



DPCC Fact Sheet: *United States v. Texas*

On November 20, 2014, the President announced that DHS would issue a series of immigration directives that strengthen border security, prioritize enforcement resources, and ensure accountability in our immigration system. On December 3, 2014, the Texas Attorney General joined by 21 states, one Attorney General, and three Governors brought suit in the U.S. District Court for the Southern District of Texas, Brownville Division, to challenge the legality of two of those immigration directives and to halt their implementation. On December 4, 2014, these States sought to temporarily suspend the implementation of those immigration directives until a court decides whether they are lawful. On February 16, 2015, the U.S. District Court for the Southern District of Texas granted the States' request and temporarily suspended the implementation of those immigration directives. Today, this suspension blocking the implementation of these immigration directives remains in place. [DHS, accessed [2/6/15](#)]

Background on State of *United States v. Texas*

December 3, 2014: Several States filed suit in the U.S. District Court for the Southern District of Texas.

- On December 3, 2014, several States brought suit in the U.S. District Court for the Southern District of Texas against the U.S., as well as the leadership of DHS and a number of the DHS component agencies.

December 4, 2014: Several States sought a preliminary injunction delaying implementation of the Deferred Action for Parental Accountability (DAPA) and expanded Deferred Action for Childhood Arrivals (DACA) initiatives until a court decides whether those initiatives are lawful.

- On December 4, 2014, several States sought a preliminary injunction delaying the implementation of the DAPA initiative, which provides temporary deportation relief for certain parents of U.S. citizens and lawful permanent residents, and an expansion of the 2012 DACA initiative, which provides temporary deportation relief for certain young people brought to the U.S. as children. [Complaint, [12/3/14](#)]
- These States allege that by implementing two of the Administration's immigration directives, the U.S. and other named defendants have violated their Constitutional duty to take care that the laws be faithfully executed (The Take Care Clause), as well as the Administrative Procedure Act (APA) (the law that "governs the process by which federal agencies develop and issue regulations"). [Complaint, [12/3/14](#); EPA, accessed [2/8/15](#)]
- The preliminary injunction seeks to delay implementation of the Administration's immigration directives until a final decision is made about whether those directives violated the Constitution and the APA.

- These States argue that a preliminary injunction is necessary because without one the Administration's immigration directives will cause them irreparable injuries. Specifically, these States allege that by “substantially increas[ing] the number of undocumented immigrants in the Plaintiff States”, the immigration directives will trigger a new wave of undocumented immigration. This increase, they further allege, will boost the business of human trafficking cartels, “exacerbate the risks and dangers imposed on the Plaintiffs by organized crime”, and force the Plaintiff states to “expend substantial resources on law enforcement, healthcare ... education”, and other benefits, some of which are required by federal and state law. [Complaint, [12/3/14](#); Motion for Preliminary Injunction, [12/4/15](#)]
- These States seek to stop and to declare unlawful the Administration's immigration directives, which they allege will cause them “dramatic and irreparable” harm. [Complaint, [12/3/14](#)]
- The U.S. District Court for the Southern District of Texas held a hearing on the States' request for a preliminary injunction on January 15, 2014, and on January 30, 2015, the Department of Justice (DOJ) filed its final response with the District Court. [Motion for Preliminary Injunction, [12/4/15](#); NILC, 2/2/15]

February 16, 2015: The U.S. District Court for the Southern District of Texas granted the States' request for a nationwide preliminary injunction blocking the implementation of the DAPA and expanded DACA programs until a court decides whether those programs are lawful.

February 23, 2015: The DOJ appealed the District Court's decision blocking the implementation of the DAPA and expanded DACA programs to the U.S. Court of Appeals for the Fifth Circuit.

March 12, 2015: The DOJ filed an emergency motion to lift the lower court's preliminary injunction pending appeal with the U.S. Court of Appeals for the Fifth Circuit. [American Immigration Council, [4/13/15](#)]

May 26, 2015: A Three-Judge panel of the U.S. Court of Appeals for the Fifth Circuit denied the DOJ's emergency request to lift the preliminary injunction issued by the lower court pending appeal. [Bloomberg, [5/26/15](#)]

- As a result of the Fifth Circuit's decision, the lower court's preliminary injunction blocking implementation of the DAPA and expanded DACA programs remains in place. [NILC, 5/13/15]

November 9, 2015: A divided panel of the Fifth Circuit Court of Appeals affirmed the District Court's preliminary injunction blocking the implementation of the DAPA and expanded DACA programs. [Petition for Certiorari, [11/20/15](#)]

- The panel found that at least the state of Texas was entitled to bring a suit in court under the APA challenging the federal government's guidance. [Petition for Certiorari, [11/20/15](#)]
- The panel also found that it was “substantially likely” that the state of Texas was could establish that the federal immigration guidance at issue should have underwent the federal notice and comment process. [Petition for Certiorari, [11/20/15](#)]

November 20, 2015: The United States asked the Supreme Court to review the Fifth Circuit’s November 9th decision. [Petition for Certiorari, [11/20/15](#)]

- The United States argued that Supreme Court review of the Fifth Circuit’s decision was warranted:
 - Because the Fifth circuit violated the limits of the judicial power by upholding “an unprecedented nationwide injunction against implementing a federal immigration enforcement policy of great national importance”;
 - Because upholding such a violation of the judicial power would not only allow States to “frustrate the federal government’s enforcement of National immigration law”, but it would also “force millions of people who are not removal priorities ... to continue to work off the books, without the option of lawful employment to provide for their families”;
 - Because upholding such a violation of the judicial power threatens to vastly expand the judicial power and “entangle federal courts in policy disputes that are properly resolved through the political process”; and
 - Because upholding such a violation of the judicial power would strip the Department of Homeland Security its long exercised authority “to provide deferred action to categories of aliens.” [Petition for Certiorari, [11/20/15](#)]

January 19, 2016: The Supreme Court agreed to review the Fifth Circuit’s decision. [Supreme Court, [1/29/16](#); Scotusblog, accessed [4/15/16](#)]

- The Court took the *United States v. Texas* case to decide:
 - Whether a state that voluntarily provides a subsidy to all unauthorized immigrants with deferred action has a legal right to sue to challenge federal immigration guidance that would result in more immigrants having differed action;
 - Whether such guidance is unlawful or violates the Constitution; and
 - Whether such guidance should have been subject to the notice and comment process. [Supreme Court, [1/19/16](#)]

The President Acted Within His Legal Authority

Prosecutorial discretion is widely recognized and accepted. The Supreme Court has affirmed the President’s broad authority to determine immigration enforcement priorities. In the 1985 *Heckler v. Cheney* case, the Supreme Court held that “an agency’s decision not to prosecute or enforce...is a decision generally committed to an agency’s absolute discretion.” Similarly, in the 2010 *Arizona v. U.S.* decision, the Supreme Court affirmed the authority of the executive branch not to seek the removal of certain aliens, noting that “[a] principal feature of

the removal system is the broad discretion entrusted to immigration officials.” [CRS, [12/27/13](#); CRS, [7/13/12](#)]

Experts in immigration law have confirmed that the President has the authority to make broad changes to immigration enforcement. 136 constitutional lawyers, professors, and other experts signed onto a letter to President Obama stating, “[prosecutorial discretion] is a common, long-accepted legal practice in practically every law enforcement context... Discretion covers both agency decision to *refrain* from acting on enforcement... as well as decisions to *provide* a discretionary remedy like granting a stay of removal, parole, or deferred action.” [Legal Scholars, [9/3/14](#)]

You can find more background and information about the legality of the President’s immigration enforcement priorities on FloorWatch by clicking [HERE](#).