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DACA is in trouble before the Supreme Court. Congress should step in

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Remember the Deferred Action for Childhood Arrivals? It might be illegal. Or, alternatively, President Trump's decision to revoke it might be.

The Supreme Court will hear oral arguments over this issue on Tuesday. When the Trump administration in 2017 announced that it was revoking the Obama-era DACA policy that gave those who were brought into the country illegally at a young age legal status, they cited the program's arguable unconstitutionality as their justification. Critics and immigration activists challenged this revocation in court, arguing that the government was legally baseless in rescinding the program.

Now, the Supreme Court will decide this matter once and for all.



Frankly, things don't look good for DACA. It was always a legally dubious and constitutionally suspect policy, even if most of the country supports the policy outcome of protecting the "Dreamers" who have grown up in the United States. The legal problem with DACA stems from the fact that President Barack Obama decided to use his executive pen to attempt to re-write immigration law to institute a policy he couldn't get through Congress. In doing so, he was effectively attempting to circumvent Congress's constitutionally-assigned legislative power.

In an amicus brief, the Cato Institute's Ilya Shapiro and Josh Blackman wrote: "The president cannot unilaterally make fundamental changes to immigration law — in conflict with the laws passed by Congress and in ways that go beyond constitutionally authorized executive power. Nor does the president acquire more powers when Congress refuses to act, no matter how unjustified the congressional inaction is." They concluded, "Congress, not the president, is empowered to resolve the status of the Dreamers."

This is what Congress should and must do, given that the Supreme Court is likely to strike DACA down. Political cowardice is no excuse for our legislators to continue to shrink away from their constitutional role as the ones who are supposed to make the laws. As the *Washington Post's* George Will notes, "If the court allows the administration to withdraw DACA's humane protections for dreamers, this might embarrass Congress into involving itself in the nation's governance."

There are 800,000 "Dreamers" counting on Congress actually getting something done. Their legal status and right to remain in the only country they have likely ever known is in jeopardy.

It's simply inexcusable that both parties cannot come together and enact a compassionate, reasonable immigration policy supported by nearly nine in 10 Americans. Congress must get its act together and pass, the right way this time, legal protections for the Americans-in-all-but-name who so clearly deserve them.

After all, DACA recipients were brought into the country by their parents at a young age, so there's no moral culpability on them for entering the country illegally. And the only people who were eligible for the program were productive members of society who also had no criminal history. So, too, they contribute more in taxes than they take in benefits.

The clear merits of DACA as policy aside, the answer to congressional incompetency is not an imperial presidency with the ability to re-write immigration law by executive fiat. So the conservative-majority Supreme Court would be well justified in striking down DACA as it stands. Critics may blast them for it, but they're missing the point. The blame truly lies on Capitol Hill.