The Supreme Court is on the verge of deciding an immigration case that could not only have a profound effect on our immigration policy but on the limits of a president's powers, as well. As background, last November, President Obama issued a series of executive actions on immigration, which, among other things, expanded eligibility for "deferred action." "Deferred action" is a regular practice in which the Secretary of Homeland Security exercises his or her discretion to refrain from removing particular aliens from the United States for humanitarian reasons or convenience. Aliens who have been accorded deferred action status are eligible to receive work authorization and federal benefits. As part of his executive actions, President Obama directed that the Department of Homeland Security (DHS) grant deferred action status to — i.e., not deport — the parents of U.S. citizens and lawful permanent residents. That executive action program is known as Deferred Action for Parents (DAPA).

Two weeks after President Obama announced his executive actions, 26 states sued the federal government in federal court in Texas to enjoin DHS from implementing the DAPA program. Those states alleged that DAPA was unconstitutional because it violated the Take Care Clause of Article II, section 3 of the U.S. Constitution. They also argued DAPA was arbitrary and capricious under the Administrative Procedures Act (APA) and not properly promulgated under the APA's notice-and-comment procedures. The district court entered a nationwide preliminary injunction enjoining DHS from implementing the DAPA program on the notice-and-comment procedures grounds.

The Supreme Court's decision to hear the case is significant because it will have a major impact on our immigration policy.

On November 9, 2015, the Fifth Circuit Court of Appeals affirmed the district court.[1] The government had sought a stay of the injunction pending appeal, which, had it been granted, would have meant DHS could have implemented DAPA while the appeal was pending. But the Fifth Circuit declined to stay the injunction.[2] Given that, the government sought expedited review by the Supreme Court, and on January 19, the Supreme Court agreed to hear the case.[3]

The Supreme Court's decision to hear the case is significant because it will have a major impact on our immigration policy. With the injunction in place, an estimated 4 million parents of U.S. citizens or permanent legal residents are subject to deportation and ineligible to work in the United States. But the decision to accept review will have an impact on more than our immigration policy.

When the government petitioned the Supreme Court, it presented three questions for review: (1) whether the states had standing to challenge the executive action; (2) whether DAPA was arbitrary and capricious under the APA; and (3) whether DAPA was subject to the APA's notice-and-comments procedures. The court granted review on all three questions but, in an unusual move, added a fourth question: Whether DAPA violates the Take Care Clause of Article II, section 3 of the Constitution. The Take Care Clause obligates the president to "take Care that the Laws be faithfully executed."

It is likely, according to court observers, that the Supreme Court will hear oral argument in the case sometime in April and rule before the current term concludes in June. Keep an eye out for what could be a bombshell decision.

[1] *Texas v. United States*, 809 F.3d 134, 187 (5th Cir. Nov. 9, 2015).

[2] *Texas v. United States*, 787 F.3d 733, 768-69 (5th Cir. 2015).

[3] *United States of America v. Texas*, Case No. 15-674.

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