NO. 15-40238

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

STATE OF TEXAS, et al.,

Plaintiffs,

v.

UNITED STATES OF AMERICA, et al.,

Respondents.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS AT BROWNSVILLE

No. 1:14-cv-00254
The Honorable Andrew S. Hanen
United States District Court Judge

BRIEF OF THE AMICUS STATES OF WASHINGTON, CALIFORNIA, CONNECTICUT, DELAWARE, HAWAI'I, ILLINOIS, IOWA, MARYLAND, MASSACHUSETTS, NEW MEXICO, NEW YORK, OREGON, RHODE ISLAND, AND VERMONT, AND THE DISTRICT OF COLUMBIA, IN SUPPORT OF MOTION TO STAY DISTRICT COURT PRELIMINARY INJUNCTION

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I. INTRODUCTION

A single State cannot dictate national immigration policy, yet that is what the district court allowed here. Relying entirely on Texas's speculative claims, the district court enjoined vital immigration reforms nationwide. Those reforms will benefit millions of people and their families, as well as the States in which they reside. This Court should stay the district court's order because the United States is likely to prevail on the merits of its appeal, the stay will not harm Plaintiffs, and a stay is overwhelmingly in the public interest. At the very least, this Court should stay the order outside Texas, as no other State has presented any evidence that it will suffer the irreparable injury needed to justify injunctive relief. As the States joining this brief show below, States will benefit from these immigration reforms. The amici States should not have to live under an improper injunction based on harms other States incorrectly claim they will suffer.

II. IDENTITY AND INTEREST OF AMICUS CURIAE

The States of Washington, California, Connecticut, Delaware Hawai'i, Illinois, Iowa, Maryland, Massachusetts, New Mexico, New York, Oregon, Rhode Island, and Vermont, and the District of Columbia (the amici States) file this amicus brief under Federal Rule of Appellate Procedure 29(a). The amici States have a strong interest in the outcome of this stay request because of the millions of residents in our States who would be eligible to participate in the programs the

district court erroneously enjoined and the economic, humanitarian, and public safety benefits that our States will receive through these programs. We also add a helpful perspective by rebutting the distorted picture Plaintiffs have offered of the impacts of the federal government's recent immigration directives on States.

III. ARGUMENT

All of the factors this Court considers support granting a stay, but to avoid repetition the amici States will focus on: "'(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; . . . (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.'" *Planned Parenthood of Greater Texas Surgical Health Servs. v. Abbott*, 734 F.3d 406, 410 (5th Cir. 2013) (quoting *Nken v. Holder*, 556 U.S. 418, 425-26 (2009)).

1. The United States Is Likely To Succeed On The Merits Of Its Appeal

The United States has explained why the district court's holding that the immigration directives violate the Administrative Procedure Act is incorrect. The amici States agree, but focus on other reasons preliminary relief was unjustified.

A. Plaintiffs Failed To Show Irreparable Injury

The only "irreparable injury" the district court found Plaintiffs would suffer was increased costs to process applications for driver's and other licenses. Order at 115-16. This erroneous conclusion relied on a mistake of law, and thus is reviewed de novo. *See Janvey v. Alguire*, 647 F.3d 585, 592 (5th Cir. 2011).

This Court has already held as a matter of law that costs States incur related to undocumented immigrants as a result of State law are a matter of State choice, "not the result of federal coercion." *Texas v. United States*, 106 F.3d 661, 666 (5th Cir. 1997). Nothing in the immigration directives requires States to provide licenses or benefits to anyone. States retain authority to shape their laws to limit the availability of State benefits and licenses. 8 U.S.C. § 1621. The district court nonetheless concluded that Plaintiffs, including Texas, will have to provide driver's licenses under the Ninth Circuit's ruling in *Arizona Dream Act Coalition v. Brewer*, 757 F.3d 1053 (9th Cir. 2014). But that case merely held that *if* a State gives driver's licenses to one group of deferred-action recipients, it cannot deny licenses to recipients of other kinds of deferred action without a rational basis. *Id.* at 1062. Having to comply with the constitutional prohibition against discrimination cannot be considered an irreparable injury.

Moreover, the district court erred as a matter of law by accepting Texas's claims about licensing costs as justifying nationwide injunctive relief. In concluding that States will suffer substantial unrecoverable costs due to the immigration directives, the district court cited a single document—a declaration of an employee of the Texas Department of Public Safety. Order at 115 (citing U.S.D.C. S.D. Tex. Dkt. No. 64, Ex. 24). No other Plaintiff State presented any evidence, whatsoever, of similar licensing costs, and it was improper for the

district court to accept Texas's evidence as dispositive for all Plaintiffs. Indeed, many Plaintiff States have very small undocumented immigrant populations,[1] so any claimed fear of a massive influx of license applicants is untenable. It was error for the district court to enter nationwide injunctive relief based on a single State's evidence of harm. *See, e.g.*, *Aviation Consumer Action Project v. Washburn*, 535 F.2d 101, 108 (D.C. Cir. 1976) ("An injunction must be narrowly tailored to remedy the specific harm shown.").

B. The Equities And Public Interest Disfavored Injunctive Relief

In evaluating the equities and public interest, the district court erred by overlooking the enormous benefits that individuals and States, including the Plaintiff States, stand to receive due to the immigration directives.

Weighing the equities, the district court found that the United States would suffer no harm from an injunction, while Plaintiffs would suffer substantial costs if an injunction was denied. The United States has explained why the first conclusion is incorrect. The second is as well, for States will benefit from the immigration directives, not suffer harm.

As demonstrated above, the licensing costs Plaintiffs allege they will incur are unsupported and within their own control. Meanwhile, there is overwhelming

[1] For example, Montana, North Dakota, South Dakota, and West Virginia are each home to less than 5,000 undocumented immigrants. Pew Research Center, *Unauthorized Immigrants in the U.S., 2012* (Nov. 18, 2014), http://www.pewhispanic.org/interactives/unauthorized-immigrants-2012/ (last visited Mar. 3, 2015).

evidence that the immigration directives will benefit States, including Texas. When immigrants are able to work legally—even for a limited time—their wages increase, they seek work compatible with their skill level, and they enhance their skills to obtain higher wages, all of which benefits State economies by increasing income and growing the tax base.[2] In Washington State, for example, approximately 105,000 people are likely to be eligible for deferred immigration action.[3] Moving these people out of the shadows and into the legal workforce is estimated to increase Washington's tax revenues by $57 million over the next five years.[4] California's tax revenues are estimated to grow by $904 million over the next five years, with an anticipated 1,214,000 people eligible for deferred immigration action.[5] The tax consequences for the Plaintiff States are also positive. For example, if the estimated 594,000 undocumented immigrants eligible for

[2] Dr. Raul Hinojosa-Ojeda, *From the Shadows to the Mainstream: Estimating the Economic Impact of Presidential Administrative Action and Comprehensive Immigration Reform* 9-10 (N. Am. Integration & Dev. Ctr., UCLA, Nov. 21, 2014), *available at* http://www.naid.ucla.edu/estimating-the-economic-impact-of-presidential-administrative-action-and-comprehensive-immigration-reform.html.

[3] Migration Policy Inst., *National and State Estimates of Populations Eligible for Anticipated Deferred Action and DACA Programs* (2014) (Excel spreadsheet), http://www.migrationpolicy.org/sites/default/files/datahub/US-State-Estimates-unauthorized-populations-executive-action.xlsx (last visited Mar. 3, 2015).

[4] Center for American Progress, *Executive Action On Immigration Will Benefit Washington's Economy*, http://www.scribd.com/doc/247296801/Economic-Benefits-of-Executive-Action-in-Washington (last visited Mar. 3, 2015).

[5] Center for American Progress, *Topline Fiscal Impact of Executive Action Numbers for 31 States*, http://www.scribd.com/doc/248189539/Topline-Fiscal-Impact-of-Executive-Action-Numbers-for-28-States (last visited Mar. 3, 2015).

deferred action in Texas receive temporary work permits, it will lead to an estimated $338 million increase in the State tax base over five years.[6]

The immigration directives will also benefit States by improving public safety. Effective local law enforcement depends on a trusting relationship between police and the communities they serve. But that relationship is undermined when undocumented immigrants fear that interactions with the police could lead to their deportation or the deportation of their family or friends.[7] Studies show that people are less likely to report crimes if they fear the police will inquire into their or their family's immigration status,[8] and undocumented immigrants who are crime victims report the crimes in greater numbers when they have received some form of temporary legal immigration status, such as U-Visas for domestic violence victims.[9] Additionally, the immigration directives protect public safety by

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[6] *Id.*

[7] Police Foundation, Anita Khashu, *The Role of Local Police: Striking a Balance Between Immigration Enforcement and Civil Liberties* 24 (2009), *available at* http://www.policefoundation.org/sites/g/files/g798246/f/Khashu%20%282009%29%20-%20The%20Role%20of%20Local%20Police.pdf.

[8] Univ. of Illinois at Chicago, Dep't of Urban Planning and Policy, Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement* 5-6 (May 2013), *available at* http://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF.

[9] *See* Natalia Lee et al., *National Survey of Service Providers on Police Response to Immigrant Crime Victims, U Visa Certification and Language Access* 6-7, 13 (Apr. 16, 2013), *available at* http://www.masslegalservices.org/system/files/library/Police%20Response%20U%20Visas%20Language%20Access%20Report%20NIWAP%20%204%2016%2013%20FINAL.pdf.

requiring certain undocumented immigrants to pass criminal and national security background checks.[10]

The district court also erred by giving short shrift to the strong public interest in favor of allowing the directives to take effect. *See, e.g.*, *Winter v. Natural Res. Def. Council, Inc*., 555 U.S. 7, 24 (2008) (holding that courts "should pay particular regard for the public consequences in employing the extraordinary remedy of injunction"). The district court concluded that because potential beneficiaries of deferred action are unlikely to be removed even without the directives (because they pose no public safety risk and are low enforcement priorities), the benefits they will receive through deferred action are unimportant. Order at 120. But receiving deferred action and work authorization are critically important to the millions of people eligible. They will finally be able to come out of the shadows, work legally, increase their earnings, report crimes and abuses, and live without the constant fear of being deported and separated from their families. States will also benefit through increased tax revenue, enhanced public safety as undocumented immigrants and their families become less fearful of contacting law enforcement, and fewer heartbreaking incidents in which U.S. citizen children are

[10] *See, e.g., Fact Sheet: Immigration Accountability Executive Action* (Nov. 20, 2014), http://www.whitehouse.gov/the-press-office/2014/11/20/fact-sheet-immigration-accountability-executive-action (last visited Mar. 3, 2015).

separated from their deported parents and left to rely on extended family or state social services.

C. The Injunction Is Overbroad

Another reason the United States is likely to succeed on appeal is that the injunction is overbroad. The district court enjoined the immigration directives nationwide, even though the only evidence of harm it cited had to do with Texas and even though dozens of States declined to join Plaintiffs' lawsuit and have never even alleged they will suffer any harm from the directives. By entering a nationwide injunction based entirely on evidence of purported harm to a single state, the district court abused its discretion. *See, e.g.*, *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1119 (9th Cir. 2009) ("'[a]n overbroad injunction is an abuse of discretion'") (alteration in original) (quoting *Lamb-Weston, Inc. v. McCain Foods, Ltd.*, 941 F.2d 970, 974 (9th Cir. 1991)); *accord Roho, Inc. v. Marquis*, 902 F.2d 356, 361 (5th Cir. 1990) ("[A]ny relief granted should be no broader than necessary to cure the effects of the harm caused.") (internal quotation marks omitted).

A preliminary injunction may not "reach[ ] further than is necessary to serve [its] purpose." *Hollon v. Mathis Indep. Sch. Dist.*, 491 F.2d 92, 93 (5th Cir. 1974) (per curiam). And an "injunction must be narrowly tailored to remedy the specific harm shown." *Aviation Consumer Action Project*, 535 F.2d at 108; *see also Davis v. Romney*, 490 F.2d 1360, 1370 (3d Cir. 1974) (vacating injunction as overly

broad and holding that injunctions "must be tailored to remedy the specific harms shown rather than to 'enjoin "all possible breaches of the law"'") (quoting *Hartford-Empire Co. v. United States*, 323 U.S. 386, 410 (1945)). Here, the purported purpose of the district court's preliminary injunction is to protect the Plaintiff States from "irreparable injuries" they allegedly would suffer if the immigration directives were not enjoined before a trial on the merits. *See, e.g.*, Order at 113-17. And the only evidence Plaintiffs introduced of such harm concerned Texas. At most, then, the Plaintiff States' showing would support a narrow injunction tailored to protect Texas from this purported harm.

But the district court enjoined the immigration directives nationwide, including in Plaintiff States that have alleged no harm and in non-Plaintiff States that will benefit from the directives. That broad injunction goes far beyond redressing the harm the court actually found—Texas's costs of issuing driver's licenses. Even if the district court's unsupported findings of harm regarding those costs were accurate, those findings could not possibly justify injunctive relief in other States, especially where the amici States stand before this Court asserting that we welcome the immigration directives and expect to benefit from them.

2. A Stay Will Not Injure Plaintiffs And Is In The Public Interest

As detailed above, States will benefit from the immigration directives, not suffer harm. For that reason, a stay will not injure Plaintiffs. A stay is also in the

public interest because it will allow the directives to take effect and let millions of undocumented immigrants begin to come out of the shadows, work legally, increase their earnings, and better contribute to their families and States.

3. At The Very Least, A Stay Is Warranted As To Non-Plaintiff States

Although the district court's injunction should be stayed in its entirety for the reasons stated above, in the alternative the amici States ask that the Court stay the injunction outside of Texas, or at least outside of the Plaintiff States. As detailed above, in light of the complete absence of even a claim of harm in the non-Plaintiff States, there is no basis for forcing the injunction on us.

IV. CONCLUSION

The federal government's immigration directives will benefit States, not harm them. The district court erred in crediting Plaintiffs' unsupported assertions to the contrary and in relying on evidence related solely to Texas to justify a nationwide injunction. The amici States respectfully ask this Court to stay the district court's order so that we may begin to enjoy the benefits of these reforms.

RESPECTFULLY SUBMITTED this 12th day of March 2015.

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CERTIFICATE OF SERVICE

I certify, under penalty of perjury under the laws of the state of Washington, that on this date I have caused a true and correct copy of Brief Of The Amicus States Of Washington, California, Connecticut, Delaware, Hawai'i, Illinois, Iowa, Maryland, Massachusetts, New Mexico, New York, Oregon, Rhode Island, and Vermont, and the District of Columbia In Support Of Motion To Stay District Court Preliminary Injunction to be served via the Court's ECF to parties listed on the ECF system for this case, and to the following via U.S. Mail, postage paid:

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DATED at Olympia, Washington this 12th of March 2015.

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