



Immigration and Justice Scalia's Death

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News Americas, NEW YORK, NY, Fri. Feb. 26, 2016: Anytime a soul departs this world, it is sad and U.S. Supreme Court Justice Anthonin Scalia's sudden departure on February 13th was no exception. But with the Supreme Court set to hear the immigration case, *U.S. v. Texas*, on the legality of President Obama's Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) program and the expanded version of his 2012 Deferred Action for Childhood Arrivals (DACA) program this April, much speculation is now surrounding whether a balanced court will favor the plan or simply lead to a deadlock.

With Scalia ironically dying in the same state that is questioning the legitimacy of the President's use of executive power on immigration, the Supreme Court is for the first time balanced – with four conservative judges and four liberal justices now making up the body. Some constitutional experts have started to speculate that this could mean a win for Obama and for immigrants, on an issue he has struggled to deliver throughout his Presidency. And with the U.S. Senate insisting it will not approve any appointments the President may make over the next 11 months he remains in office; it's all up to the eight justices.

Randal Meyer, of the Cato Institute's Center for Constitutional Studies, tells Forbes' Jared Meyer that "without a solid showing from the conservative wing of the Court, the decision in *U.S. v. Texas*, if made on constitutional grounds, would give the president unilateral authority to suspend and rewrite statutes at his pleasure."

Others like Russell Wheeler, a Brookings Institution scholar who studies federal courts and the selection of judges, insists it's more uncertain how the court will vote on immigration or the other hot button issues it is set to take up. "We are in a period of uncertainty now," Wheeler said. "It's bad to have all these 4-4 decisions because everybody puts all of this effort into them, and in the end, it doesn't make any difference."

Still there is a chance that the four liberal justices may be unable to get a conservative in their camp to join them in supporting the immigration ruling, especially because of the unexpected wrinkle that was added when the Court agreed to hear the case.

At that time, the Court had asked the federal government and the states suing it to address whether the executive actions on immigration violate the Constitution's take care clause – an

issue that was not definitively decided by lower courts that have ruled on the case. This means lawyers for both sides will essentially have to argue whether Obama's decision to defer deportation is an abdication of his duties as chief executive.

If no liberal judge swings to the right and no right leaning justice swings left, then a 4-4 outcome will simply create no new law and affirm the lower court's decision that sustained the injunction against DAPA/DACA.

So for now, advocates, immigrants and the Obama administration alike can pray that the SCOTUS' see it their way and give hope and a future to some four million undocumented immigrants living in limbo. Especially since the Court ruling for or against before the Presidential Election could serve to add fuel to a fire being stoked vigorously by the likes of Donald Trump, the Republican Presidential front-runner to date – or douse water on the hateful flames. One can only hope for the latter in the days post Anthony Scalia.