

DEADLOCKED SUPREME COURT PRESENTS ANOTHER ROADBLOCK FOR PRESIDENT'S IMMIGRATION ACTIONS

Insights
Jun 23, 2016

In a 4-4 decision, the U.S. Supreme Court announced today that it could not reach a majority consensus on President Obama's Executive Action on immigration. As a result, the Executive Action remains subject to an injunction blocking its implementation. The case will now return to Judge Hanen in Brownsville, Texas, to decide how to proceed with the case on the merits of the argument. While the case proceeds in the Federal Court in the Southern District of Texas, the undocumented workers, who would have benefited from the Executive Action, will not be able to seek protection from the threat of deportation and will remain ineligible for work authorization in the United States. *United States v. Texas*.

President's Immigration Actions Drew Legal Challenge

President Obama first announced his immigration initiative on November 20, 2014 as part of a series of executive actions on immigration reform. As part of the initiative, the President intended to exercise prosecutorial discretion to provide temporary relief from deportation and eligibility for work authorization to certain undocumented parents of U.S. citizens or lawful permanent residents via the Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA).

The initiative also provided for an expansion of the President's Deferred Action for Childhood Arrivals (DACA) that he introduced in 2012. With the expansion, the upper-age cap previously in place for DACA would have been eliminated, the date of entry into the U.S. for DACA was

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changed from June 15, 2007 to January 1, 2010, and the DACA status would be granted for a period of three years.

Shortly after the President's announcement, Texas and 25 other states filed a lawsuit in a Texas federal court challenging the Executive Action. In February 2015, the judge issued a preliminary injunction and temporarily blocked the implementation of the expanded DACA and DAPA. This ruling prohibited the federal government from taking any further actions to implement the initiatives.

The federal government appealed the decision to the 5th Circuit Court of Appeals, but that court upheld the decision in November 2015 by a 2-1 vote. The Obama Administration appealed the case to the highest court in the land, leading to today's Supreme Court *per curiam* decision.

SCOTUS Could Not Muster A Majority

As described more fully [here](#), the absence of a ninth Supreme Court Justice can lead to a deadlocked 4-4 vote among the remaining members. When that happens, the resulting decision will not be treated as the law of the land, but instead will solely apply to affirm the case below. The lower court decision will be upheld, and the law will remain status quo.

Today's *per curiam* decision did not shed any light on the merits of the case. The one-sentence ruling simply states: "The judgment is affirmed by an equally divided Court." This means that the injunction issued by the lower court remains in place. The case will now return to the Texas district court, which will move forward and evaluate the overall merits of the case. No matter which side prevails, the case will almost assuredly return to the appeals court, and could one day surface again at the Supreme Court.

What Does This Mean For Employers?

Given this decision, no benefits will be conferred to potential beneficiaries of the proposed DAPA or extended DACA programs for the foreseeable future.

However, those original beneficiaries of the initial 2012 DACA action will not be negatively affected because the challengers did not attack the President's original Executive Action originally establishing DACA. That means that currently issued employment authorization documents issued under the 2012 DACA Executive Action remain valid,

and employees benefitting from that plan should not be treated adversely due to this decision.

It is possible that the Court will revisit this case in the future once a full complement of nine Justices have been restored to the bench. Because the constitutionality of the Executive Action was not addressed by the Court, a future President could implement similar Executive Actions. Additionally, Congress could also bring forth legislation that would address further immigration reforms.

In the meantime, employers should continue to follow the provisions of the Immigration Reform and Control Act of 1986, which prohibits employers from discriminating against anyone on the basis of national origin or citizenship status. Employers should continue to correctly complete the Employment Eligibility Verification, I-9 Form to document verification of the identity and employment authorization of each new employee (both citizen and noncitizen) hired after November 6, 1986 to work in the United States and ensure re-verification as necessary.

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