

UPDATE: LIKELY SCENARIOS

Texas, et al. v. United States, et al.

Updated JUNE 12, 2015

On December 3, 2014, Texas and other states filed a lawsuit, *Texas, et al. v. United States, et al.*, in order to stop the immigration initiatives announced by President Obama the previous month (November 2014). These initiatives would allow millions of immigrants with deep ties to the U.S. to apply for work authorization and protection from deportation. On February 16, 2015, a federal district court in Texas issued a preliminary injunction, blocking implementation of the initiatives while the case proceeds. While the injunction is in place, millions of immigrant families will remain in limbo, waiting to apply for the opportunity to more fully contribute to our communities and economy.

So that the president's initiatives can be implemented as soon as possible, the U.S. Department of Justice (DOJ) asked the Fifth Circuit Court of Appeals to speed up the appeal of the district court's preliminary injunction. A panel of Fifth Circuit judges is scheduled to hold a hearing on the appeal on July 10, 2015.

This is a summary of the primary ways the Fifth Circuit could rule on the appeal.

Appeal of District Court's Decision to Issue a Preliminary Injunction

- **Fifth Circuit affirms the district court's decision to grant a preliminary injunction nationwide.** *Note:* This would be considered a negative outcome for the Obama administration. In order to affirm the preliminary injunction, the Fifth Circuit would have to find that the plaintiff states had a legal right to bring the lawsuit (what is referred to legally as "standing"). The court would also have to find that the plaintiff states were likely to succeed on their legal arguments in the lawsuit and that without an injunction irreparable harm would result.
 - **Projected timeline for decision from Fifth Circuit:** A hearing on the appeal is set for July 10, 2015. There is no set deadline by which the court would have to issue an opinion after a hearing. It could be weeks or months.
 - **DOJ may ask the Fifth Circuit to reconsider the decision *en banc*.** This would be a request that a full panel of the active judges on the Fifth Circuit (currently fifteen), instead of the usual three, reconsider the decision of the three-judge panel. The court does not have to grant this *en banc* request. In fact, such requests are rarely granted in the Fifth Circuit.
 - **The federal government could ask the U.S. Supreme Court to hear the case.** This process is known as filing a petition for *certiorari*. The Supreme Court can decide whether or not to grant this request.
- **Fifth Circuit reverses part or all of the district court's decision.** *Note:* This would be considered a positive outcome for the Obama administration. The court could find that the

LOS ANGELES (Headquarters)
 3435 Wilshire Blvd., Suite 2850
 Los Angeles, CA 90010
 213 639-3900
 213 639-3911 fax



WASHINGTON, DC
 1121 14th Street, NW, Suite 200
 Washington, DC 20005
 202 216-0261
 202 216-0266 fax

plaintiff states had no legal right to bring the lawsuit and reverse the district court decision on that ground. Alternatively, the court could also find that the plaintiff states were not likely to succeed on their legal arguments or that they would not suffer irreparable harm without an injunction. Any of these situations would lead to a reversal of the injunction.

The court could also change the scope of the injunction. Some options include narrowing the injunction to apply only in the suing states, or only in Texas.

- **Projected timeline for decision from the Fifth Circuit:** A hearing on the appeal is set for July 10, 2015. There is no set deadline by which the court would have to issue an opinion after a hearing.
- **The states may ask the Fifth Circuit to reconsider the decision *en banc*.** This would be a request that a full panel of the active judges on the Fifth Circuit (currently fifteen) reconsider the decision of the three-judge panel. If the states take this route, the injunction could remain in place pending a decision on whether the Fifth Circuit will hear the case *en banc* and, if *en banc* review is granted, the original injunction could remain in effect pending a ruling from the *en banc* court.
- **The states could ask the U.S. Supreme Court to hear the case.** The Supreme Court can decide whether or not to grant this request.

NOTE: The Supreme Court is on recess from July through September. The Court will not decide which cases to consider or hear oral argument again until the end of September or October.