



TEXAS LEGISLATIVE STUDY GROUP

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March 16, 2018

LSG UPDATE ON SENATE BILL 4, SANCTUARY CITIES LITIGATION

On Tuesday, March 13, the three-judge panel of the United States Court of Appeals for the Fifth Circuit issued a decision on a preliminary injunction and nearly completely reversed a previous ruling by a federal judge in San Antonio, thus allowing Texas' ban on "sanctuary cities" to take effect while legal challenges proceed.

U.S. District Judge Orlando Garcia halted several parts of the bill last August, including a provision that requires jail officials to honor all detainers—or "immigration holds". In addition, Judge Garcia blocked sections that prevent local entities from limiting the enforcement of immigration laws and another that prohibits law enforcement from "assisting or cooperating" with federal immigration officers. While halting part of the law, he ruled provisions of the bill that allow police chiefs, sheriffs and other department heads to forbid officers from questioning a person's immigration status can remain in place. After Garcia's ruling, the state appealed and asked a three-judge panel of the 5th Circuit to lift Garcia's ruling while the case played out.

As many may recall — Senate Bill 4, passed during the 85th Legislative Session in May 2017 — mandates law enforcement officials to cooperate with federal immigration officials, and permits the police to question the immigration status of anyone they arrest. It was passed in response to the ongoing crack-down and discussion over sanctuary cities, which restrict cooperation with the federal government and have gained national attention as President Trump's administration pursues stricter immigration policies.

Since the bill was introduced, law enforcement officials expressed concerns that the legislation would harm efforts to stop crime rather than improve them. Police chiefs, who set the agenda for their departments, testified that they believe the law will make daily policing more difficult. If someone is a victim or a witness to a crime, police wants people to report crime, regardless of their immigration status. Most believe that if individuals are scared they'll be deported when they come forward, key leads will dry up and crimes will become harder to solve. There are worries among immigrant and minority communities that this law can turn routine exchanges like traffic stops for a broken taillights into excuses for police to question and flag immigrants for deportation.

While the appeals panel upheld the majority of the law, it prevented one element from going into effect: a clause that prohibits local officials from "endorsing" policies that limit immigration enforcement. Officials can be forbidden to enact or enforce such policies, the panel ruled, but a ban on endorsements violates the First Amendment. The judges upheld all other parts of the law, rejecting plaintiff's arguments that it failed to adequately define the prohibited conduct and would encourage or lead to racial profiling of apprehended individuals. In the ruling, Judge Edith Jones expressed doubt that the plaintiffs chances moving forward, writing in the decision that they "have

not made a showing that they are likely to succeed on the merits of any of their constitutional claims”.

Lee Gelernt, deputy director of the American Civil Liberties Union’s Immigrants’ Rights Project and a lawyer for several of the plaintiffs, said they were weighing all options and considering whether to appeal. He added they would probably make a decision in the coming days. The first step in an appeal would most likely be to request a review by the full Fifth Circuit court.

UPDATE ON PERMANENT LEGISLATIVE SOLUTION ON DACA PROGRAM

Since the Trump administration announced on September 5, 2017 that it was winding down and ultimately ending the Deferred Action for Childhood Arrivals (DACA) program, there’s been much confusion among advocates and DACA recipients about what is going on.

The White House and Congress had repeatedly cited March 5 — the date President Trump picked for Congress to finally find a solution for the 690,000 undocumented immigrants protected under DACA — as a clear deadline. Congress officially failed to meet that deadline without any substantial legislation to show for it.

While the deadline was approaching and pressure mounting on Congress to find a fix, and despite a failed attempt by Democrats to shut down the government unless a DACA solution was passed, it was ultimately the courts that gave recipients any sort of temporary relief.

In January, a federal judge in California issued an injunction against the Trump administration’s wind-down of DACA, and ordered the US Customs and Immigration Services (USCIS) agency to resume accepting renewal applications in a timely manner. The Trump administration appealed the judge’s order to the 9th Circuit Court of Appeals in California and additionally asked the Supreme Court to hear the case and bypass the lower court.

Additionally, a second judge, in New York, also issued an injunction in February. This means that that even if one of the two orders got overturned, USCIS will have to keep accepting and processing renewals.

A week before the March 5 deadline, the Supreme Court rejected a request from the Trump administration to review the California order directly. As a result, the appeal it will go through the normal process, appealing the California order to the 9th Circuit Court of Appeals (which agreed to expedite the appeal) and presumably appeal the New York order to the 2nd Circuit Court of Appeals. These lawsuits are probably going to have to go back to the Supreme Court if the federal government wants any hope of getting the California order overturned.

While all this provides DACA recipients a small sigh of relief, this is not permanent and simply kicks the can further down the road. Simply because USCIS is processing and renewing DACA work permits, it doesn’t restore the program to where it was before the September 5 announcement. USCIS is only accepting DACA “renewals”. Unauthorized immigrants who turned 15 after September 5 of last year and become eligible still won’t be able to apply. This also includes and individuals who would have qualified for DACA but couldn’t afford a \$495 application fee, or for whatever other reason they may have had for not applying.

While the appeal process plays out, immigrants whose DACA permits have expired are not being rounded up by ICE. The Trump administration has said clearly that ICE won't actively target people whose DACA work permits have expired, but it's said just as clearly that if ICE agents happen to come across immigrants who have lost DACA protections, they're just as vulnerable to arrest or deportation as anyone else. Some have already been arrested, turned over to ICE agents, and put in removal proceedings.

This ordeal has caused irrevocable anxiety and fear among DACA recipients, and unfortunately it does not appear to be over anytime soon. Congress still has the ability to clear the uncertainty, but it failed to pass meaningful legislation even with a deadline, and it may have less urgency now that they no longer have one.

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Raul Lopez is the new Executive Director for the Legislative Study Group. If you have any questions about this policy paper or any future matter related to LSG, please do not hesitate to contact him, either by email at Raul@texaslsg.org, or by phone at (512) 787-7199.

Raul comes to the LSG with a wealth of policy knowledge after having worked for Rep. Abel Herrero and most recently for Rep. Armando Walle as both his District Liaison in Houston and Legislative Director. Raul was the primary staffer that oversaw Rep. Walle's work on the House Committee on Appropriations and has great understanding of how the budget process works.