

# Deadlocked Supreme Court deals big blow to Obama immigration plan

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## Story highlights

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Supreme Court keeps executive actions on immigration blocked

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White House sought to sidestep Congress, which has declined to take up comprehensive immigration reform

**(CNN)** — In a crushing blow to the White House, the Supreme Court announced Thursday it was evenly divided in a case concerning President Barack Obama's controversial executive actions on immigration.

[The one-sentence ruling](#), issued without comment or dissent, means that the programs will remain blocked from going into effect, and the issue will return to the lower court. It is exceedingly unlikely the programs will go into effect for the remainder of the Obama presidency.

Obama, speaking at the White House, lamented the ruling.

"For more than two decades now our immigration system, everybody acknowledges, has been broken," Obama said. "And the fact that the Supreme Court wasn't able to issue a decision today doesn't just set the system back even further, it takes us further from the country that we aspire to be."

The ruling will impact the more than 4 million undocumented immigrants seeking to be able to come out of the shadows and apply for these programs to stay in the United States. Immediately after Obama announced them in late 2014, Texas and 25 other states challenged the plans and they were blocked nationwide by a federal district court the next year.



**Photos:** Supreme Court issues in 2016

Immigration has already been a prominent and highly charged topic of the 2016 election already this year, and this ruling guarantees it will only be more so.

importance to putting a Democrat in the White House to continue the fight to put them in place.

Presumptive Democratic presidential nominee Hillary Clinton criticized the ruling, saying it is evidence not only of why the Supreme Court needs a ninth justice, but also that the delay of Obama's immigration programs adds

"Today's deadlocked decision from the Supreme Court is unacceptable, and show us all just how high the stakes are in this election," Clinton said in a statement Thursday morning. She later tweeted, calling it "heartbreaking."

Today's heartbreaking #SCOTUS immigration ruling could tear apart 5 million families facing deportation. We must do better. -H

— Hillary Clinton (@HillaryClinton) June 23, 2016

The topic of undocumented immigrants has been a central theme this campaign. While Democrats have pushed for immigration reform and leniency to some people living in the country illegally, presumptive GOP presidential nominee Donald Trump has spoken forcefully about deporting the millions of undocumented immigrants in the U.S. and disparaged Mexican immigrants during his campaign.

Hispanic Americans are also becoming an increasingly influential electoral demographic in key swing states that Democrats hope they can turn blue by painting Republicans as backward on immigration. Already liberal groups were putting out statements seeking to tie the Republican Party to Trump's comments in light of the ruling.

Obama used his statement to hit Trump as well, saying, "Immigration is not something to fear. We don't have to wall ourselves off from those who may not look like us right now or pray like we do or have a different last name because being an American is about something more than that."

## Impact of Scalia's death

The 4-4 split on the court is also more evidence of the long shadow of Justice Antonin Scalia's death this February.

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"This is a ruling that affects millions of American families, but because the Supreme Court does not have its full complement of nine justices, the court was unable to deliver a definitive ruling a case of such national importance." said Elizabeth Wydra, president of Constitutional Accountability Center.

While Scalia likely would have voted with the conservatives on the court against Obama, resulting in the same overall outcome of the policies remaining blocked, legal experts say the lack of a definitive answer is harmful to the courts.

"The resolution of the immigration case -- or lack thereof -- underscores how handicapped the Supreme Court can be when it's not fully staffed," said Steve Vladeck, CNN contributor and professor of law at American University Washington College of Law. "Although proponents of President Obama's immigration plan might prefer this result to a 5-4 loss, which would have set a nationwide precedent, rulings like these create uncertainty for the courts and the country going forward -- uncertainty that, at the end of the day, puts more pressure on the political branches and dilutes the role of the Supreme Court."

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## Congressional Republicans: 'Slap down' to Obama

Texas was supported at the Supreme Court by the GOP-led House of Representatives, who said that the programs went forward after the President failed in his attempts to persuade Congress to revise immigration laws.

"This is a slap down to the President," Sen. Lindsey Graham, R-South Carolina, told CNN. "It shows there are limitations on the President's actions and the only way to resolve this problem is through the Congress."

"Today, Article I of the Constitution was vindicated," House Speaker Paul Ryan said in a statement. "The Supreme Court's ruling makes the President's executive action on immigration null and void. The Constitution is clear: The president is not permitted to write laws -- only Congress is. This is another major victory in our fight to restore the separation of powers."

Texas Gov. Greg Abbott called Obama's action "an unauthorized abuse of presidential power that trampled the Constitution." In a statement, he added, "as the President himself said, he is not a king who can unilaterally change and write immigration laws."

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## Legal limbo

Thursday's ruling essentially perpetuates indefinitely a legal limbo that undocumented immigrants who were potentially eligible for the program have been living since the first court ruling blocking the President's programs.

Millions had readied applications for the deferred action, only to enter a holding pattern as the court cases played out.

Thursday's ruling was not a final decision in the matter, it only continues an injunction preventing the programs from going into effect. The question of the constitutionality of the program still remains before the lower courts. The roughly 4 million undocumented Americans who were awaiting Thursday's decision find their situations largely unchanged, though the ruling guarantees their undecided status will continue likely through the end of Obama's presidency.

Vladeck said the undocumented immigrants do not face a serious threat of deportation. "But so long as the lower court's ruling remains intact, they also won't be able to take advantage of the benefits that the President's initiative was intended to provide," he said.

FWD.us, an immigration advocacy group with roots in Silicon Valley, called the ruling a "devastating loss" for millions.

"Today is a very tough, disappointing day," FWD.us President Todd Schulte said in a statement. "This morning, a few million United States citizens with undocumented parents, hundreds of thousands of DREAMers, and millions of their family and friends received devastating news. The hope that they would benefit from DAPA and expanded DACA and be able to live their lives in ways so many of us take for granted, such as driving to work without the fear that a broken taillight will end in our family being torn apart, remains out of reach."

Mi Familia Vota pledged to continue the political battle as well as the legal one, blaming Republicans for inaction.

"Let's be clear, our community will never forget that it was Republican elected officials and politicians who stood in the way of the well-being of our families and have blocked any solutions to fix our broken immigration system," Executive Director Ben Monterroso said in a statement. "While this is a setback in our fight, we are fully committed to find a fix to our broken immigration system through a comprehensive immigration reform with a pathway to citizenship. The solution is in the hands of our community, and we will demonstrate the power of our vote come November."

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## What Obama's plans do

The White House announced the programs in November 2014, issuing a five-page guidance memo enabling qualifying undocumented workers to receive temporary relief from the threat of deportation and to apply for programs that could qualify them for work authorization and associated benefits.

The Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) targets the nearly 4.3 million undocumented parents of citizens and lawful residents, and the second program expands the Deferred Action for Childhood Arrivals (DACA), initiative aimed at non-citizens who came to the country as children.

"We'll bring more undocumented immigrants out of the shadows so they can play by the rules, pay their full share of taxes, pass a criminal background check and get right with the law," Obama told an audience in Nevada after the programs were announced.

The challengers -- mostly Republican governors and attorney generals -- said the unilateral actions were unconstitutional and they violated a federal law that sets forward how agencies can establish regulations.

In 2015 a federal judge sided with the states and blocked the programs from going forward. A divided federal appeals court later upheld the preliminary injunction.

Obama's lawyers argued in court papers that the lower court rulings threatened great harm, "not only to the proper role of federal courts and to federal immigration law, but also to millions of parents of U.S. citizens and permanent residents, aliens who are the lowest priorities for removal yet now work off the books to support their families."

As a threshold issue, Solicitor General Donald Verrilli said that the states didn't have the legal right to be in court, because the Constitution "assigns the formation of immigration policy exclusively to the National Government precisely because immigration is an inherently national matter."

He stressed that the guidance from the government does not provide any kind of lawful status under immigration law as the aliens remain removable at any time.

Texas Solicitor General Scott Keller argued that the states had standing to bring the challenge in part because

DAPA would create a new class of recipients for state subsidized driver's licenses in Texas. He says that Texas would stand to lose millions of dollars if even a small fraction of DAPA eligible aliens applied.

"DAPA is an extraordinary assertion of executive power," Keller wrote in court papers. "The Executive has unilaterally crafted an enormous program -- one of the largest changes ever to our Nation's approach to immigration," he said. "In doing so, the Executive dispensed with immigration statutes by declaring unlawful conduct to be lawful."

He pointed to the guidance and said that the eligible undocumented immigrations would be permitted to be "lawfully present in the United States," which would make them eligible for work authorization and some types of Social Security and Medicare benefits.

*Ted Barrett and Jedd Rosche contributed to this report*