lack standing, it will be holding that they don't have a legally protectable interest or stake in the case.)

The second possibility is that the Supreme Court could rule that the plaintiff states *do* have standing to sue but *also* that DACA+ and DAPA are lawful exercises of the president's executive authority under our nation's immigration laws. Such a decision would allow the DACA+ and DAPA initiatives to be implemented.

Either of these possible outcomes would be a win for immigrant families. However, the lower courts would then have to issue rulings that would clear the way for the DACA+ and DAPA initiatives to go forward. No one can say how long this would take.

Court Deadlocks: 4-4 Tie

Because currently there is an even number of Supreme Court justices (8), it is possible that the Court would not reach a majority decision in the case. If that were to happen, the decisions of the lower courts would remain in place.

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Because the Fifth Circuit Court of Appeals ruled that the district court order blocking the implementation of DACA+ and DAPA should remain in place, the two initiatives would remain blocked. It is unclear whether, following such a result, there would be any further proceedings in the case in the lower courts. It's possible that there could be, since the lower court decision that the Supreme Court is reviewing is one that granted a preliminary injunction, the type of decision that usually comes early in a case.

If the Supreme Court does not reach a majority decision in the case, it is also possible that it could decide to schedule the case for re-argument at a later time when it again has nine justices.

But, in the event of a 4-4 tie, the DACA+ and DAPA initiatives would remain blocked and the federal government would not be allowed to move forward with their implementation, unless some future development or decision reverses the Fifth Circuit's ruling that the initiatives should remain blocked.

Court Majority Upholds the Preliminary Injunction against DACA+/DAPA

If a majority of the Supreme Court justices finds that the states had standing to sue the federal government in this case, the Court could proceed to find that the president did not have the authority to establish the DACA+ and DAPA initiatives. In that case, DACA+ and DAPA would remain blocked and the case would be sent back to the federal district court to determine whether there should be additional proceedings in the case.

Or the Supreme Court could find that the president *does* have the authority to establish the DACA+ and DAPA initiatives but hold that the initiatives must go through a notice-and-comment procedure before they may be implemented. While such a ruling would help make clear that presidents can and should use their executive authority on immigration matters, DAPA and DACA+ would still be blocked, at least temporarily.

WHILE IT IS IMPOSSIBLE TO PREDICT how the Supreme Court will ultimately decide *U.S. v. Texas*, we remain confident that the DACA+ and DAPA initiatives are lawful exercises of executive authority and consistent with our nation's values. The stakes could not be higher. Along with millions of others, we anxiously await the Court's decision.

MORE INFORMATION about *United States v. Texas* is available at www.nilc.org/issues/immigration-reform-and-executive-actions/united-states-v-state-of-texas/.