

NATIONAL IMMIGRATION PROJECT

Lawyers for the Movement



COMMUNITY EXPLAINER

FREQUENTLY ASKED QUESTIONS ABOUT ***UNITED STATES V. TEXAS***

What is *United States v. Texas* about?

- Texas and Louisiana sued the Department of Homeland Security (DHS) claiming that Secretary Mayorkas's [prosecutorial discretion memo](#), issued on September 30, 2021, was unlawful because it ignored immigration laws that DHS was required to enforce. That memo laid out both positive and negative factors that Immigration and Customs Enforcement (ICE) should consider when deciding whether or not to arrest and deport someone. The states claimed they were harmed by the memo because they had to spend money on people who would otherwise be arrested, detained, and deported if DHS was enforcing those immigration laws. The lower courts had agreed with the states and struck down Secretary Mayorkas's memo.

What did the Supreme Court decide in *United States v. Texas*?

- The Supreme Court decided that the states who brought the lawsuit do not have "*standing*," a requirement for someone to bring a lawsuit in a federal court. Standing means that the person bringing the suit must have an injury – that is, they must demonstrate a real harm – that is caused by the conduct the person complains of *and* the court must be able to do something to fix that injury. Because the Supreme Court said that the states cannot bring this suit, the [enforcement priorities memo will return](#), and people will be able to receive prosecutorial discretion under the guidelines the memo lays out.
- In this case, the states said that Mayorkas's failure to detain everyone potentially subject to detention, cost the states money, and that is normally an injury that will allow people to sue. However, the injury must also be "legally or judicially cognizable," meaning that it must be the kind of dispute where a court is allowed to intervene. A majority of the Court, five justices, decided the states' lawsuit was not that kind of dispute because courts have usually not interfered in prosecutorial decisions when the people or groups challenging the decisions were not the ones being prosecuted.
- The states in this case effectively wanted the Court to order DHS to arrest and deport more people. The Supreme Court refused and said that the Executive Branch (the President and federal agencies under the President's control, including DHS) has always been in charge of enforcement decisions, which require weighing a lot of policy factors. The Supreme Court said this is especially the case when there are not enough resources to prosecute everyone who breaks the law, which has been true for immigration law for all of the five Presidential administrations that have been in power since Congress enacted the current enforcement laws.

- The Supreme Court left open other circumstances in which states or other plaintiffs might sue over the enforcement of federal laws, including if they claimed that DHS completely failed to enforce the law, or if DHS also gave people “legal benefits or legal status.” The Supreme Court specifically referred to work authorization and Medicare eligibility and cited its DACA decision from 2020 as issues that are different from the standing issue it ruled on today. Unfortunately, this means that today’s decision does not prevent states from suing to end DACA, though it does not make any decision about whether or not DACA is legal or even how it will rule on standing in other types of cases.
- Three justices agreed that the states did not have standing, but thought that the states had claimed a “cognizable” injury; they instead thought that the states could not sue because the Court could not fix the injury the states claimed. Only one justice, Justice Alito, dissented, and would have ruled that the states could bring suit.

What is the effect of the decision?

- Secretary Mayorkas’s enforcement priorities memo will go back into effect, and people will be able to ask for prosecutorial discretion based on the factors laid out in the memo. You can read more about that memo [here](#). However, this will probably not happen immediately, because the lower court still needs to go through a process to get rid of its order, which we expect will take at least a month.
- Additionally, when arguing the case, the government told the Supreme Court that the enforcement priorities memo does not apply to people who are already detained and decisions about whether or not to release them from detention. The Supreme Court said that its opinion today also does not apply to people who are already in detention. There may be other ways to argue for a person’s release from detention, but it is unlikely that ICE will agree to release people based on the enforcement priorities memo.