US Supreme Court hears oral arguments in case affecting millions of immigrants

Eric London
22 April 2016

On April 18, the United States Supreme Court heard oral arguments in *Texas v. United States*, a legal challenge brought by Texas and 25 additional states against two executive programs that would "defer" the deportation of four million undocumented migrants.

The programs in question are the Deferred Action for Childhood Arrivals (DACA) and Deferred Action for Parents of Americans (DAPA), which were announced in 2012 and 2014, respectively.

The lawsuit alleges that DAPA and a 2014 expansion to DACA are unconstitutional violations of the president's authority under Article II of the Constitution and encroach on Congress's power to legislate under Article I. The program was struck down by the Fifth Circuit Court of Appeals, which also issued a stay on the executive orders, meaning that no immigrants are currently able to apply for coverage while the case is pending.

As a preliminary matter, the challenge is founded on a pseudo-legal leap of faith. In order to file suit, Texas and its fellow challengers must prove that they have the "standing" to sue. To do so, they must show that they (1) suffered injury, (2) that the injury was caused by the conduct complained of, and (3) that the injury will be redressed by a favorable decision. Here, Texas alleges that its "injury" consists of spending millions of dollars to make identification cards for those migrants who comply with the application process and whose applications are granted.

There is profound historical irony in the state of Texas challenging the right of migrants to remain in the US due to the cost of printing ID cards. The US effectively robbed Texas from Mexico in 1845 after provoking an uprising of American slaveholders with the help of the reactionary Jacksonian Democrat, Samuel Houston. Those tens of millions of migrants who have made the journey in the last decades have done so to escape conditions of violence and poverty caused by a century of US imperialist intervention and exploitation.

Beyond this, the states' standing claim has no legal merits. States only have the standing to challenge federal law when their challenge is based on defending state law. Since immigration is a purview of the federal government, the states' right to challenge federal action is severely limited and not applicable in this case.

The states also challenge the orders on the grounds that they overstep the president's power and encroach Congress's right to legislate. However, the Supreme Court ruled in the well-known *Youngstown Steel v. Sawyer* case that the president is only barred from issuing executive orders where Congress has explicitly passed legislation contradicted by the order. Where Congress has remained silent and especially where prior congressional action is in harmony with the executive order, the president's powers are broader.

To prove it has not violated the *Youngstown* rule, the Obama administration has gone out of its way to show that it is not halting the deportation of those who would be DACA or DAPA eligible—it is merely deferring their eventual deportation. Obama administration Solicitor General Donald Verrilli told the Court Monday that "there is no way we could give deferred action" to migrants with a criminal history, migrants captured while attempting to cross to the United States, or migrants who are not detained at the border but are recent arrivals.

The Obama administration appealed to the Court by bragging of its role in mass deportation of migrants and their families.

Justice Samuel Alito asked Verrilli about a hypothesis where "the President said, you know, there

© World Socialist Web Site

was a time when we had open borders in the United States, and I think that's the right policy, so we're just not going to remove anybody. Who could challenge that?"

Verrilli's response was: "Well, obviously, we're doing more or less the opposite." Verilli said that it would be unconstitutional for the president to offer legal status to all migrants, because "if you just decide that you're not going to enforce the law at all, then there may well be a cause of action to challenge it there, and—but that's—that's a million miles from where we are now."

Indeed, DAPA is limited only to certain migrants with children who have satisfied multiple residency requirements and have no criminal record. The DACA expansion removes an age restriction in the 2012 DACA order.

DAPA and DACA do not provide any benefits and do not grant migrants legal immigration status—they simply postpone their deportation. Undoubtedly, millions of migrants and their families are hopeful that they can breathe even a temporary sign of relief. But the executive orders can be revoked at any time, by either Obama or the winner of the 2016 election. As Verrilli stated in oral argument: "What [lawful presence] means in the immigration world is not that you have a legal right to be in the United States, that your status has changed in any way. That you have any defense to removal. It doesn't mean any of those things, and it never has."

Immigration advocates were surprised by the tone of the questions at oral arguments, indicating that an unfavorable decision is possible when announced this summer. The death of Antonin Scalia will not change the outcome, since five votes are required to overturn the Fifth Circuit's decision. A four-four split means the executive orders will not go into effect.

Chief Justice John Roberts and Justice Anthony Kennedy will determine the outcome of the decision. Both ruled against Arizona's SB 1070 and upheld the ability of the federal government to regulate immigration. During oral arguments, Kennedy hinted that immigration law would be turned "upside down" by executive action on immigration while also refraining from siding with the states on the standing issue. For his part, Roberts was hostile to Verrilli on the standing question.

The Court is weighing its decision in the midst of an almost unprecedented climate of anti-immigrant demagogy. Donald Trump's fascistic proposal to deport all undocumented migrants would likely require the establishment of military rule over cities like Los Angeles, Dallas, San Diego, Phoenix, Miami and Chicago. A vast infrastructure, including detention camps, would be required to carry out such a plan. The fact that such a proposal is aired by a leading candidate is an indictment of the entire US political establishment, including the Democratic Party.

Both Democratic candidates, Hillary Clinton and Bernie Sanders, sing praise for President Barack Obama's immigration policy. Seven years into his term, Obama has deported over two million undocumented migrants—far more than any other president in US history.

To contact the WSWS and the Socialist Equality Party visit:

wsws.org/contact

© World Socialist Web Site