How the Lone Star StateReached the Entire Nation: The Need to Limit the Nationwide Injunction Against DAPA and DACA in United States v. Texas

Denise Cartolano

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How the Lone Star State Reached the Entire Nation: The Need to Limit the Nationwide Injunction Against DAPA and DACA in United States v. Texas

Denise Cartolano*

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INTRODUCTION

Imagine for a moment a boy named Anthony who came to the United States from El Salvador on June 16, 2007, at five months old. Anthony is a recipient of expanded Deferred Action for Childhood Arrivals (DACA).\(^1\) When Anthony hears about a nationwide injunction—against expanded DACA—he is nine years old and enrolled in the Fourth Grade at an elementary school in New York City. Since he came to the United States as an infant he only knows English. All his friends are American citizens; his favorite sports teams are the New York Yankees and the New York Knicks; he enjoys the all-American hamburger and fries; and he has never been to El Salvador since he entered the United States at five months old. Suddenly this nationwide injunction creates the possibility that Anthony will not be allowed to legally remain in the United States. He fears being returned to El Salvador; a country he knows nothing about and where he does not understand the native language or culture.

Now imagine a hard-working mother named Maria. Maria was a victim of sexual and physical abuse in Mexico since she was a young teenager. After becoming pregnant at eighteen years old—as a result of rape—she escapes her attacker and crosses the border into Arizona at eight months pregnant. She delivers a beautiful baby girl; who is now automatically a United States citizen because of her place of birth. Maria is overjoyed that due to her daughter's citizenship she will not suffer the same fate as her; a life full of sexual abuse and scant opportunity for women. However, Maria is undocumented and in the United States illegally. She worries about who will care for her daughter if she cannot find a way to stay in the United States. In 2014, Maria learns about Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA)\(^2\) and immediately applies and obtains work authorization. Maria begins to work three jobs to support her daughter. However, one day while at work she hears on the news that the Supreme Court upheld a nationwide injunction against DAPA.\(^3\) Maria's hopes are shattered. She will no longer have work authorization which allows her to legally maintain her three jobs. She must live her

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2. Id.
life in the shadows hoping she is not removed to Mexico where she has memories of abuse, and worst of all leaving her United States citizen daughter with no one to care for her.

On June 23, 2016, the Supreme Court of the United States was ultimately deadlocked in the case United States v. Texas.\(^4\) In just one line, the Supreme Court shattered the dreams of millions of undocumented children and their parents who were residing in the United States; those like Anthony and Maria.\(^5\) The Supreme Court's utterance of these nine words, "[t]he judgment is affirmed by an equally divided Court,"\(^6\) created instability and uncertainty amongst undocumented children, students, workers and parents.\(^7\) This divided decision upheld a nationwide injunction against President Obama's executive action creating DAPA and expanding DACA.\(^8\)

Although the stories of Anthony and Maria are hypotheticals, they are reminiscent of millions of actual stories of undocumented people who have been affected by the nationwide injunction.\(^9\) To address this meaningful issue, this article will argue that the injunction's applicability needs to be limited to Texas; this can be achieved by challenging the nationwide injunction in the other states which were not a party to the lawsuit. First, this article will discuss the background of DAPA and Expanded DACA, along with the court case and subsequent appeals which created and upheld the nationwide injunction. Next, this article will discuss the arguments for and against the nationwide injunction and its legitimacy. Lastly, this article will argue that a nationwide injunction—based on an initial decision by one court

\(^4\) Texas, 136 S. Ct. at 2272.
\(^5\) Id.
\(^6\) Id.
\(^7\) See Jon Elswick, Supreme Court Ties in Case Challenging Obama's Immigration Actions, CBS News (June 23, 2016, 10:58 AM), http://www.cbsnews.com/news/supreme-court-immigration-obama-executive-action-affirms-lower-court-ruling/ ("While the Supreme Court's decision on Thursday isn't a ruling, it does deal a blow to the Obama administration because it leaves millions of people who might have benefited from the proposed programs in legal limbo." "But in addition to throwing millions of families across our country into a state of uncertainty, this decision reminds us how much damage Senate Republicans are doing by refusing to consider President Obama’s nominee to fill the vacancy on the Supreme Court.").
in Texas—is inherently overbroad and should be challenged by those affected in forty-nine other states.

I. THE EXECUTIVE ACTION

On November 20, 2014, President Barack Obama signed an executive action which stated that the United Stated Department of Homeland Security (DHS) would not deport certain undocumented parents of United States citizens and parents of lawful permanent residents (LPRs). This executive order also expanded DACA, creating eligibility in the program for more people who came to the United States as children.

Currently, DAPA and Expanded DACA affect approximately 4.4 million people. These are people who lack immigration status but have been in the United States since they were children or are the parents of a United States citizen or a lawful permanent resident children. An injunction that halts these programs will leave millions of people who have been living, working, and attending school in America in a confused and scared place; they do not know what their future will be. Some of the recipients have been in the United States since they were infants and do not know of any other home.

13. Id.
have United States children, and family separation will become a reality.\textsuperscript{16} They are people with stories like Anthony and Maria.\textsuperscript{17}

A. Prior to the Creation of DAPA and Expanded DACA

When President Obama signed the executive action expanding DACA and creating DAPA it was intended to reform immigration.\textsuperscript{18} These executive actions were a result of Congress failing to pass immigration reform legislation.\textsuperscript{19} The Border Security, Economic Opportunity, and Immigration Modernization Act of 2013,\textsuperscript{20} was introduced by Senator Charles Schumer, a Democrat from New York, and was co-sponsored by seven other United States Senators who became known as the “Gang of Eight.”\textsuperscript{21} The Bill was introduced in the Senate on April 16, 2013, in the 113th Congress.\textsuperscript{22} The Bill passed the Senate in June 2013 with sixty-eight Senators voting for the Bill and thirty-two against.\textsuperscript{23} All Democratic Senators voted for the Bill and fourteen Republicans joined with them.\textsuperscript{24} However, the House of Representatives did not vote on the Bill and it expired when the 113th Congress came to an end.\textsuperscript{25}

One of the main provisions in the Border Security, Economic Opportunity, and Immigration Modernization Act of 2013, was a path-
way for undocumented immigrants already in the United States to become citizens.\textsuperscript{26} This included an accelerated path for undocumented immigrants who entered the United States as children to achieve permanent legal status and/or citizenship in the United States.\textsuperscript{27} The Bill also provided an increased number of visas to address the backlog of family and employment-based visa applicants.\textsuperscript{28} President Obama was a supporter of the Bill created by the “Gang of Eight.”\textsuperscript{29} When the Bill passed through the Senate, President Obama stated, “the Senate bill is consistent with the key principles for commonsense reform that I – and many others – have repeatedly laid out.”\textsuperscript{30} When referring to the Bill moving to the House of Representatives for a vote President Obama stated; “[n]ow is the time when opponents will try their hardest to pull this bipartisan effort apart so they can stop commonsense reform from becoming a reality. We cannot let that happen.”\textsuperscript{31}

\textbf{B. Overview of DAPA and Expanded DACA}

When the Bill failed to become a reality, President Obama passed the Immigration Accountability Executive Action on November 21, 2014.\textsuperscript{32} The main effect of this executive action was the creation of DAPA and the expansion of DACA.\textsuperscript{33} DAPA and expanded DACA granted eligible persons temporary permission to stay in the United States by “deferred action.”\textsuperscript{34} Aside from granting temporary permission to stay in the United States, it also granted work authorization to

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{27} Immigration Bill, supra note 20, at § 2101-2103; see also Guide to S.744, supra note 26, at 7–8.
\item \textsuperscript{28} Guide to S.744, supra note 26, at 7–8.
\item \textsuperscript{29} Seung Min Kim, Senate Passes Immigration Bill, POLITICO (June 27, 2013, 4:25 PM), http://www.politico.com/story/2013/06/immigration-bill-2013-senate-passes-093530.
\item \textsuperscript{30} Id.
\item \textsuperscript{31} Id.
\item \textsuperscript{32} Understanding the Legal Challenges to Executive Action, AM. IMMIGR. COUNCIL (June 2016), https://www.americanimmigrationcouncil.org/sites/default/files/research/understanding_the_legal_challenges_to_executive_action.pdf [hereinafter Legal Challenges].
\item \textsuperscript{33} DAPA and Expanded DACA Memo, supra note 1.
\item \textsuperscript{34} Cox & Rodriguez, supra note 11, at 107; see also DAPA and Expanded DACA Programs, supra, note 12 (defining deferred action as “kind of administrative relief from deportation that has been around a long time. Through it, DHS authorizes a non–U.S. citizen to remain in the U.S. temporarily. The person may also apply for an employment authorization document for the period during which he or she has deferred action”).
\end{enumerate}
\end{footnotesize}
recipients so they could legally earn an income to support themselves and their families.  

DACA was originally created during the Obama administration in June 2012. Eligibility requirements for undocumented immigrants under the original DACA program are: applicants must have entered the United States before their sixteenth birthday and before June 15, 2007; lived continuously in the United States since June 15, 2007; currently enrolled in school, a high school graduate or be honorably discharged from the military; be under the age of thirty-one as of June 15, 2012; and, have not been convicted of a felony, significant misdemeanor or three other misdemeanors, or otherwise pose a threat to national security. This program remains in effect and is not included in the nationwide injunction.

The executive action in November 2014, sought to expand DACA to undocumented immigrants who entered before January 1, 2010; those who have lived continuously in the United States since January 1, 2010, and; created no age limit for eligibility if the applicant arrived in the United States before sixteen-years old. The executive action also created DAPA. To be eligible for DAPA applicants must: be the parent of a United States citizen or lawful permanent resident; have continuously lived in the United States since January 1, 2010; have been present in the United States on November 20, 2014; not have a lawful immigration status on November 20, 2014; and, the applicant must have not been convicted of certain criminal offenses, including any felonies and some misdemeanors.

President Obama made a statement about the executive actions which expanded DACA and created DAPA. The President stated:

35. DAPA and Expanded DACA Programs, supra, note 12; see also Cox & Rodríguez, supra note 11, at 140 ("Pursuant to this program, known as DAPA, eligible noncitizens who are not otherwise enforcement priorities for the government would be permitted to apply for the deferral of their removal, as well as work authorization, for three years").


37. Id.

38. Legal Challenges, supra note 32, at 1.

39. DAPA and Expanded DACA Memo, supra note 1.

40. Id.

41. Id.
There are actions I have the legal authority to take as President [actions] that will help make our immigration system more fair and more just . . . we're going to keep focusing enforcement resources on actual threats to our security. Felons, not families. Criminals, not children. Gang members, not a mother who's working hard to provide for her kids . . . So we're going to offer the following deal: If you've been in America for more than five years; if you have children who are American citizens or legal residents; if you register, pass a criminal background check, and you're willing to pay your fair share of taxes – you'll be able to apply to stay in this country temporarily, without fear of deportation . . . Are we a nation that accepts the cruelty of ripping children from their parents' arms? Or are we a nation that values families, and works to keep them together? . . . I've seen the heartbreak and anxiety of children whose mothers might be taken away from them just because they didn't have the right papers . . . These people – our neighbors, our classmates, our friends – they did not come here in search of a free ride or an easy life. They came to work, and study, and serve in our military, and above all, contribute to America's success.42

This statement from President Obama shows that he felt that expanded DACA and DAPA were the just and moral decision to help undocumented immigrants, who are hard-working and decent people, remove themselves from the shadows and enter society.43 These programs gave opportunity to millions of undocumented immigrants in the United States for a brief period until the nationwide injunction occurred.44

C. United States v. Texas

Shortly after President Obama announced his executive actions—expanding DACA and creating DAPA—representatives of seventeen states filed a federal lawsuit in Brownsville, Texas.45 Nine other states joined the lawsuit at a later time.46 The case was heard by

43. See id.
44. See Lee, supra note 16.
45. Complaint for Declaratory and Injunctive Relief, Tex. v. U. S., 86 F. Supp. 3d 591 (S.D. Tex. 2015) (No. 1:14-cv-254) (listing the initial seventeen plaintiff states as: Alabama, Georgia, Idaho, Indiana, Kansas, Louisiana, Maine, Mississippi, Montana, Nebraska, North Carolina, South Carolina, South Dakota, Texas, Utah, West Virginia and Wisconsin.).
Judge Andrew Hanen of the United States District Court for the Southern District of Texas. The States ultimately sought to permanently block DAPA and expanded DACA, and asked for a preliminary injunction to temporarily block the programs until the case could be heard on the merits.

The complaint contained a series of arguments such as that DAPA and expanded DACA “will trigger a ‘wave’ of immigration and that this would ‘increase human trafficking by drug cartels and thus exacerbate[s] the risks and dangers imposed on [states] by organized crime.'” Further, “the states alleged broader harms from the expenditures on law enforcement, health care, education, processing professional licenses, and other benefits.”

On February 16, 2015, Judge Hanen granted the preliminary injunction. Judge Hanen found that out of the twenty-six states that were a party to the lawsuit only Texas had standing due to the fact that DAPA and Expanded DACA created a new class of individuals who would become eligible for state-subsidized driver’s licenses, creating an increased cost for Texas to process and issue these licenses. The additional standing arguments—such as indirect costs on public education and medical care—were rejected. On substantive grounds, Judge Hanen found that the Government did not comply with the notice-and-comment procedures for rulemaking under the Administrative Procedure Act (APA). Judge Hanen concluded that the states showed a substantial likelihood of success on the merits of the claim that DAPA and Expanded DACA were subject to APA’s notice and comment requirements and therefore granted the preliminary injunction in a lengthy decision spanning approximately ninety pages.

On November 9, 2015, the United States Court of Appeals for the Fifth Circuit upheld the preliminary injunction heard on an appeal.

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49. Legal Challenges, supra note 32, at 2; see also Amended Complaint for Declaratory and Injunctive Relief, supra note 46.
50. Legal Challenges, supra note 32, at 2; see also Amended Complaint for Declaratory and Injunctive Relief, supra note 46.
51. Texas, 86 F. Supp. 3d at 677–78.
52. Id. at 616–20.
53. Id. at 629.
54. Id. at 667.
55. Id.
made by the United States Government.\textsuperscript{56} Fifteen states, the District of Columbia, seventy-three United States mayors and county officials, thirty heads of law enforcement agencies, one hundred and eighty-one United States Representatives, four United States Senators, over one hundred and fifty civil rights and immigrant rights groups, nineteen faith organizations, and various business and trade associations filed \emph{amici} briefs supporting the government's position.\textsuperscript{57} However, the Fifth Circuit agreed with the District Court that Texas had standing based on additional drivers' license costs and that the programs of DAPA and Expanded DACA were subject to the notice-and-comment rulemaking procedures under the APA.\textsuperscript{58}

The government further appealed the decision to the highest court in the nation, the United States Supreme Court.\textsuperscript{59} On June 23, 2016, the Supreme Court was unable to come to a majority decision.\textsuperscript{60} Since there were only eight justices on the Court—after Justice Antonin Scalia's recent death left a vacancy on the Court—\textsuperscript{61} the Court was equally divided in a 4-4 decision.\textsuperscript{62} The Court's one line ruling in the case, "[t]he judgment is affirmed by an equally divided Court," caused the preliminary injunction issued by the District Court to be upheld.\textsuperscript{63} Since the injunction was only temporary the case will go back to the District Court for a full hearing on the merits where Judge Andrew Hanen will decide if the injunction should become permanent.\textsuperscript{64} Scholars predict that his lengthy decision in granting the injunction would result in a decision to make the injunction permanent.\textsuperscript{65} Therefore, one court in Southern Texas will be able to decide the fate of DAPA and Expanded DACA for the entire nation.

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\textsuperscript{56} Texas v. United States, 809 F.3d 134 (5th Cir. 2015), cert. granted, 136 S. Ct. 906 (2016).
\textsuperscript{57} Legal Challenges, supra note 32, at 6.
\textsuperscript{58} Texas, 809 F.3d at 156, 179.
\textsuperscript{59} Texas, 136 S. Ct. 2271.
\textsuperscript{60} Id.
\textsuperscript{62} Texas, 136 S. Ct. at 2272.
\textsuperscript{63} Id.
\textsuperscript{65} Id.
\end{tabular}
\end{center}
D. Nationwide Injunctions

Although the District Court in Southern Texas issued a nationwide injunction halting the implementation of DAPA and Expanded DACA, the authority for a federal court to issue a nationwide injunction is unclear. A preliminary injunction in federal court is governed by Federal Rule of Civil Procedure 65. This rule does not directly authorize nor limit the ability of the federal courts to issue a nationwide injunction. Additionally, the Supreme Court has not specifically released an opinion on the authority of a Court to issue a nationwide injunction.

The Supreme Court has issued an opinion that the lower courts "may command persons properly before it to cease or perform acts outside its territorial jurisdiction." The Court has also warned that in issuing such an order, courts ought not to issue a remedy broader than necessary to redress the complainant's injury. Further, in the context of nationwide class actions, the Supreme Court has recognized that sometimes it would be preferable to allow a claim to be litigated in multiple jurisdictions to allow for different results in different factual scenarios.

Therefore, there are no laws or precedent Supreme Court decisions which directly allow or forbid a federal court from issuing a nationwide injunction. Therefore, a nationwide injunction will have to be analyzed on a case-by-case basis to determine if it was the proper remedy.

II. LIMITING THE NATIONWIDE INJUNCTION

On October 3, 2016, the Supreme Court of the United States declined the Government's petition to rehear the case of United States v. United States District Court for the Northern District of Texas, 86 F. Supp. 3d 591 (N.D. Tex. 2016).
v. Texas. With this denial, the Supreme Court has made clear that it will not issue a decision on the nationwide injunction against DAPA and Expanded DACA in the case of United States v. Texas.

Since this nationwide injunction affects over four million undocumented immigrants currently living in the United States, its applicability needs to be limited to Texas by challenging the nationwide injunction in the other states. This will allow DAPA and Expanded DACA to prevail in the various states that disagreed with the ruling or did not have standing in United States v. Texas. Additionally, having split decisions across the federal district courts and potentially the various circuits of the United States Courts of Appeals could ultimately persuade the Supreme Court to hear the issue, and the injunction in Texas could be lifted allowing the program to operate across the United States.

A. Why the Nationwide Injunction Should Be Eliminated

There are several arguments that can be utilized in order to challenge the nationwide injunction in federal courts across the nation. First, the nationwide injunction is overbroad because only the

75. Id.
76. DAPA and Expanded DACA Memo, supra note 1.
79. Roy E. Hofer, Supreme Court Reversal Rates: Evaluating the Federal Courts of Appeals, A.B.A. (Jan./Feb. 2010), http://www.americanbar.org/content/dam/aba/migrated/intel prop/magazine/LandslideJan2010_Hofer.authcheckdam.pdf (“Statistics indicate that the Court is more likely interested in taking cases to resolve circuit splits, to resolve uncertainty in the law, or to determine important legal or constitutional issues”).
80. See Kent, supra note 73 (listing generally why nationwide injunctions are disfavored):

Critics of nationwide injunctions by the lower federal courts cite the strong incentive of plaintiffs to forum shop (which clearly occurred in the DAPA case and many other instances); the unfairness of a single district judge blocking nationwide a statute or executive policy for up to several years while litigation and appeals drag on; the possibility of conflicting decisions if other lower courts don't heed the injunction and reach a different result; and, as Amanda Frost puts it, the problem of arresting the development of the law if other lower courts do not weigh in on the issue addressed by a single court, "a problem that should particularly concern the Supreme Court, which prefers to hear and decide cases after they have percolated in the lower courts." The government often argues that "comity between circuits" should lead lower courts to refrain from issuing nationwide injunctions—the idea being the each
State of Texas was found to have standing in United States v. Texas. Supra note 73. Second, the nationwide injunction is overbroad based on the interests of society in ensuring a functioning and thriving economy. Supra note 73. Lastly, issuing a nationwide injunction will encourage "forum-shopping" or "judge-shopping" in order to obtain the results a plaintiff is looking for.

1. The Nationwide Injunction is Overbroad Based on Standing

The first argument that can be made against the nationwide injunction is that the District Court’s injunction is overbroad. Supra note 84. Twenty-Four States, the District of Columbia, and the U.S. territories were not parties to the action; a dozen states participated as amici to oppose plaintiffs’ challenge; and only the State of Texas was found to have standing in the case. Supra note 84. The Supreme Court and the Court of Appeals for the Fifth Circuit have found that an injunction “should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs.”

The nationwide injunction imposed by the District Court in Brownsville, Texas is broader than necessary to redress any purported injury to the plaintiff states. Supra note 84. Judge Hanen dismissed the list of claimed injuries that the plaintiffs named in the complaint and only found one injury to hold merit. Supra note 84. This single injury was the cost Texas expects to incur in processing and subsidizing driver’s license applications from the undocumented immigrants given deferred action through DAPA and Expanded DACA. Supra note 84. A preliminary finding that one federal court should stick within its limited territorial area out of respect for its fellow federal courts in other parts of the country.

81. Kent, supra note 73.
82. Id.
83. Id.
84. See Brief for the Appellants, Texas v. United States, 809 F.3d 134 (5th Cir. 2015) (No. 15-40238).
85. Id.
86. Califano v. Yamasaki, 442 U.S. 682, 702 (1979); Lion Health Servs., Inc. v. Sebelius, 635 F.3d 693, 703 (5th Cir. 2011); see also Dep’t of Def. v. Meinhold, 510 U.S. 939 (1993) (staying nationwide injunction insofar as it “grants relief to persons other than” named plaintiff).
87. Brief for the Appellants, supra note 84.
88. Texas, 86 F. Supp. 3d at 616.
89. Id. at 617 (The Court found that “under current Texas law, applicants pay $24.00 to obtain a driver’s license, leaving any remaining costs to be absorbed by the state. If the majority of DAPA beneficiaries currently residing in Texas apply for a driver’s license, it will cost the state $198.73 to process and issue each license, for a net loss of $174.73 per license.”).
state potentially will incur expenses related to issuing driver's licenses should not be imputed to the forty-nine other states and the District of Columbia.\textsuperscript{90} There was no evidence submitted by any other state besides Texas that they would incur driver's license expenses and the District Court did not make a decision finding that this was the case.\textsuperscript{91}

Further, the District Court did not address the economic benefits that states would gain from DAPA and Expanded DACA.\textsuperscript{92} These benefits would include an increased tax revenue, new jobs, higher wages and additional funds entering the stream of commerce through retail and consumer spending.\textsuperscript{93} These benefits could offset the costs Texas may incur from issuing driver's licenses.\textsuperscript{94} An amicus brief submitted by the State of Washington found that that grant of work authorization to individuals under DAPA and expanded DACA in Texas will lead to an estimated $338 million increase in the state tax base over five years.\textsuperscript{95} Additionally, the Court did not consider the fact that each state is free to charge license fees that would cover its costs and potentially increase the revenue stream of the state.\textsuperscript{96} Also, a percentage of those who obtain driver's licenses will also pay for car registration fees which can offset any costs associated with the purported driver's license fees.\textsuperscript{97}

The argument that a court should limit its remedy to only redress the plaintiff's injury can be seen in, \textit{Virginia Society for Human Life, Inc. v. FEC.}\textsuperscript{98} In this case an anti-abortion non-profit corporation challenged a Federal Election Commission (FEC) regulation which defined the term "express advocacy."\textsuperscript{99} The corporation argued that the definition violated the First Amendment because it was impermissibly

\begin{itemize}
  \item \textsuperscript{90} See Brief for the Appellants, \textit{supra} note 84.
  \item \textsuperscript{91} Complaint for Declaratory and Injunctive Relief, \textit{supra} note 45; see also Amended Complaint for Declaratory and Injunctive Relief, \textit{supra} note 46.
  \item \textsuperscript{92} Defending DAPA and Expanded DACA Before the Supreme Court, \textit{supra} note 16.
  \item \textsuperscript{93} \textit{Id.}
  \item \textsuperscript{94} \textit{Id.}
  \item \textsuperscript{95} Amicus Brief of Washington, et al. \textit{Tex. v. U. S.}, 809 F.3d 134 (5th Cir. 2015) (No. 15-40238).
  \item \textsuperscript{96} Adam Liptak & Michael D. Shear, \textit{Supreme Court Tie Blocks Obama Immigration Plan}, \textit{N.Y. Times} (June 23, 2016) ("[Solicitor General Donald B. Verrilli Jr.] Verrilli told the justices that Texas' injury was self-inflicted, a product of its decision to offer driver's licenses for less than they cost to produce and to tie eligibility for them to federal standards").
  \item \textsuperscript{97} See Brief for the Appellants, \textit{supra} note 84.
  \item \textsuperscript{99} \textit{Id.} at 670; see also 11 C.F.R. § 100.22(b) (2000).
\end{itemize}
broad. The District Court found that the regulation violated the First Amendment and enjoined the FEC from enforcing it against the plaintiff as well as "any other party in the United States of America." On appeal, the Fourth Circuit determined that the regulation was in fact unconstitutional as a violation of the First Amendment, but held that "the district court abused its discretion by issuing a nationwide injunction," since it was "broader than necessary to afford full relief to [the plaintiff]." The Court also stated that "[p]reventing the FEC from enforcing [the regulation] against other parties in other circuits does not provide any additional relief to [the plaintiff]." The Court did not want to prevent other circuits from considering the regulation's constitutionality for themselves and did not want to create a binding effect outside of the court's geographic jurisdiction.

Therefore, since a finding was not made that a state besides Texas would suffer an identifiable financial injury, the scope of the injunction should be confined to Texas. Instituting a nationwide injunction will unfairly allow one court to make a decision concerning states which were not a party to the lawsuit.

2. The Nationwide Injunction is Overbroad Based on the Interests of Society

The second argument that can be made against the nationwide injunction is that it is overbroad based on the interests of society. The Fifth Circuit has held that the Court must take into account "the larger interests of society that might be adversely affected by an overly
broad injunction." The Supreme Court has also found that "[d]iscretion in the enforcement of immigration law embraces immediate human concerns." The nationwide injunction will harm the public and the interest of society by forcing families to separate. Thus, undermining the DHS's policy of promoting family unification.

What is at stake here are the lives and security of millions of undocumented immigrants who are currently living, working and raising their families in the United States. These members of society are part of the economy and are necessary to ensure a smooth functioning society. The various jobs held by undocumented immigrants span from fast food service workers to agricultural workers and laborers; jobs that American citizens typically consider undesirable but are vital to a functioning society and to the heart of America. The public will suffer and a large portion of companies that serve consumers will be left with vacancies which in turn will create a slowing economy resulting in financial loss. A program with numerous economic and public benefits is being enjoined on the basis that one state may incur expenses by issuing driver's licenses. It is preposterous that the rest of

110. See Brief for the Appellants, supra note 84, at 55.
111. See DAPA and Expanded DACA Programs, supra note 12.
114. See Liz Robbins & Annie Correal, On a 'Day Without Immigrants,' Workers Show Their Presence by Staying Home, N.Y. TIMES (Feb. 16, 2017), https://www.nytimes.com/2017/02/16/nyregion/day-without-immigrants-boycott-trump-policy.html (discussing the effects of a protest which occurred on February 16, 2017, where immigrants refrained from going to work. A quote from the article highlights the impact stores in the United States had during the protest, "[w]hat began as a grass-roots movement quickly reached the highest levels of federal government . . . The Pentagon warned its employees that a number of its food concessions, including Sbarro's, Starbucks and Taco Bell, were closed because immigrant employees had stayed home and that they could expect longer lines at restaurants that were open").
115. Texas, 86 F. Supp. 3d at 616.
the United States should suffer harm due to this singular potential expense which is limited to the State of Texas.\textsuperscript{116}

Therefore, as the government argued in their brief to the United States Court of Appeals for the Fifth Circuit, “leaving the injunction in place would work immense harm to the public interest by undermining the Department’s efforts to encourage illegal aliens with significant ties to the community and no serious criminal record to come out of the shadows and to request the ability to work legally.”\textsuperscript{117}

3. A Nationwide Injunction Will Encourage “Judge and Forum-Shopping”

The third and final argument against the implementation of a nationwide injunction is the propensity to encourage “judge-shopping” and “forum-shopping.”\textsuperscript{118} “Judge-shopping” is when an attorney specifically chooses what judge their case would be heard in front of in order to inflate their chances of a preferable outcome.\textsuperscript{119} “Generally, attorneys engage in judge-shopping in the belief that judges are, as individuals, predisposed to rule a certain way in specific types of cases, and that a sympathetic judge increases an attorney’s odds of winning their case.”\textsuperscript{120} “Forum-shopping” is defined as a litigant’s attempt “to have his action tried in a particular court or jurisdiction where he feels he will receive the most favorable judgment or verdict.”\textsuperscript{121} According to an article in the Harvard Law Review, “the American legal system tends to treat forum shopping as unethical and inefficient; parties who forum shop are accused of abusing the adversary system and squandering judicial resources.”\textsuperscript{122}

“Judge-shopping” and “forum-shopping” can occur in a plethora of legal arguments and cases, but, it is even more prevalent in cases that involve federal programs and policies that can potentially be brought in various District Courts throughout the United States.\textsuperscript{123}

The case at issue here, United States v. Texas, dealt with an executive

\begin{thebibliography}{99}
\bibitem[116]{} See Brief for the Appellants, \textit{supra} note 84, at 56.
\bibitem[117]{} Defendant’s Emergency Expedited Motion to Stay the Courts February 16, 2015 Order Pending Appeal and Supporting Memorandum at 15, Texas v. United States, 809 F.3d 134 (5th Cir. 2015) (No. 15-40238).
\bibitem[118]{} See Kent, \textit{supra} note 73.
\bibitem[120]{} Id.
\bibitem[121]{} Forum Shopping Reconsidered, 103 Harv. L. Rev. 1677, 1677 (1990).
\bibitem[122]{} Id.
\bibitem[123]{} See Kent, \textit{supra} note 73.
\end{thebibliography}
action that afforded undocumented immigrants across the United States with “deferred action” and the potential for work authorization.\textsuperscript{124} Due to the nationwide applicability of the DAPA and Expanded DACA, those who opposed the policy would be able to determine which District Court would have judges that would rule more favorably for them and which state would tend to share in their views.\textsuperscript{125} This is where the problem lies. Having one court in a particular jurisdiction of the United States decide the fate of a nationwide program based on standing that is limited to that state is inherently unfair and is certain to lead to inconsistent results depending on where the case is filed.\textsuperscript{126}

The nationwide injunction issued by the district court in Texas halting DAPA and Expanded DACA is not the first time a Texas Court was chosen in order to achieve a favorable result for conservative views.\textsuperscript{127} On December 31, 2016, Judge Reed O’Connor of the District Court for the Northern District of Texas instituted a temporary injunction to halt a federal regulation implementing anti-discrimination provisions of the Affordable Care Act (ACA) that would prevent discrimination in health care on the basis of “gender identity” and “termination of pregnancy.”\textsuperscript{128} The Washington Post reported:

Some have criticized nationwide injunctions such as this because it facilitates forum shopping by plaintiffs. There’s little doubt that the plaintiff states filed suit where they did because they expected to find a more sympathetic judge than if they had filed elsewhere, such as in Washington, D.C. That’s good for plaintiffs who wish to challenge federal policy, but it also gives a single federal district court immense power over national policy.\textsuperscript{129}

As the Washington Post found, giving one court the ability to make a decision on a policy that affects that nation yields an enormous amount of power for that court to mold society.\textsuperscript{130} The fact that “judge-shopping” and “forum-shopping” are utilized to select a court or judge with similar views as the plaintiff shows the inherent bias in the procedure and highlights the varying political ideals present in the United

\textsuperscript{124} Texas, 86 F. Supp. 3d at 616.

\textsuperscript{125} See Kent, supra note 73.

\textsuperscript{126} Id.


\textsuperscript{128} Id.


\textsuperscript{130} Id.
States.\textsuperscript{131} Aligning oneself with a court or judge that shares one set of views shuts out the remaining population who has wildly different views and customs.\textsuperscript{132} Therefore, nationwide injunctions should not be utilized, especially to make a decision for the nation when only one state is found to have standing and a purported injury.

\textbf{B. Overcoming the Arguments for a Nationwide Injunction}

Proponents of the nationwide injunction raise several arguments asserting that its nationwide applicability is correct.\textsuperscript{133} First, supporters argue that limiting the injunction to the State of Texas would not fully redress the injury – an increase in fees associated with issuing driver’s licenses.\textsuperscript{134} Proponents also argue that immigration law needs to be consistent with a nationwide policy therefore only a nationwide injunction would be proper.\textsuperscript{135} However, this Article will refute these contentions and establish that the nationwide injunction was improper.

\textbf{1. Limiting the Injunction to Texas Does Not Fully Redress the Injury}

Although there are several arguments for why the nationwide injunction halting DAPA and Expanded DACA should be terminated,\textsuperscript{136} supporters of the nationwide injunction argue that it is the only way to resolve the issue.\textsuperscript{137} One argument for the nationwide injunction to be upheld in \textit{United States v. Texas}, is that it is the only way to ensure with substantial certainty that the State of Texas is afforded a full remedy.\textsuperscript{138}

Even though Texas was the only state which the Court found to have standing in \textit{United States v. Texas}, supporters of the nationwide injunction argue that applying the injunction only to Texas would not fully address the issue of increased costs to the state for issuing driver’s licenses.\textsuperscript{139} Proponents argue that DAPA and Expanded DACA

\textsuperscript{131} See Kent, supra note 73.
\textsuperscript{132} Id.
\textsuperscript{133} Brief for the Appellees, Texas v. United States, 809 F.3d 134 (5th Cir. 2015) (No. 15-40238).
\textsuperscript{134} Id.
\textsuperscript{135} Id.
\textsuperscript{136} See infra Part III, A.
\textsuperscript{137} See Brief for the Appellees, supra note 133.
\textsuperscript{138} Id. at 50.
\textsuperscript{139} Id. at 50-51.
confers lawful presence and work permits that are valid nationwide; millions of eligible aliens could either leave Texas to get DAPA or Expanded DACA and return, or would move from another state to Texas.\textsuperscript{140} This is due to the fact that there is a right to free interstate movement and because Texas is a large state with a varied and bustling economy.\textsuperscript{141}

However, the hypothetical and even more attenuated possibility that an alien accorded deferred action in another state may possibly relocate to Texas and apply for a driver’s license does not justify barring implementation in all fifty states to accommodate one.\textsuperscript{142} Further, there is no basis to the argument that a significant number of people who receive DAPA or Expanded DACA would want to relocate to Texas and apply for a driver’s license.\textsuperscript{143} When this argument was presented in the brief in front of the United States Court of Appeals for the Fifth Circuit, the appellees did not present any statistics nor did they cite any sources for this allegation.\textsuperscript{144}

Further, even if some recipients of DAPA and Expanded DACA did relocate to Texas and obtain drivers licenses, the increase that Texas would see in their economy would easily offset the costs of the license fees.\textsuperscript{145} In 2013, the Center for American Progress issued a report that determined that DAPA and DACA would grow the United States economy cumulatively by $230 billion over ten years.\textsuperscript{146} When looking specifically at Texas, the report found that Texas is estimated to see a cumulative increase of $38.3 billion in gross domestic product (GDP), a $17.6 billion increase in income for all state residents, and an increase of 4,800 jobs annually over a period of ten years.\textsuperscript{147} Therefore, even if the argument that applying an injunction against DAPA and Expanded DACA only to Texas would cause some recipients to obtain drivers licenses in the state, the increase in the state’s economy would far surpass the fees expended.\textsuperscript{148}

\begin{thebibliography}{99}
\bibitem{140} Brief for Appellees, \textit{supra} note 133, at 56.
\bibitem{141} Id.
\bibitem{142} Brief for the Appellants, \textit{supra} note 84, at 56.
\bibitem{143} Id.
\bibitem{144} Brief for the Appellees, \textit{supra} note 133, at 26.
\bibitem{146} Id.
\bibitem{147} Id.
\bibitem{148} Id.
\end{thebibliography}
2. Immigration Law Requires a Nationwide Policy

Another argument for upholding a nationwide injunction against DAPA and expanded DACA is that immigration law is a federal matter that requires a nationwide policy. \(^{149}\) Therefore, proponents of the nationwide injunction argue that immigration laws need to be uniform and should not vary from state to state. \(^{150}\)

This argument stems from Article I, Section 8, clause 4 of the United States Constitution which entrusts the federal legislative branch with the power to “establish a uniform Rule of Naturalization.” \(^{151}\) Further, in 1817, the Supreme Court recognized Congress’s exclusive authority over naturalization. \(^{152}\) In 2012, the Supreme Court held that “states are precluded from regulating conduct in a field that Congress, acting within its proper authority, has determined must be regulated by its exclusive governance.” \(^{153}\) In Arizona, the state passed a statute making failure to comply with federal alien-registration requirements a state misdemeanor. \(^{154}\) The Court found that even if Arizona’s statute could be considered complementary, it intruded on the field of alien registration, which the Federal Government had occupied by comprehensive regime of regulation, leaving no room for states to regulate. \(^{155}\) Further, the state law conflicted with the federal statute by ruling out probation as possible sentence, something permitted under federal law. \(^{156}\)

The precedent of the Supreme Court does establish a strong argument for nationwide application of immigration laws in the United States. \(^{157}\) However, immigration benefits do vary from state to state and this has been upheld by the courts when challenged. \(^{158}\) In 2005, according to the Immigration Policy Project of the National Conference of State Legislators, state legislatures considered approximately 300 immigration and immigration-related bills and passed around 50. \(^{159}\) In

\(^{149}\) Brief for the Appellees, supra note 133, at 55.

\(^{150}\) Id. at 57.

\(^{151}\) U.S. Const. art. I, § 8, cl. 4.

\(^{152}\) Chirac v. Chirac’s Lessee, 15 U.S. 259, 269 (1817).


\(^{154}\) Id. at 2501.

\(^{155}\) Arizona, 132 S. Ct. at 2502.

\(^{156}\) Id. at 2503.

\(^{157}\) Id. at 2492.


\(^{159}\) Id.
2006, 500 bills were considered, 84 of which became law; in 2007, 1,562
immigration and immigrant-related pieces of legislation were intro-
duced and 240 became law.\textsuperscript{160} Further, in 2009, approximately 1,500
laws and resolutions were considered in all 50 state legislatures, and
353 were enacted.\textsuperscript{161} Therefore, these statistics demonstrate that im-
migration policies do vary considerably in each state.\textsuperscript{162}

In 2011, the Supreme Court heard a case which challenged an
Arizona state law; the Legal Arizona Workers Act (LAWA).\textsuperscript{163} LAWA
allows the superior courts of Arizona to suspend or revoke the business
licenses of employers who knowingly hire unauthorized noncitizen
workers.\textsuperscript{164} The Chamber of Commerce of the United States, along
with several business and civil rights organizations, sued to prohibit
the law arguing that it was expressly preempted by federal immigra-
tion regulations.\textsuperscript{165} The plaintiffs argued that the Immigration Reform
and Control Act of 1986 (IRCA), created a comprehensive federal statutory scheme requiring employers to maintain records of employee work eligibility and penalized employers who hired unauthorized workers, and further protected authorized workers from discriminatory hiring practices.\textsuperscript{166} The Supreme Court disagreed with the plaintiffs and al-
lowed LAWA to remain in effect.\textsuperscript{167} The Court reasoned that since the
law did not monetarily or criminally penalize employers and instead
based the law on licensing powers, it could exist.\textsuperscript{168}

Further, the 2012 Supreme Court case of \textit{Arizona v. United
States}, which proponents of the nationwide injunction cite as a basis
for not allowing varied immigration laws by state, did not exclusively
find that the Arizona law being challenged was invalid.\textsuperscript{169} Although
the Court struck down the provision that would have required nonci-
tizens to face state penalties for failing to carry proof of their lawful
status, they upheld the provision that allows state and local law en-
forcement to check an individual's immigration status by contacting
the federal government whenever that individual is already detained
lawfully—on non-immigration grounds—and the officer has reason to

\begin{enumerate}
\item\textsuperscript{160} 2010 Immigration-Related Laws and Resolutions in the States, \en quoting
\item\textsuperscript{161} Id.
\item\textsuperscript{162} Id.
\item\textsuperscript{163} Chamber of Commerce of U.S. v. Whiting, 563 U.S. 582 (2011).
\item\textsuperscript{164} Id. at 594.
\item\textsuperscript{165} Whiting, 563 U.S. 582 at 593.
\item\textsuperscript{166} Id. at 594.
\item\textsuperscript{167} Id. at 611.
\item\textsuperscript{168} Id.
\item\textsuperscript{169} See Arizona, 132 S. Ct. at 2492.
\end{enumerate}
believe that the individual is unlawfully present in the United States. 170

Currently, ten states and the District of Columbia allow unauthorized immigrants to obtain driver's licenses using a foreign passport, birth certificate, or evidence of current residency in the state. 171 Additionally, twenty states allow unauthorized immigrants to attend a public college at the same in-state tuition rate that legal residents and American citizens pay; 172 some states even allow immigrants to apply for and receive financial aid. 173 After the Court case of Arizona v. United States, six states in total have enacted laws requiring the police to question anyone they arrest about immigration status if they suspect the person is in the country illegally. 174

Several counties and states have "sanctuary cities." 175 A "sanctuary city" is "a broad term applied to jurisdictions that have policies in place designed to limit cooperation with or involvement in federal immigration enforcement actions." 176 These policies can be informal or be the result of official laws put in place. 177 The main policy of "sanctuary cities" is to prevent cooperation with federal law enforcement on immigration policies. 178 For example, "in 2015, more than 200 state and local jurisdictions did not honor requests from Immigration and Customs Enforcement (ICE) to detain individuals." 179 Additionally, the Center for Immigration Studies found that approximately "300 sanctuary jurisdictions rejected more than 17,000 detention requests, between January 1, 2014 and September 30, 2015." 180 Federal courts

170. See generally Arizona, 132 S. Ct. at 2525.
172. Park, supra note 171 (listing the following states as allowing unauthorized immigrants to obtain tuition benefits: California, Colorado, Connecticut, Florida, Hawaii, Illinois, Kansas, Maryland, Michigan, Minnesota, Nebraska, New Mexico, New Jersey, New York, Oklahoma, Oregon, Rhode Island, Utah, Vermont and Washington).
173. Id.
174. Id. (listing the following states as allowing police to question people about their immigration status: Alabama, Arizona, Georgia, Indiana, South Carolina and Utah).
176. Id.
177. Id.
178. Id.
179. Id.
have upheld the laws of "sanctuary cities."\textsuperscript{181} For example, the United States Court of Appeals for the Third Circuit ruled that Lehigh County, Pennsylvania did not have to enforce an ICE detainer because it was voluntary.\textsuperscript{182} Therefore, certain states can be seen as more or less desirable to the immigrant population and can influence where noncitizens choose to live.

The premise that allows the states to have varied immigration laws is based on the fact that the Supreme Court has only held that state laws cannot conflict with already established federal laws.\textsuperscript{183} However, the Court does not prevent differences in immigration law to exist when Congress has not established a uniform national law.\textsuperscript{184} President Obama's executive action implementing DAPA and expanded DACA cannot be considered a law established by Congress.\textsuperscript{185} Instead, it is executive guidance intended to ease the burden of those who have been in the United States since children or are parents of citizen children in order to prevent family separation.\textsuperscript{186} Therefore, it cannot be argued that by applying an injunction against DAPA and expanded DACA only in the State of Texas would be undermining an established immigration law instituted by Congress. States have been able to craft immigration laws on their own which in turn make certain states more appealing to immigrants; allowing DAPA and expanded DACA to function in certain states would be akin to this.\textsuperscript{187} DAPA and expanded DACA does not provide recipients with a pathway to citizenship it only defers their removal from the United States and confers on them the benefit to receive work authorization.\textsuperscript{188} This is akin to the concept of "sanctuary cities" where laws have been put in place in various counties, cities and states which prevent those jurisdictions from informing the federal government of the location of immigrants or placing a detainer on them in order to allow the federal government to obtain custody over them, with the possible result being removal from the United States.\textsuperscript{189}

Regardless, if the argument was accepted that the Constitution requires "a uniform rule of Naturalization,"\textsuperscript{190} instead of applying the

\begin{thebibliography}{99}
\bibitem{181} Kopan, supra note 180.
\bibitem{182} Galarza v. Szalczyny, 745 F.3d 634, 645 (3d Cir. 2014).
\bibitem{183} See Arizona, 132 S. Ct. at 2492.
\bibitem{184} Id.
\bibitem{185} DAPA and Expanded DACA Memo, supra note 1.
\bibitem{186} Id.
\bibitem{187} See Park, supra note 171.
\bibitem{188} DAPA and Expanded DACA Memo, supra note 1.
\bibitem{189} See Kopan, supra note 175.
\bibitem{190} U.S. Const. art. I, § 8, cl. 4.
\end{thebibliography}
nationwide injunction across the United States, it should be denied in its entirety.\textsuperscript{191} The fact that only one state has been found to have standing demonstrates the only proper outcome would be to deny injunctive relief altogether as a matter of equity.\textsuperscript{192} The appellants in \textit{United States v. Texas} argued in their brief to the Fifth Circuit:

If the interest in uniformity did preclude a geographically limited injunction, the proper outcome would be to deny injunctive relief altogether as a matter of equity, not to let the tail wag the dog by allowing Texas's voluntary decision to subsidize driver's licenses to dictate the federal government's immigration enforcement policies in forty-nine other States.\textsuperscript{193}

Therefore, the argument that a nationwide injunction needs to be upheld on DAPA and Expanded DACA can be refuted on the basis of the inconsistent immigration laws that exist from state to state.\textsuperscript{194} And, even if the argument was upheld that immigration laws need to be uniform, the only just outcome would be to deny the nationwide injunction altogether.\textsuperscript{195}

\textbf{C. Real-World Application of Limiting the Nationwide Injunction}

The nationwide injunction has had serious consequences for millions of undocumented immigrants living in the United States. Since the injunction in \textit{United States v. Texas}\textsuperscript{196} was upheld by a split decision in the Supreme Court,\textsuperscript{197} and the petition for rehearing was denied,\textsuperscript{198} it may seem as if there is little that can be done to rectify the negative effects. Currently, DAPA and Expanded DACA are halted in all fifty states, making undocumented immigrants across the nation unable to utilize the programs as intended when they were established.\textsuperscript{199} Thus, it can be said that a cloud has drifted over the bright light these people once experienced when President Obama first introduced the programs.

\textsuperscript{191} Brief for the Appellants, \textit{supra} note 84, at 37.
\textsuperscript{192} Id.
\textsuperscript{193} Id.
\textsuperscript{194} See \textit{Park, supra} note 171.
\textsuperscript{195} Supplemental Brief for the Appellants, \textit{Texas v. United States}, 809 F.3d 134 (5th Cir. 2015) (No. 15-40238), 2015 WL 3935167, at *30.
\textsuperscript{196} \textit{Texas v. United States}, 86 F. Supp. 3d at 616.
\textsuperscript{197} \textit{Texas}, 136 S. Ct. at 2272.
\textsuperscript{198} Id.
However, every cloud has a silver lining. Plaintiffs outside of Texas, who have been affected by the injunction, need to initiate lawsuits in several jurisdictions. The effect of multiple lawsuits occurring simultaneously in various states creates the possibility of conflicting decisions across the federal district courts and eventually the various circuits within the United States Court of Appeals. Having a federal court find that the injunction should not be applied in its respective state would have the effect of limiting the injunctions national reach. In reality this would diminish the strength of the ruling in Texas, and circumvent the need for the Supreme Court to make a substantive ruling on the matter to create this effect. Additionally, if several circuits of the United States Court of Appeals come to differing conclusions the Supreme Court would be pressured to hear the issue and come to an ultimate conclusion.

Currently, a brave recipient of the expanded DACA program in New York is following this path and has initiated a lawsuit in the District Court for the Eastern District of New York. In August, 2016, Mr. Batalla Vidal filed his lawsuit in Brooklyn claiming that officials of the United States Citizenship and Immigration Services illegally revoked his work permit. Mr. Vidal finally received his three-year work permit in February 2015, one day after the District Court in United States v. Texas issued the nationwide injunction. Three months later, his permit was revoked by the federal government. This revocation was directly based on the nationwide injunction from United States v. Texas. Mr. Vidal came to the United States from Mexico when he was only seven years old. At the time he filed his lawsuit he was twenty-six years old, which would mean he already spent nineteen years of his life living in the United States. The revo-

200. See supra Part III.
201. Id.
203. Id.
204. Hofer, supra note 79.
206. Id. at 10.
208. Id.
209. Id.; see also Complaint, supra note 205, at 10.
210. Feuer, supra note 207.
211. Id.
cation of his employment authorization affected Mr. Vidal greatly as he had two jobs: one with a catering company and the other as a desk clerk and housekeeper at the New York Sports Club.212 When speaking about the lawsuit Mr. Vidal stated, "Texas has their own laws . . . [b]ut other states, like New York and California, we're different. I just thought it wasn't fair for myself and millions of other people that a judge somewhere else could affect our lives."213

The lawsuit was filed by Michael J. Wishnie, a professor at Yale Law School, and alleges that the Texas injunction does not apply to New York residents.214 Specifically the complaint avers that:

Plaintiff Martín Jonathan Batalla Vidal is not and has never been a party to the Texas v. United States suit. He did not have a full and fair opportunity to defend his interests in that action, and no other party there adequately represented them. In addition, Texas and the other plaintiffs lack standing to obtain, and the District Court in Texas v. United States lacked jurisdiction or authority to enter, an injunction reaching to New York.215

The complaint urges the District Court in New York to issue a declaratory judgment stating that the February 2015 preliminary injunction entered in Texas v. United States does not apply to New York residents.216

The federal judge presiding over Mr. Vidal's case is Judge Nicholas Garaufis.217 Judge Garaufis has made statements that indicate he believes Mr. Vidal does have a case and is willing to consider the fact that a ruling in Texas may not apply to residents of New York.218 Specifically, Judge Garaufis stated, "I don't know what's going on out there in Texas on the border, but I know what's going on in New York."219 He went on to state, "I'm very concerned about it, and I have absolutely no intention of simply marching behind in the parade that's going on out there in Texas, if this person has rights here."220 During a hearing the attorney for the Department of Justice argued that since a nationwide injunction has already been upheld it would be impossible for the Court to issue the injunction Mr. Vidal is requesting.221 Judge

212. Feuer, supra note 207.
213. Id.
214. Id.
216. Id. at 15.
217. Feuer, supra note 207.
218. Id.
219. Id.
220. Id.
221. Id.
Garaufis responded by saying, "I sympathize with your problem, but I do not sympathize with the idea that I am hamstrung in dealing with an issue involving individual rights and including the right to go make a living and have a life as an immigrant in the United States." 222

Mr. Vidal’s case is still pending a resolution, however the statements by the presiding judge indicate that initiating a lawsuit in a state which was not a party or which did not have standing in United States v. Texas can be fruitful and potentially allow DAPA and expanded DACA to operate in particular jurisdictions. 223 Therefore, plaintiffs across the nation should begin to initiate lawsuits challenging the applicability of the nationwide injunction in order to resurrect DAPA and expanded DACA.

CONCLUSION

When President Obama introduced DAPA and expanded DACA an estimated 4.4 million immigrants living in the United States were expected to utilize the programs. People who have been living in the United States since children, those who attend school and work in the United States, and parents of United States citizen children, would finally be removed from the shadows and be able to live fuller, safer and more productive lives. These people are our neighbors, classmates, co-workers and friends. However, the nationwide injunction issued in United States v. Texas halted DAPA and expanded DACA, crushing the dreams of millions of immigrants.

The fact that one court in Texas was able to have such nationwide reach is overbroad and unjust. Recipients of DAPA and expanded DACA, who do not reside in Texas or have any intention to relocate there, were not given their day in court and an opportunity to address an issue that greatly affects them. However, all hope is not lost for these people. Immigrants outside of Texas who have been directly affected by the nationwide injunction need to band together and initiate an overwhelming number of lawsuits arguing that the injunction issued in Texas should not reach to the other forty-nine states. This nationwide injunction needs to be devalued and eventually eliminated. Conflicting decisions from federal courts across the nation is the way to effectuate this.

The United States has and always will be a nation founded by immigrants. Therefore, nonprofit organizations, civil rights groups and

222. Feuer, supra note 207.
223. Id.
attorneys need to assist those affected in filing these lawsuits and allow the hopes of millions of people to once again return to this country.224

224. Since this article was written there has been considerable action by the Trump administration regarding DAPA and DACA. On June 15, 2017, then-Secretary of Homeland Security John Kelly issued a memorandum rescinding the DAPA program. See John F. Kelly, U.S. DEPT. OF HOMELAND SEC., Rescission of November 20, 2014 Memorandum Providing for Deferred Action for Parents of Americans and Lawful Permanent Residents (“DAPA”) (June 15, 2017), https://www.dhs.gov/sites/default/files/publications/DAPA%20Cancellation%20Memo.pdf. That memorandum allowed the June 15, 2012 DACA memorandum to remain in effect as well as some expanded DACA permits that were issued as a result of the November 20, 2014 memorandum creating DAPA and expanded DACA. Id. On June 20, 2017, Texas Governor Abbott authored a letter to Attorney General Sessions which threatened litigation by ten states if the 2012 DACA executive order was not rescinded. See Letter from Ken Paxton, Attorney General of Texas, to Jeff Sessions, Attorney General of the United States (June 29, 2017), https://www.texasattorneygeneral.gov/files/epress/DACAletter_6_29_2017.pdf. This was based on an assertion that since the pending litigation—in United States v. Texas—blocked DAPA and expanded DACA from going forward, the 2012 DACA program should also be blocked based on similar reasoning. Id. On September 5, 2017, Acting Secretary Elaine C. Duke issued a memorandum which rescinded the June 15, 2012 memorandum creating DACA. See Elaine C. Duke, U.S. DEPT. OF HOMELAND SEC., Rescission of the June 15, 2012 Memorandum Entitled “Exercising Prosecutorial Discretion With Respect to Individuals Who Came to the United States as Children” (Sept. 5, 2017), https://www.dhs.gov/news/2017/09/05/memorandum-rescission-daca. A large portion of the memorandum was dedicated to discussing the nationwide injunction regarding DAPA and expanded DACA and the ongoing litigation in United States v. Texas. Id. As this article discusses, the nationwide injunction was issued based on the contention that the memorandum creating DAPA and expanded DACA did not comply with the Administrative Procedure Act’s (APA) notice and comment procedures. See discussion supra Part I.C. There has been a great deal of contention regarding whether or not President Trump’s decision to rescind the same program—without complying with the APA’s notice and comment requirements—would be contrary to law. See Anna Giaritelli, Trump’s DACA Decision Hit With Five Lawsuits in Three Weeks, WASH. EXAMINER (Sept. 26, 2017), http://www.washingtonexaminer.com/trumps-daca-decision-hit-with-five-lawsuits-in-three-weeks/article/2635595. This argument has formed the basis for multiple lawsuits against the rescission of the 2012 DACA program; which are currently pending. Id. Further, on September 5, 2017, in response to the Trump administration rescinding the DACA program in its entirety the plaintiffs in United States v. Texas filed a notice to voluntarily dismiss the lawsuit that was still pending. See Josh Gerstein, Judge Rebuffs Red States’ Effort to Drop Suit Against Obama Immigration Actions, POLITICO (Sept. 8, 2017), https://www.politico.com/blogs/under-the-radar/2017/09/08/judge-rebuffs-dropping-dapa-lawsuit-242507. However, on September 8, 2017, Judge Hanen denied the motion to dismiss the lawsuit and held that voluntary dismissal “is not appropriate in a case which has had the extensive and hard-fought clashes over the merits that this one has.” Id. Based on this ruling the case of United States v. Texas is still pending in front of the District Court for the Southern District of Texas for a full hearing on the merits. If the Court proceeds with the case the decision of whether or not the memorandum creating DAPA and expanded DACA complied with the rulemaking procedures of the APA will be important in the pending litigation over the rescission of the 2012 DACA program. Therefore, the court case of United States v. Texas, should be followed by those interested in the current litigation surrounding the rescission of DACA because the ultimate determination may have bearing over the 2012 DACA program in an unattended way.