

LIKELY SCENARIOS

Texas, et al. v. United States

JANUARY 13, 2015

On January 15, 2015, a federal district court in Texas will hear oral argument in *Texas, et al. v. United States*, the 25-state lawsuit challenging the immigration initiatives announced by President Obama last year. The lawsuit alleges that states will be burdened by the expansion of the Deferred Action for Childhood Arrivals (DACA) initiative and the creation of the Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) initiative.

The court will hear arguments and decide whether it should issue a preliminary injunction, which would block these initiatives from being implemented. After hearing the arguments, the court will issue a ruling. The timing of such rulings can vary, but it is likely the court will issue a ruling before February 20, the target date the Obama administration has set for accepting applications for the expanded DACA initiative. Given the high profile of the case, it is also possible that the court may issue a ruling very quickly.

There are several possible ways the court could rule:

- **Court denies the states' motion for preliminary injunction.** (NOTE: Most court-watchers believe this outcome is unlikely.) The court determines that the states have not provided enough evidence to convince the court it should stop the DAPA and DACA initiatives before they begin. This would be considered a *win* for the Obama administration and immigrant communities, and the programs would move forward as planned. The plaintiffs may appeal such a decision to the U.S. Court of Appeals for the Fifth Circuit, and may try to speed the process by asking for an expedited appeal.
 - **Projected timeline for decision from the Fifth Circuit:** Five months to one year after district court decision, unless the Fifth Circuit expedites the appeal process.
- **Court denies the states' motion for preliminary injunction as moot due to lack of standing.** The court could determine that while the state's arguments may be convincing, the states are not proper plaintiffs in such a case and that therefore the court may not block the implementation of the DACA and DAPA programs. There is some precedent for such a ruling: In 2012, Mississippi joined a lawsuit against the original DACA program, *Crane, et al. v. United States*. The state was dismissed as a plaintiff due to lack of standing. The appeals process would follow the process outlined above.
 - **Projected timeline for decision from Fifth Circuit:** Five months to one year after district court decision, unless the Fifth Circuit expedites the appeal.
- **Court grants states' motion for preliminary injunction nationwide.** (NOTE: Court-watchers believe this is a very likely scenario.) The court could block implementation of the entire program. As a result, people hired to process DACA or DAPA applications would not be able to work on the programs at all, and applications for either initiative would not be

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distributed until a subsequent court lifted the injunction. This would be considered a *loss* for the Obama administration. The Department of Justice would likely submit a request for a temporary stay of the injunction pending a full appeal of the district court's decision to the U.S. Court of Appeals for the Fifth Circuit. If the temporary stay were granted, the DACA and DAPA initiatives could move forward.

- **Projected timeline for decision from Fifth Circuit:** The emergency request to stay the injunction would likely be filed within 24 to 72 hours, and the Fifth Circuit could rule a few weeks after it was filed. The subsequent appeals process regarding the merits of the case would take 4 to 8 months, as it would be more likely under this scenario that the Fifth Circuit would set an expedited appeal schedule. This means the DAPA initiative could be on hold for 4 to 8 months, especially if an emergency appeal is not granted.
- **Consequences for the immigrant community:** Such a decision could rattle confidence in the integrity of the deferred action program, making it more difficult to convince immigrants to apply. An injunction also would delay implementation of the DACA or DAPA initiatives, which could limit the number of people who might be able to apply for and receive relief under them during the rest of the Obama administration's tenure.
- **Court grants the states' motion for preliminary injunction in 25 states.** (*NOTE: Court-watchers believe this is the most likely outcome.*) The court could block implementation in the states represented by the plaintiffs but allow the program to move forward in the states that have not challenged the policy. As a result, some people hired to process DACA or DAPA applications may not be able to work on the programs, and applications for either initiative would not be accepted for residents of 25 states, but would be accepted for residents from other states not involved in the challenge. This would be considered a *loss* for the Obama administration. The Department of Justice would likely submit a request for a temporary stay of the injunction pending a full appeal of the district court's decision to the U.S. Court of Appeals for the Fifth Circuit. The Department of Justice would likely submit a request for a temporary stay of the injunction pending a full appeal of the district court's decision to the U.S. Court of Appeals for the Fifth Circuit. If the temporary stay were granted, the DACA and DAPA initiatives could move forward.
 - **Projected timeline for decision from Fifth Circuit:** The emergency request to stay the injunction would likely be filed within 24 to 72 hours, and the Fifth Circuit could rule a few weeks after it was filed. The subsequent appeals process would take 4 to 8 months, as it would be more likely under this scenario that the Fifth Circuit would set an expedited appeal schedule. This means the DAPA and the DACA expansion could be on hold for 4 to 8 months, especially if an emergency appeal is not granted.
 - **Consequences for the immigrant community:** Such a decision would be deeply confusing for members of the immigrant community and their allies, and could rattle confidence in the integrity of the deferred action initiatives. An injunction also would delay implementation of both the DACA or DAPA programs in 25 states, which could limit the number of people who might be able to apply for these programs during the rest of the Obama administration's tenure.