

Supreme Court Tie Blocks Obama Immigration Plan

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ABSTRACT

The 4-4 tie dealt a sharp blow to an ambitious program that the president had hoped would become one of his central legacies.

FULL TEXT

WASHINGTON -- The Supreme Court announced on Thursday that it had deadlocked in a case challenging President Obama 's immigration plan, effectively ending what Mr. Obama had hoped would become one of his central legacies. The program would have shielded as many as five million undocumented immigrants from deportation and allowed them to legally work in the United States.

The 4-4 tie, which left in place an appeals court ruling blocking the plan, amplified the contentious election-year debate over the nation's immigration policy and presidential power.

When the Supreme Court agreed to hear the case in January , it seemed poised to issue a major ruling on presidential power. That did not materialize, but the court's action, which established no precedent and included no reasoning, was nonetheless perhaps its most important statement this term.

The decision was just nine words long: "The judgment is affirmed by an equally divided court."

But its consequences will be vast, said Walter Dellinger, who was acting solicitor general in the Clinton administration. "Seldom have the hopes of so many been crushed by so few words," he said.

Speaking at the White House, Mr. Obama described the ruling as a deep disappointment for immigrants who would not be able to emerge from the threat of deportation for at least the balance of his term.

"Today's decision is frustrating to those who seek to grow our economy and bring a rationality to our immigration system," he said before heading to the West Coast for a two-day trip . "It is heartbreaking for the millions of immigrants who have made their lives here."

The decision was one of two determined by tie votes Thursday -- the other concerned Indian tribal courts -- and one of four so far this term. The court is scheduled to issue its final three decisions of the term, including one on a restrictive Texas abortion law, on Monday.

Mr. Obama said the court's immigration ruling was a stark reminder of the consequences of Republicans' refusal to consider Judge Merrick B. Garland, the president's nominee to fill the vacancy on the Supreme Court created by the death of Justice Antonin Scalia .

"If you keep on blocking judges from getting on the bench, then courts can't issue decisions," Mr. Obama said. "And what that means is then you are going to have the status quo frozen, and we are not able to make progress on some very important issues."

The case, *United States v. Texas*, No. 15-674, concerned a 2014 executive action by the president to allow as many as five million unauthorized immigrants who were the parents of citizens or of lawful permanent residents to apply for a program that would spare them from deportation and provide them with work permits. The program was called Deferred Action for Parents of Americans and Lawful Permanent Residents, or DAPA.

Mr. Obama has said he took the action after years of frustration with Republicans in Congress who had repeatedly refused to support bipartisan Senate legislation to update immigration laws. A coalition of 26 states, led by Texas, promptly challenged the plan, accusing the president of ignoring administrative procedures for changing rules and of abusing the power of his office by circumventing Congress.

"Today's decision keeps in place what we have maintained from the very start: One person, even a president, cannot unilaterally change the law," Ken Paxton, the Texas attorney general, said in a statement after the ruling. "This is a major setback to President Obama's attempts to expand executive power, and a victory for those who believe in the separation of powers and the rule of law."

The court did not disclose how the justices had voted, but they were almost certainly split along ideological lines. Administration officials had hoped that Chief Justice John G. Roberts Jr. would join the court's four-member liberal wing to save the program.

The case hinged in part on whether Texas had suffered the sort of direct and concrete injury that gave it standing to sue. Texas said it had standing because it would be costly for the state to give driver's licenses to immigrants affected by the federal policy.

Chief Justice Roberts is often skeptical of expansive standing arguments. But it seemed plain when the case was argued in April that he was satisfied that Texas had standing, paving the way for a deadlock.

Mr. Obama said the White House did not believe the terse ruling from the court had any effect on the president's authority to act unilaterally. But he said the practical effect would be to freeze his efforts on behalf of immigrants until after the November election.

He also predicted that lawmakers would eventually act to overhaul the nation's immigration system.

"Congress is not going to be able to ignore America forever," he said. "It's not a matter of if; it's a matter of when. We get these spasms of politics around immigration and fear-mongering, and then our traditions and our history and our better impulses kick in."

White House officials had repeatedly argued that presidents in both parties had used similar executive authority in applying the nation's immigration laws. And they said Congress had granted federal law enforcement wide discretion over how those laws should be carried out.

But the court's ruling may mean that the next president will again need to seek a congressional compromise to overhaul the nation's immigration laws. And it left immigration activists deeply disappointed.

"This is personal," Rocio Saenz, the executive vice president of the Service Employees International Union, said in a statement. "We will remain at the front lines, committed to defending the immigration initiatives and paving the path to lasting immigration reform."

The lower court rulings in the case were provisional, and the litigation will now continue and may again reach the Supreme Court when it is back at full strength. In the meantime, it seems unlikely that the program will be revived.

In February 2015, 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 a divided three-judge panel of the United States Court of Appeals for the Fifth Circuit in New Orleans affirmed the injunction .

In their Supreme Court briefs, the states acknowledged that the president had 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 this "lawful presence" was merely what had always followed from the executive branch's decision not to deport someone for a given period of time.

"Deferred action does not provide these individuals with any lawful status under the immigration laws," he said. "But it provides some measure of dignity and decent treatment."

"It recognizes the damage that would be wreaked by tearing apart families," Mr. Verrilli added, "and it allows individuals to leave the shadow economy and work on the books to provide for their families, thereby reducing exploitation and distortion in our labor markets."

The states said they had suffered the sort of direct and concrete injury that gave them standing to sue.

Judge Jerry E. Smith, writing for the majority in the appeals court, focused on an injury said to have been suffered by Texas, which he said would have 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 was self-inflicted, a product of its decision to offer driver's licenses for less than they cost to produce and to tie eligibility for them to federal standards.

Texas responded that being required to change its laws was itself the sort of harm that conferred standing. "Such a forced change in Texas law would impair Texas' sovereign interest in 'the power to create and enforce a legal code,'" the state's lawyers wrote in a brief.

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.

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