**Argument against President Obama’s Executive Order**

**Deferred Action for Parental Authority (DAPA)**

**Deferred Action for Childhood Arrivals (DACA)**

DAPA and DACA were a set of instructions from the Department of Homeland Security, which is under the executive branch, to guide officials in deciding which illegal immigrants should receive top priority for deportation. They explained the priorities should be national security, border security, and public safety. Officials should focus on violent criminals instead of parents or children who were law abiding and working.

The case before the Supreme Court is asking whether President Obama had the authority to do this. The answer is clearly no for two constitutional reasons: (1) Congress gives the legislative branch the power to determine which immigration policy our nation has and (2) DAPA/DACA created a new law.

**Congress gives the legislative branch power to write laws – specifically immigration laws**

Impatient presidents don’t get to rewrite the law when they don’t get their way. This is foundational to our country’s entire system of governance. Yes, this case *is* of great national importance, as the president states, but for reasons different than those he advanced. It’s not about immigration policy. It’s about the Constitution and fundamental pillars of our republic – the separation of powers – intended to protect our liberties and freedoms (including those of people lawfully entering the United States).

On numerous occasions, President Barack Obama publicly proclaimed that he took executive action to “change the law” – specifically, to categorically confer “lawful presence” on at least 4.3 million illegal aliens. To the president, his constitutional responsibility to “take Care that the Laws be faithfully executed” brings with it the power to change the law. He’s wrong.

President Obama’s actions are unconstitutional, violating the separation of powers. Congress’s refusal to enact the president’s preferred policies does not provide a good reason for violating our nation’s vital restraints on executive authority. The president’s action is not tied to his constitutional authority, either express or implied, nor can it be tied to an assignment of statutory authority. The president violated the constitutional doctrines of separation of powers and federalism in order to accomplish that which he could not through the legitimate constitutional system.

The Constitution vests in Congress the *exclusive* authority to make law and set immigration policies. The Supreme Court has acknowledged Congress’s exclusive authority over naturalization, and recognized that it is in Congress’s exclusive authority to dictate the policy pertaining to aliens’ ability to enter and remain in the United States.

Congress has created a comprehensive immigration scheme – which expresses its desired policy as to classes of immigrants – but the class identified by the Department of Homeland Security’s directive for categorical relief is unsupported by this scheme. Moreover, the DHS directive, by the president’s admission, changes the law and sets a new policy, exceeding the executive’s constitutional authority and disrupting the delicate balance of powers.

An emotional appeal to the plight of illegal aliens hides the real issue: The Constitution grants decision-making power in these areas to Congress and Congress alone. The executive is but to enforce and execute the laws made by Congress. It’s true that, for better or worse (mostly worse), Congress has vested agencies with certain duties that often entail discretion. But neither the president nor his agents are granted authority to *change* the law. DAPA changed the law as only Congress may, and violated the president’s solemn duty to “take Care that the Laws be faithfully executed.” This is as clear a case of unconstitutional executive overreach as there ever was.

**DAPA/DACA created a new immigration law**

It is undisputed that, through DAPA, “an individual is permitted to be lawfully present in the United States” – 4.3 million individuals according to the district court. The newfound status would bring eligibility for public benefits like Social Security and Medicare, and work authorizations, Social Security numbers, and earned income tax credits would follow. So, too, would driver’s licenses, at the states’ expense. There can be no doubt that DAPA substantively alters immigration policy. The president was entirely correct when he said he “changed the law.”

Therefore, the DAPA and DACA executive orders violate the Constitution because the Constitution gives only Congress the ability to write immigration law and DAPA and DACA created a new class of immigrants, not allowed by Congress.

Arguments developed from brief submitted to the Supreme Court:

* Symposium: Constitutional limits of presidential power – changing the law or enforcing it  
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