

# Supreme Court to Hear Challenge to Obama Immigration Actions

By ADAM LIPTAK and MICHAEL D. SHEAR JAN. 19, 2016



Immigration supporters from CASA de Maryland, an advocacy group, rallied outside the Supreme Court on Friday.

WASHINGTON — The Supreme Court said Tuesday that it would consider a legal challenge to President Obama's overhaul of the nation's immigration rules, **agreeing to examine the reach of presidential power** as it decides the fate of one of his most far-reaching executive actions.

The court, which has twice rejected challenges to Mr. Obama's signature legislative victory by upholding his health care law, will now rule on the president's plan **to protect millions of illegal immigrants from deportation and allow them to work indefinitely in the country legally.**

The justices raised the possibility of a broad decision by taking the unusual step of adding their own question to the case, asking the parties to address **whether Mr. Obama had violated his constitutional obligations to enforce the nation's laws.** The answer to that question could significantly alter the scope of presidential power in realms far beyond immigration.

"The court's decision could redefine the balance of power between Congress and the president," said Stephen Yale-Loehr, a law professor at Cornell.

Mr. Obama has repeatedly taken unilateral action during his seven years in office, asserting the power of his office to sidestep a recalcitrant Congress on gun control, gay rights, the minimum wage, contraception and climate change. White House officials said Tuesday that the steps taken by Mr. Obama on immigration were "consistent with the actions taken by presidents of both parties" and expressed optimism that the court would agree.

But Mr. Obama's aggressive use of executive power has intensified the criticism by his adversaries that the president is abusing his authority. Attorney General Ken Paxton of Texas, who is leading the challenge to his immigration actions, urged the court to make it clear that no president can "unilaterally rewrite congressional laws and circumvent the people's representatives."

**Fourteen months ago, Mr. Obama ordered the creation of a program intended to allow as many as five million illegal immigrants who are the parents of citizens or of lawful permanent residents to apply for a program sparing them from deportation and providing them work permits. The program was called Deferred Action for Parents of Americans and Lawful Permanent Residents, or DAPA.**

The president has said he took the step after years of frustration with Republicans in Congress who had repeatedly refused to support bipartisan Senate legislation to update immigration laws. In an Oval Office address just before Thanksgiving in 2014, Mr. Obama excoriated Republicans for refusing to cooperate and told millions of illegal immigrants, "You can come out of the shadows."

But the president's promise has gone unfulfilled. **A coalition of 26 states, led by Mr. Paxton, a Republican, quickly filed a lawsuit accusing the president of ignoring federal procedures for changing rules and of abusing the power of his office by sidestepping Congress.**

White House officials said they were pleased by the court's decision to hear their case, and they expressed optimism that the justices would eventually clear the way for the president's actions to be carried out.

"The policies will make our communities safer. They will make our economy stronger," said Brandi Hoffine, an assistant White House press secretary. "They are consistent with the actions taken by presidents of both parties, the laws passed by Congress, and the decisions of the Supreme Court. We are confident that the policies will be upheld as lawful."

Last February, Judge Andrew S. Hanen of Federal District Court in Brownsville, Tex., entered a preliminary injunction shutting down the program while the legal case proceeded. The government appealed, and on Nov. 9 a divided three-judge panel of the United States Court of Appeals for the Fifth Circuit, in New Orleans, affirmed the injunction.

If the Supreme Court upholds Mr. Obama's actions, the White House has vowed to move quickly to set up the DAPA program and begin enrolling immigrants before his successor takes over early next year. Democratic presidential candidates have said they would continue the program, but most of the Republicans in the race have vowed to dismantle it and redouble immigration enforcement.

The administration, fearing that the program could remain frozen through the balance of Mr. Obama's presidency, had asked the court to move quickly. On that point, at least, the court agreed, and it now appears that the case will be argued in April and decided by the end of June.

As is their custom, the justices gave no reasons for agreeing to hear the case, *United States v. Texas*, No. 15-674.

The new case joins a crowded docket, including cases on abortion, affirmative action, public unions, voting rights and religious liberty. The decisions in all of them will probably land in the late spring and early summer, as the presidential election enters its final stages.

In their written arguments before the court, the states acknowledged that the president has wide authority over immigration matters, telling the justices that "the executive does have enforcement discretion to forbear from removing aliens on an individual basis." Their quarrel, they said, was with what they called a blanket grant of "lawful presence" to millions of immigrants, entitling them to various benefits.

In response, Solicitor General Donald B. Verrilli Jr. told the justices that "lawful presence" is merely what has always followed from the executive branch's decision not to deport someone for a given period of time.

He added that the consequences of allowing immigrants to be lawfully present were positive. "Without work authorization," Mr. Verrilli wrote of the people eligible for the program, "they are more likely to work for employers who will hire them illegally, often at below-market wages, thereby hurting American workers and giving unscrupulous employers an unfair advantage."

Many of the briefs so far have focused on the threshold question of whether the states have suffered the sort of direct and concrete injury that gives them standing to sue. The question will play a major role as the Supreme Court considers the case.

Judge Jerry E. Smith, writing for the majority in the appeals court, said the states had standing to challenge the program under a 2007 Supreme Court decision that said Massachusetts and other states were entitled to sue the Environmental Protection Agency over its refusal to regulate motor vehicle emissions contributing to climate change.

In that case, the Supreme Court said Massachusetts had standing to challenge the Bush administration's decision not to regulate greenhouse-gas emissions based on the harm the state would suffer from a rise in sea levels and the loss of the state's coastal land.

Judge Smith said Texas would suffer a similarly direct and concrete injury in having to spend millions of dollars to provide driver's licenses to immigrants as a consequence of the federal program.

Mr. Verrilli told the justices that Texas' injury, such as it was, was self-inflicted, a product of its own decision to offer driver's licenses to people lawfully in the United States at reduced cost.

Texas responded that being required to change its laws is itself the sort of harm that confers standing. "Texas could avoid the driver's-license-cost injury only by changing its policy and making driver's licenses less affordable," the states told the justices. "That is itself an injury, because Texas has a sovereign interest in enforcing its legal code."

Judge Hanen grounded his injunction on the Obama administration's failure to give notice and seek public comments on its new program. He found that notice and comment were required because the program gave blanket relief to entire categories of people notwithstanding the administration's assertion that it required case-by-case determinations about who was eligible for the program.

The appeals court affirmed that ruling and added a broader one. The program, it said, also exceeded Mr. Obama's statutory authority.

Even as the Obama administration urged the Supreme Court to hear its appeal, a footnote in one of its briefs asked the justices not "to inject a constitutional question into this case." That request was rebuffed on Tuesday.

[http://www.nytimes.com/2016/01/20/us/politics/supreme-court-to-hear-challenge-to-obama-immigration-actions.html?\\_r=0](http://www.nytimes.com/2016/01/20/us/politics/supreme-court-to-hear-challenge-to-obama-immigration-actions.html?_r=0)

**Vocab terms to define:**

*Unilateral:*

*Injunction:*

**Preliminary Guiding Questions:**

*What laws or programs are in question in this case?*

*What Articles or Amendments to the Constitution are in question in this case?*