

Legal Sidebar

Nationwide Injunctions: Recent Rulings Raise Questions about Nationwide Reach of a Single Federal Court

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Two recent, notable appellate court rulings raise questions about the appropriate scope of injunctions issued by federal courts. In particular, this fall two federal circuit courts of appeals separately issued nationwide injunctions, each of which blocked the implementation of a different agency action throughout the entire United States. First, in October, a majority of the Sixth Circuit in *In re E.P.A.*, at the request of 18 petitioner-states, granted a nationwide stay of a [final rule](#) published by the Army Corps of Engineers and Environmental Protection Agency that redefined the “waters of the United States” protected under the Clean Water Act. Then, in November, a majority of the Fifth Circuit in *Texas v. United States* upheld a nationwide preliminary injunction issued by the Southern District of Texas blocking the Obama Administration from implementing its 2014 deferred action programs for certain aliens who entered or remained in the United States in violation of federal immigration law. Both rulings have been summarized in [previous sidebars](#). This sidebar discusses questions raised by rulings like *E.P.A.* and *Texas* about the authority of lower federal courts—typically viewed as having jurisdiction over particular persons and geographical territories—to issue orders affecting actions throughout the United States as a whole.

An injunction is a court order directing a person to do or refrain from doing a specific action. It is considered an [“extraordinary remedy.”](#) and is governed by [Federal Rule of Civil Procedure 65](#). A preliminary injunction is granted before the merits of a lawsuit are finally adjudicated, in order to preserve the status quo. An injunction may bind not only the parties, but their officers, agents, and employees. The federal rules neither directly authorize nor limit the ability of federal courts to issue a nationwide injunction. And the Supreme Court does not appear to have explicitly opined on the scope of the practice.

So in assessing a court’s authority to grant an injunction with nationwide applicability, one must consider the Supreme Court’s comments, generally, on injunctive relief. The Court long ago opined that lower courts [“may command persons properly before it to cease or perform acts outside its territorial jurisdiction.”](#) Yet [the Court has warned](#) that, in issuing such an order, courts ought not to issue a remedy broader than necessary to redress the complainant’s injury. Additionally, 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. Yet the ability of a court to issue an injunction nationwide may also depend on the law underlying the lawsuit. In cases brought under the Administrative Procedure Act (APA), for example, [section 706](#) allows a reviewing court to set aside unlawful agency actions. The term set aside has been interpreted to mean vacate, meaning that once the rule is vacated it no longer exists as law. Because the rule would no longer exist nationwide, in a lawsuit where a party requests that a rule be set aside under the APA, a preliminary injunction with nationwide reach may make sense. The propriety of issuing a nationwide injunction, therefore, is highly case specific.

For example, in *Texas*, the Fifth Circuit majority concluded that a nationwide injunction was appropriate because federal immigration laws are designed to function as a uniform system. Moreover, the majority added, an injunction confined to Texas would not redress Texas’s alleged injury—losing millions of dollars by having to issue state-subsidized drivers licenses to deferred-action beneficiaries—because those beneficiaries can move from state to state. And in *E.P.A.*, the Sixth Circuit majority concluded that a nationwide stay was necessary because the confusion

spawned by the rule's "effective redrawing of jurisdictional lines over certain of the nation's waters" would create a nationwide burden on state and federal governmental bodies.

The Obama Administration has already [requested the Supreme Court to review the *Texas* ruling](#). One issue the government could raise, [as it did in the Fifth Circuit](#), is whether the scope of the injunction should be limited to Texas rather than applied nationwide. If the Court decides to hear the case, it could mean that the Court will clarify when nationwide injunctive relief, indeed, is appropriate.

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