

Fact Sheet from National Immigration Law Center (NILC) regarding DOJ's request for a stay in the *Texas v. U.S.* case:

What happened in *Texas v. United States* today?

The Department of Justice today filed two documents with the federal district court. This sets two procedures into motion: the first is an appeal of the federal district court's decision to block DAPA and DACA, and the second is a motion to stay the injunction pending appeal, which would allow these initiatives to take effect while the court case is pending. The motion to stay is important, because the appeal to the Fifth Circuit, even under an expedited schedule, will likely take 4 to 8 months to get to decision.

The emergency motion to stay the injunction pending appeal can be resolved more quickly. It is of course most likely that the court (where the stay was filed) will deny the motion, but if so, or if he fails to act soon (by Feb. 25, as requested by the Department of Justice), the emergency request can then be taken to the U.S. Court of Appeals for the Fifth Circuit. The court can either stay the injunction pending consideration of the appeal (allowing expanded DACA and DAPA to move forward as scheduled), or deny it.

What did the Department of Justice say in today's filing?

- The United States argues that the federal government will be irreparably harmed if the courts do not remove this temporary block. Conversely, they explain that the plaintiffs will not be harmed if these programs are allowed to move forward as scheduled.
- The federal government argues that because they are highly likely to succeed upon appeal, this current block is unnecessary. They also point out that the states should not be allowed to bring this lawsuit forward as plaintiffs. (this is called a "lack of standing")
- The federal government also says that if the block to stay in place, it should be limited to residents of Texas – the only state that the district court found the plaintiffs faced harm. **Note:** this is a **strategic move** to show the government is being **aggressive** with its defense of DACA and DAPA.
- The government explains that the DAPA and DACA expansion are a critical part of DHS' own enforcement priorities, and that the district court

was wrong to view them as somehow separate from the DHS Secretary's exclusive enforcement authority.

- The Department of Homeland Security has already spent considerable time and effort to implement these initiatives, and blocking them at this point will cause damage to the department, along with the general public.

Timeline:

- If the court denies the emergency stay or does not act on it by close of business on Wednesday, the Department of Justice will likely file a stay request with the 5th circuit this Thursday.
- In that case, the court of appeals will likely issue a decision within days or several weeks, which could result in a decision one way or the other by mid-March. **If the stay is granted**, it means implementation can move forward. **If the stay is denied**, it means the Department of Justice can appeal to the Supreme Court (just on the stay issue) and that might take another few weeks.
- **If the Supreme Court grants the stay**, the administration can move forward with implementation. **If it denies the stay** then implementation will be blocked until the separate appeal is decided.
- The appeal of the federal district court's injunction decision with respect to the Obama administration failing to go through the Administrative and Procedures Act (APA) will be on a slower track and that can take approximately 4-8 months.

What happens next?

- While this is going on, the district court can proceed to resolve the other claims in the case that were not included in the initial decision about the preliminary injunction. In the temporary injunction order, the court directed the parties to agree upon a schedule for resolving the case, and to file that with the court by Feb. 27, after which the court will hold a conference to set deadlines.