

NO. 15-40238

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

STATE OF TEXAS; STATE OF ALABAMA; STATE OF GEORGIA; STATE OF IDAHO;
STATE OF INDIANA; STATE OF KANSAS; STATE OF LOUISIANA; STATE OF
MONTANA; STATE OF NEBRASKA; STATE OF SOUTH CAROLINA; STATE OF SOUTH
DAKOTA; STATE OF UTAH; STATE OF WEST VIRGINIA; STATE OF WISCONSIN;
PAUL R. LEPAGE, Governor, State of Maine; PATRICK L. MCCRORY, Governor, State of
North Carolina; C. L. "BUTCH" OTTER, Governor, State of Idaho; PHIL BRYANT, Governor,
State of Mississippi; STATE OF NORTH DAKOTA; STATE OF OHIO; STATE OF
OKLAHOMA; STATE OF FLORIDA; STATE OF ARIZONA; STATE OF ARKANSAS;
ATTORNEY GENERAL BILL SCHUETTE; STATE OF NEVADA; STATE OF
TENNESSEE,

Plaintiffs - Appellees

v.

UNITED STATES OF AMERICA; JEH CHARLES JOHNSON, Secretary,
Department Of Homeland Security; R. GIL KERLIKOWSKE, Commissioner of U.S. Customs
and Border Protection; RONALD D. VITIELLO, Deputy Chief of U.S. Border Patrol, U.S.
Customs and Border Protection; SARAH R. SALDANA, Director of U.S. Immigration and
Customs Enforcement; LEON RODRIGUEZ, Director of U.S. Citizenship and Immigration
Services,

Defendants - Appellants

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, HAWAII, ILLINOIS, IOWA, MARYLAND,
MASSACHUSETTS, NEW MEXICO, NEW YORK, OREGON, RHODE ISLAND,
VERMONT, VIRGINIA, AND THE DISTRICT OF COLUMBIA IN SUPPORT
OF THE UNITED STATES**

ROBERT W. FERGUSON
Attorney General

Noah G. Purcell, WSBA 43492
Solicitor General
Counsel of Record

Anne E. Egeler, WSBA 20258
Deputy Solicitor General

Washington Office of Attorney General
PO Box 40100
Olympia, WA 98504-0100
360-753-6200 (office)
noahp@atg.wa.gov

Additional Amici Listed On Signature Page

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	IDENTITY AND INTEREST OF AMICUS CURIAE	2
III.	ARGUMENT	2
	A. Plaintiffs Failed to Prove the Elements Required to Obtain Preliminary Injunctive Relief	3
	1. Plaintiffs Failed to Show Irreparable Injury Because States Will Benefit From the Immigration Directives	3
	2. The Equities and Public Interest Disfavored Injunctive Relief	8
	B. The Injunction Is Overbroad	13
IV.	CONCLUSION.....	14

TABLE OF AUTHORITIES

Cases

<i>Arizona Dream Act Coal. v. Brewer</i> , 757 F.3d 1053 (9th Cir. 2014).....	4
<i>Aviation Consumer Action Project v. Washburn</i> , 535 F.2d 101 (D.C. Cir. 1976)	8, 13
<i>Bluefield Water Ass’n, Inc. v. City of Starkville</i> , 577 F.3d 250 (5th Cir. 2009).....	6
<i>Canal Auth. of Fla. v. Callaway</i> , 489 F.2d 567 (5th Cir. 1974).....	2
<i>Davis v. Romney</i> , 490 F.2d 1360 (3d Cir. 1974).....	13
<i>Dennis Melancon, Inc. v. City of New Orleans</i> , 703 F.3d 262 (5th Cir. 2012).....	2
<i>Diginet, Inc. v. W. Union ATS, Inc.</i> , 958 F.2d 1388 (7th Cir. 1992).....	5
<i>Hollon v. Mathis Indep. Sch. Dist.</i> , 491 F.2d 92 (5th Cir. 1974).....	13
<i>Janvey v. Alguire</i> , 647 F.3d 585 (5th Cir. 2011).....	3
<i>Roho, Inc. v. Marquis</i> , 902 F.2d 356 (5th Cir. 1990).....	13, 14
<i>Stormans, Inc. v. Selecky</i> , 586 F.3d 1109 (9th Cir. 2009).....	14
<i>Terrebonne v. Blackburn</i> , 646 F.2d 997 (5th Cir. 1981).....	5

Territory of Alaska v. Am. Can Co.,
358 U.S. 224 (1959) 5

Texas v. United States,
106 F.3d 661 (5th Cir. 1997)..... 4

Winter v. Natural Res. Def. Council, Inc.,
555 U.S. 7 (2008) 12

Statutes

8 U.S.C. § 1621 4

Nev. Rev. Stat. 483.291 5, 7

Utah Code 53-3-207..... 7

Rules

Fed. R. App. P. 29(a)2

Other Authorities

Applied Research Center, Seth Freed Wessler,
*Shattered Families: The Perilous Intersection of Immigration
Enforcement and the Child Welfare System* (Nov. 2011)
available at [http://www.immigrationresearch-info.org/
report/other/shattered-families-perilous-intersection-immigration-
enforcement-and-child-welfare-syst](http://www.immigrationresearch-info.org/report/other/shattered-families-perilous-intersection-immigration-enforcement-and-child-welfare-syst)..... 12

*Budgetary Effects of Immigration-Related Provisions of the House-Passed
Version of H.R. 240, An Act Making Appropriations for the Department
of Homeland Security, Congressional Budget Office* (Jan. 29, 2015),
available at [http://www.cbo.gov/sites/default/files/cbofiles/
attachments/hr240.pdf](http://www.cbo.gov/sites/default/files/cbofiles/attachments/hr240.pdf). 6

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 Apr. 2, 2015) 9

Center for American Progress,
How Today’s Immigration Enforcement Policies Impact Children, Families, and Communities: A View from the Ground (Aug. 2012)
available at <https://www.americanprogress.org/wp-content/uploads/2012/08/DrebyImmigrationFamiliesFINAL.pdf>..... 11

Center for American Progress,
The Facts on Immigration Today (Oct. 23, 2014), available at
<http://cdn.americanprogress.org/wp-content/uploads/2013/04/ImmigrationFacts-brief-10.23.pdf>..... 11

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-31-States>
(last visited Apr. 2, 2015)..... 6, 9

Dr. Raul Hinojosa-Ojeda,
From the Shadows to the Mainstream: Estimating the Economic Impact of Presidential Administrative Action and Comprehensive Immigration Reform (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>..... 9

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 Apr. 2, 2015) 10

Fiscal Note, SB 303 (Mar. 29. 2013),
available at <http://www.leg.state.nv.us/Session/77th2013/FiscalNotes/5654.pdf> 5, 7

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 Apr. 2, 2015)..... 9

Nat'l Hwy Traffic Safety Admin.,
http://www-nrd.nhtsa.dot.gov/departments/nrd-30/ncsa/STSI/49_UT/2013/49_UT_2013.htm (last visited Apr. 3, 2015)..... 5

Natalia Lee et al.,
National Survey of Service Providers on Police Response to Immigrant Crime Victims, U Visa Certification and Language Access (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>..... 10

Nevada Dept. of Motor Vehicles, Residency and Proof of Identity,
<http://www.dmvnv.com/dlresidency.htm#non>
(last visited Apr. 2, 2015)..... 5, 7

Pew Research Center,
Unauthorized Immigrants in the U.S., 2012 (Nov. 18, 2014),
<http://www.pewhispanic.org/interactives/unauthorized-immigrants-2012/> (last visited Apr. 2, 2015)..... 7

Police Foundation, Anita Khashu,
The Role of Local Police: Striking a Balance Between Immigration Enforcement and Civil Liberties (2009), available at
<http://www.policefoundation.org/sites/g/files/g798246/f/Khashu%20%282009%29%20-%20The%20Role%20of%20Local%20Police.pdf>..... 10

The Urban Institute, Ajay Chaudry et al.,
Facing Our Future: Children in the Aftermath of Immigration Enforcement (Feb. 2010) available at http://www.urban.org/uploadedpdf/412020_FacingOurFuture_final.pdf..... 11

Univ. of Illinois at Chicago,
Dep't of Urban Planning and Policy, Nik Theodore,
Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement (May 2013), available at http://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF 10

Univ. of S. Cal. CSII, Manuel Pastor, et al.,
What's at Stake for the State: Undocumented Californians, Immigration Reform, and Our Future Together (May 2013) available at http://dornsife.usc.edu/assets/sites/731/docs/whats_at_stake_for_the_state.pdf 11

Utah Department of Public Safety, Driver Privilege Card,
<http://publicsafety.utah.gov/dld/dpc.html>
(last visited Apr. 2, 2015)..... 7

I. INTRODUCTION

Unhappy with recent federal immigration directives, Plaintiffs filed suit. The district court granted them the extraordinary remedy of a preliminary injunction based on an alleged violation of the Administrative Procedure Act (APA) and the Plaintiffs' claim that the directives will irreparably harm them by requiring them to issue more driver's licenses. These holdings are unsupportable.

The reality is that the directives are lawful, will substantially benefit States, and will further the public interest. In holding to the contrary, the district court relied entirely on speculative claims of harm by one Plaintiff—Texas. But Texas' assertions failed to justify an injunction even as to Texas, much less nationwide. Indeed, several of the Plaintiff States already offer driver's licenses to undocumented immigrants. The district court's order protects them from the “irreparable harm” of doing what they already are.

More broadly, as the amici States demonstrate below, the directives will actually benefit States and further the public interest by allowing qualified undocumented immigrants to come out of the shadows, work legally, and better support their families. This will increase State tax revenue, enhance public safety, and help avoid tragic situations in which parents are deported away from their U.S. citizen children, who are left to rely on State services or extended family. There was no basis for the injunction, and this Court should reverse.

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, Vermont, Virginia, 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 appeal because of the millions of residents in our States who would benefit from the directives the district court erroneously enjoined and because of the economic, humanitarian, and public safety benefits that our States will receive through these directives. 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

“[A] preliminary injunction is an extraordinary and drastic remedy which should not be granted unless the movant clearly carries the burden of persuasion.” *Canal Auth. of Fla. v. Callaway*, 489 F.2d 567, 573 (5th Cir. 1974). The plaintiff must have “clearly carried the burden of persuasion” as to “*each* of four traditional criteria in order to be entitled to a preliminary injunction: (1) irreparable injury, (2) substantial likelihood of success on the merits, (3) a favorable balance of hardships, and (4) no adverse effect on the public interest.” *Dennis Melancon, Inc. v. City of New Orleans*, 703 F.3d 262, 268 (5th Cir. 2012) (internal quotation

marks omitted). The Plaintiffs failed to meet their burden. And although this Court generally reviews a preliminary injunction for abuse of discretion, relevant here, “a decision grounded in erroneous legal principles is reviewed de novo.” *Janvey v. Alguire*, 647 F.3d 585, 592 (5th Cir. 2011) (quoting *Byrum v. Landreth*, 566 F.3d 442, 445 (5th Cir. 2009)).

A. Plaintiffs Failed to Prove the Elements Required to Obtain Preliminary Injunctive Relief

To avoid redundancy, the amici States will not repeat the United States’ compelling arguments as to why the district court erred in holding that Plaintiffs’ APA claim was likely to succeed. Instead, the amici States will focus on the other three elements of the preliminary injunction test: irreparable injury, the balance of hardships, and the public interest. The amici States will also explain why the preliminary injunction is so overbroad that this error independently merits reversal.

1. Plaintiffs Failed to Show Irreparable Injury Because States Will Benefit From the Immigration Directives

The only “irreparable injury” the district court found Plaintiffs would suffer was increased costs to process applications for driver’s and other licenses. ROA.4490-91. This erroneous conclusion relied on several mistakes of law, and thus is reviewed de novo. *See Janvey*, 647 F.3d at 592.

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 and to set fees for licenses. 8 U.S.C. § 1621. The district court nonetheless concluded that Plaintiffs—including those in the Fifth Circuit, like Texas—will have to provide driver’s licenses under the Ninth Circuit’s ruling in *Arizona Dream Act Coal. v. Brewer*, 757 F.3d 1053 (9th Cir. 2014). But *Arizona Dream Act* merely held that *if* a State gives driver’s licenses to some immigrants who have temporary authorization to remain in the United States, it cannot deny licenses to other such immigrants without a rational basis. *Id.* at 1062. States retain great leeway in issuing licenses and in the fees they charge for them, so long as distinctions they draw are related to legitimate state interests and not irrationally discriminatory. Having to thus comply with the constitutional prohibition against discrimination cannot be considered an irreparable injury.

Even if costs Plaintiffs incur because of their own laws count as “irreparable injuries,” the district court erred in evaluating Plaintiffs’ evidence of harm in two crucial respects. Each independently merits reversal.

First, the district court erred as a matter of law by looking only at the harms Plaintiffs claimed they would incur because of the directives, not the many benefits they will accrue. A plaintiff cannot show irreparable injury where the evidence

suggests he will actually be better off if an injunction is denied. *Cf. Diginet, Inc. v. W. Union ATS, Inc.*, 958 F.2d 1388, 1394 (7th Cir. 1992) (noting that preliminary relief makes little sense where “the harm to the plaintiff from refusing a preliminary injunction would actually be negative”) (Posner, J.).

Here, for example, the district court never considered new revenue States would receive from driver’s license fees. But at least one Plaintiff, Nevada, already offers a form of driver’s license to undocumented immigrants¹ and has concluded that doing so *increases* state revenue because the increased fees outweigh new administrative costs.² Even in the unknown number of Plaintiff States where licensing fees do not cover administrative costs, those States presumably subsidize driver’s licenses because they see some offsetting benefit in doing so, such as reducing traffic accidents and increasing rates of insurance coverage.³ They offered no evidence or argument whatsoever that these benefits would be any smaller in licensing undocumented immigrants.

¹ See Nevada Rev. Stat. 483.291; Nevada Dep’t of Motor Vehicles, Residency and Proof of Identity, <http://www.dmvnv.com/dlresidency.htm#non> (last visited Apr. 2, 2015).

² See Fiscal Note, SB 303 (Mar. 29, 2013), available at <http://www.leg.state.nv.us/Session/77th2013/FiscalNotes/5654.pdf>. See also, e.g., *Terrebonne v. Blackburn*, 646 F.2d 997, 1000 n.4 (5th Cir. 1981) (“Absent some reason for mistrust, courts have not hesitated to take judicial notice of agency records and reports.”); *Territory of Alaska v. Am. Can Co.*, 358 U.S. 224, 227 (1959) (permitting federal courts to take judicial notice of the legislative history of a bill).

³ See, e.g., ROA.2614-16; Nat’l Hwy Traffic Safety Admin., showing reduction in fatality accidents since licensing undocumented aliens in 2005, http://www-nrd.nhtsa.dot.gov/departments/nrd-30/ncsa/STSI/49_UT/2013/49_UT_2013.htm (last visited Apr. 3, 2015).

More broadly, the immigration directives will significantly increase state tax revenues by allowing undocumented immigrants to pursue more and better jobs and increase their income. For example, and as explained in more detail below, Texas's tax revenues are projected to increase by roughly \$338 million over the next five years as a result of the directives.⁴ And while Plaintiffs might quibble with the precise estimates, the principle that allowing undocumented immigrants to work legally increases tax revenue is widely accepted. For example, the nonpartisan Congressional Budget Office has concluded that stopping the directives from taking effect will cost the federal government roughly \$22 billion in lost tax revenue over the next ten years.⁵

The district court declined to consider this evidence, finding that “the presence of damages or off-setting benefits is too speculative to be relied upon.” ROA.4430. But it was *Plaintiffs'* burden to prove that they would clearly be irreparably injured by the directives. *Bluefield Water Ass'n, Inc. v. City of Starkville*, 577 F.3d 250, 252 (5th Cir. 2009). To the extent the district court could

⁴ 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-31-States> (last visited Apr. 2, 2015).

⁵ *Budgetary Effects of Immigration-Related Provisions of the House-Passed Version of H.R. 240, An Act Making Appropriations for the Department of Homeland Security*, Congressional Budget Office (Jan. 29, 2015), available at <http://www.cbo.gov/sites/default/files/cbofiles/attachments/hr240.pdf>.

not tell whether the directives' benefits to States outweighed their harms, it should have denied relief. Likely financial benefit is not irreparable harm.

The second legal error in the district court's irreparable injury analysis was basing its injunction on findings of harm that related to only one of the Plaintiff States: Texas. 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. ROA.4490 (citing U.S.D.C. S.D. Tex. Dkt. No. 64, Ex. 24). It was improper for the district court to accept Texas's evidence as dispositive for all Plaintiffs. For example, as noted above, Plaintiff State of Nevada already offers a form of driver's license to undocumented immigrants⁶ and has concluded that doing so *increases* state revenue.⁷ Moreover, at least one other Plaintiff State, Utah, already grants a form of driver's license to undocumented immigrants,⁸ and many other Plaintiff States have very small undocumented immigrant populations,⁹ so any claim of across-the-board injury from a massive influx of license applicants is untenable. Given these

⁶ See Nevada Rev. Stat. 483.291; Nevada Dep't of Motor Vehicles, Residency and Proof of Identity, <http://www.dmvnv.com/dlresidency.htm#non> (last visited Apr. 2, 2015).

⁷ See Fiscal Note, SB 303 (Mar. 29, 2013), *available at* <http://www.leg.state.nv.us/Session/77th2013/FiscalNotes/5654.pdf>.

⁸ See Utah Code 53-3-207; Utah Department of Public Safety, Driver Privilege Card, <http://publicsafety.utah.gov/dld/dpc.html> (last visited Apr. 2, 2015).

⁹ 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 Apr. 2, 2015).

significant differences between States, the district court committed clear legal error by entering 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.”).

2. 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.

There is strong 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.¹⁰ In Washington State, for example, approximately 105,000 people are likely to be eligible for deferred immigration action.¹¹ Moving these people into the legal workforce would increase Washington's tax revenues by an estimated \$57 million over the next five years.¹² California, with an anticipated 1,214,000 people eligible for deferred immigration action, would see tax revenues grow by around \$904 million over the next five years if those people received temporary work permits as a result of the immigration directives.¹³ The tax consequences for the Plaintiff States are also positive. For example, if the estimated 594,000 undocumented immigrants eligible for deferred action in Texas receive temporary work permits, it will lead to an estimated \$338 million increase in state tax revenue over five years.¹⁴

¹⁰ 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> (last visited Apr. 2, 2015).

¹¹ 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 Apr. 2, 2015).

¹² 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 Apr. 2, 2015).

¹³ 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-31-States> (last visited Apr. 2, 2015).

¹⁴ *Id.*

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.¹⁵ 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,¹⁶ and law enforcement's experience with recipients of U-Visas, a form of temporary legal immigration status, confirms that addressing deportation concerns can encourage undocumented immigrants to cooperate with police.¹⁷ Additionally, the immigration directives protect public safety by requiring certain undocumented immigrants to pass criminal and national security background checks.¹⁸

¹⁵ 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>.

¹⁶ 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.

¹⁷ 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>.

¹⁸ 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 Apr. 2, 2015).

In addition to providing fiscal and public-safety benefits, the immigration directives are also likely to lead to other important social benefits, including for the 16 million people living in mixed-status families.¹⁹ One in five undocumented immigrant adults living in the United States has a spouse that is a U.S. citizen or lawful permanent resident, and around 3.8 million undocumented immigrants have children who are U.S. citizens.²⁰ In California alone, some 1.2 million children are U.S. citizens who live with an undocumented parent.²¹ In the first six months of 2011, more than 46,000 parents of U.S. citizen children were deported.²² Removing an undocumented parent can subject those children to housing instability, food insecurity, and other harms.²³ Indeed, many such children are

¹⁹ Center for American Progress, *How Today's Immigration Enforcement Policies Impact Children, Families, and Communities: A View from the Ground* at p. 1 (Aug. 2012) available at https://www.americanprogress.org/wp-content/uploads/2012/08/DrebyImmigrationFamilies_FINAL.pdf.

²⁰ Center for American Progress, *The Facts on Immigration Today* at p. 5 (Oct. 23, 2014), available at <http://cdn.americanprogress.org/wp-content/uploads/2013/04/ImmigrationFacts-brief-10.23.pdf>.

²¹ Univ. of S. Cal. CSII, Manuel Pastor, et al., *What's at Stake for the State: Undocumented Californians, Immigration Reform, and Our Future Together* at p. 15 (May 2013) available at http://dornsife.usc.edu/assets/sites/731/docs/whats_at_stake_for_the_state.pdf.

²² Center for American Progress, *How Today's Immigration Enforcement Policies Impact Children, Families, and Communities : A View from the Ground* at p. 1 (Aug. 2012) available at https://www.americanprogress.org/wp-content/uploads/2012/08/DrebyImmigrationFamilies_FINAL.pdf.

²³ The Urban Institute, Ajay Chaudry et al., *Facing Our Future: Children in the Aftermath of Immigration Enforcement* at pp. 27-33 (Feb. 2010) available at http://www.urban.org/uploadedpdf/412020_FacingOurFuture_final.pdf.

forced into foster care,²⁴ at significant expense to States.

The district court also erred in assessing the public interest. The court found that “the public interest factor that weighs the heaviest is ensuring that actions of the Executive Branch . . . comply with this country’s laws.” ROA.4495-96. But this is simply a restatement of the district court’s legal finding of an APA violation, a finding that, as the United States has already explained, is unsupportable.

Meanwhile, the district court 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. ROA.4495. But receiving deferred action and work authorization are critically important to the millions of people eligible. They will finally be able to 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

²⁴ Applied Research Center, Seth Freed Wessler, *Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System* at pp. 6, 23 (Nov. 2011) available at <http://www.immigrationresearch-info.org/report/other/shattered-families-perilous-intersection-immigration-enforcement-and-child-welfare-syst> (last visited Apr. 2, 2015).

benefit through increased tax revenue, enhanced public safety, and fewer heartbreaking incidents in which U.S. citizen children are separated from their deported parents and left to rely on extended family or state social services. The equities and public interest weighed heavily against an injunction.

B. The Injunction Is Overbroad

An independent reason to reverse the injunction is that it is substantially overbroad. The district court abused its discretion by imposing a remedy that went far beyond what was necessary to prevent the harm allegedly at issue.

This Court has long held that 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). Put another way, “any relief granted should be no broader than necessary to cure the effects of the harm caused.” *Roho, Inc. v. Marquis*, 902 F.2d 356, 361 (5th Cir. 1990) (internal quotation marks omitted). Thus, 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)).

The district court ignored these principles. It entered a broad, nationwide injunction, even though the only evidence of harm it cited related to driver's license costs in Texas. Meanwhile, thirteen Amici States were before the court arguing that we would benefit from the directives, many other States never joined Plaintiffs' lawsuit and have never alleged that the directives will harm them, and even the vast majority of Plaintiff States offered no evidence that the directives would harm them. 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., Roho*, 902 F.2d at 361; *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)).

In short, even if the district court's flawed findings of harm to the Plaintiff States 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.

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 reverse the district court's order so that we may begin to enjoy the benefits of these reforms.

RESPECTFULLY SUBMITTED this 6th day of April 2015.

ROBERT W. FERGUSON
Attorney General

s/ Noah G. Purcell

Noah G. Purcell, WSBA 43492
Solicitor General
Counsel of Record
noahp@atg.wa.gov

Anne E. Egeler, WSBA 20258
Deputy Solicitor General

Washington Office of Attorney General
PO Box 40100
Olympia, WA 98504-0100
360-753-6200 (office)

Kamala D. Harris
California Attorney General
1300 I Street
Sacramento, CA 95814

Lisa Madigan
Illinois Attorney General
100 W Randolph Street 12th Floor
Chicago, IL 60601

George Jepsen
Connecticut Attorney General
55 Elm Street
Hartford, CT 06106

Thomas J. Miller
Iowa Attorney General
1305 E Walnut Street
Des Moines, IA 50319

Matthew P. Denn
Delaware Attorney General
820 N French Street 6th Floor
Wilmington, DE 19801

Brian E. Frosh
Maryland Attorney General
200 Saint Paul Place
Baltimore, MD 21202

Karl A. Racine
Dist. of Columbia Attorney General
441 4th Street NW Suite 1145 N
Washington, D.C. 20001

Maura Healey
Massachusetts Attorney General
One Ashburton Place
Boston, MA 02108

Russell A. Suzuki
Hawai'i Attorney General
425 Queen Street
Honolulu, HI 96813

Hector H. Balderas
New Mexico Attorney General
PO Drawer 1508
Santa Fe, NM 87504-1508

Eric T. Schneiderman
New York Attorney General
120 Broadway 25th Floor
New York, NY 10271

William H. Sorrell
Vermont Attorney General
109 State Street
Montpelier, VT 05609-1001

Ellen F. Rosenblum
Oregon Attorney General
1162 Court Street NE
Salem, OR 97301

Mark R. Herring
Attorney General of Virginia
900 East Main Street
Richmond, VA 23219

Peter F. Kilmartin
Rhode Island Attorney General
150 S Main Street
Providence, RI 02903

CERTIFICATE OF COMPLIANCE WITH FRAP 32(a)(7)

Pursuant to Fed. R. App. P. 32(a)(7), I certify that:

This brief has been prepared in Microsoft Word using a 14-point, proportionally spaced font, and that based on word processing software, the brief contains 3,388 words.

s/ Anne E. Egeler
Attorney for Amici Curiae

CERTIFICATE OF SERVICE

I certify, under penalty of perjury under the laws of the state of Washington, that on this date I electronically filed the foregoing Brief of the Amicus States in support of the United States using the Court's CM/ECF system, which constitutes service under the Court's rules.

DATED at Olympia, Washington this 6th of April 2015.

s/ Noah G. Purcell
Noah G. Purcell, WSBA 43492
Solicitor General