

# POWERLINE

## Oral Argument In DAPA Case Highlights The Need To Block Merrick Garland

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The Supreme Court heard oral argument today in *United States v. Texas*. This is the case in which Texas and 25 other states challenge the Obama administration's deferred-action policy (DAPA), otherwise known as executive amnesty, an attempt to give legal status and work authorizations to more than four million illegal immigrants.

We have written often about the case. See [here](#) and [here](#), for example. [Elizabeth Slattery](#) of the Heritage Foundation provides a useful discussion of the both the background of the case and today's oral argument.

The consensus among those who reported on the oral argument is that the Court will split 4-4 both on the question of whether the states have standing to bring this case and on the merits. That's the take of [Ilya Shapiro](#) of the Cato Institute, [Mark Joseph Stern](#) of Slate, [Robert Barnes](#) of the Washington Post, and [Adam Liptak](#) and [Michael Shear](#) of the New York Times.

As Barnes notes, however, what happens at oral argument isn't always a reliable indicator of how a case will be resolved. After oral argument in the first big Obamacare case, no one thought Chief Justice Roberts would vote to uphold the individual mandate. Yet he did.

Thus, the possibility of some sort of "compromise" decision cannot be ruled out. In that event, expect the non-liberal Justices to do the bulk of the compromising.

A 4-4 decision would set no precedent, but it would leave in place the federal appeals court ruling which upheld the district court's nationwide injunction against DAPA. This would be a defeat for the Obama administration.

If, as expected, it turns out that the Court's four liberal Justices are willing to uphold DAPA on the merits, thus enabling the president effectively to make a massive change in our immigration law with the stroke of his pen, this will highlight the importance of blocking Merrick Garland's nomination to the Supreme Court. It will also demonstrate the need to obstruct, if possible, the nominee of the next president, if that president is a Democrat.

On big ticket items such as DAPA, Justices appointed by Democrats form a voting bloc so loyal to liberal presidents and their policy preferences that it's hard to imagine where they might draw the line. Here, President Obama said he couldn't do executive amnesty because he isn't a king. Then, Obama went ahead with executive amnesty, stating that he had no choice because Congress wouldn't cooperate — i.e., do what he wanted.

This apparently gives the four liberal Justices no pause. Republican Senators should pause for as long as possible before confirming more liberals to the Supreme Court.