

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION**

STATE OF TEXAS, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	Case Number: 1:14-cv-00254 (ASH)
	)	
v.	)	
	)	
UNITED STATES OF AMERICA, <i>et al.</i> ,	)	
	)	
Defendants.	)	
_____	)	

**MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF  
IN OPPOSITION TO DEFENDANTS’ EMERGENCY EXPEDITED MOTION**

Judicial Watch, Inc. (“Judicial Watch”), by counsel, respectfully moves for leave to file an *amicus curiae* brief in opposition to Defendants’ Emergency Expedited Motion. Judicial Watch states as follows:

**MEMORANDUM OF LAW**

1. Judicial Watch is a not-for-profit, educational organization that seeks to promote transparency, integrity, and accountability in government and fidelity to the rule of law. Judicial Watch regularly monitors significant developments in the court systems and the law, pursues public interest litigation, and files *amicus curiae* briefs on issues of public concern. Judicial Watch regularly files *amicus curiae* briefs as a means to advance its public interest mission.
2. The Court has inherent authority to permit the filing of *amicus* briefs. *See Gudur v. Deloitte Consulting LLP*, 512 F. Supp. 2d 920, 927 (S.D. Tex. 2007) (“The extent to which the court permits or denies *amicus* briefing lies solely within the court’s discretion.”).

3. Defendant's request would destroy the status quo and, in doing so, would undermine the rule of law. The Court has already ruled that preserving the status quo is important. It should not waiver from that ruling.

4. U.S. Supreme Court Justices Thomas and Scalia recently admonished their colleagues after the Court denied a stay and failed to preserve the status quo in a same sex marriage case.

5. Judicial Watch's proposed amicus curiae brief is attached as Exhibit A to this motion. It highlights the admonishment of Justices Thomas and Scalia and demonstrates how it is applicable here. Judicial Watch is filing this motion within the time period permitted by the Court for Plaintiffs to file their opposition. Judicial Watch sought consent from the parties. Defendants' counsel informed Judicial Watch that Defendants take no position. Judicial Watch has not yet received a response from Plaintiffs' counsel.

WHEREFORE, Judicial Watch respectfully requests that the Court grant its motion for leave to file an amicus curiae brief and accept for filing the amicus curiae brief attached as Exhibit A.

Dated: February 25, 2015

Respectfully submitted,

By: /s/ Mitchell L. Herren  
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*Attorney for Judicial Watch, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 25<sup>th</sup> day of February, 2015, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to counsel for Plaintiffs and Defendants through the Electronic Case Filing System.

/s/ Mitchell L. Herren\_\_\_\_\_

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_____	)	

**AMICUS CURIAE BRIEF OF JUDICIAL WATCH, INC.**

Amicus Curiae Judicial Watch, Inc., by counsel, respectfully submits this brief in opposition to Defendants’ Emergency Expedited Motion. Judicial Watch states as follows:

**STATEMENT OF THE ISSUES**

Whether this Court should stay its preliminary injunction and, in doing so, destroy the status quo.

**SUMMARY OF THE ARGUMENT**

This Court has already ruled that preserving the status quo is important. It should not waiver from that ruling.

**ARGUMENT**

**I. The Preliminary Injunction Preserved the Status Quo.**

In its February 16, 2015 decision preliminarily enjoining the implementation of the Deferred Action for Parents of American and Lawful Permanent Residents (“DAPA”) program, the Court determined that it was important to preserve the status quo. *Texas v. U.S.*, 2015 U.S. Dist. LEXIS 18551, \*\*205-210 (S.D. Tx. Feb. 16, 2015). First, the Court concluded that even with the preliminary injunction in place, “DHS may continue to prosecute or not prosecute []

EXHIBIT A

illegally-present individuals, as current laws dictate. This has been the status quo for *at least* the last five years.” *Id.* Second, the Court found, “If the preliminary injunction is denied, Plaintiffs will bear the costs of issuing licenses and other benefits once DAPA beneficiaries – armed with Social Security cards and employment authorization documents – seek those benefits.” *Id.* Third, the Court noted that once DAPA beneficiaries received benefits and services from the states, there is no effective way to “put[] the toothpaste back in the tube” should Plaintiffs ultimately prevail on the merits. *Id.* The Court has already ruled that preserving the status quo is important. It should not waiver from that ruling.

## **II. Preservation of the Status Quo Is of Great Importance When Benefits And Services Are At-Issue.**

Defendants’ argument that grants of deferred action can be revoked at any time and can readily be reversed misses the forest for the trees. As this Court found, a DAPA beneficiary does not only receive a promise that he will not be deported but also receives the opportunity to apply for numerous benefits and services, such as the authority to work and driver’s licenses.

Because granting Defendants’ emergency, expedited motion would allow millions of individuals to begin applying for benefits and services they otherwise would not be able to receive, the recent admonition by U.S. Supreme Court Justices Thomas and Scalia after the Court denied a stay that failed to preserve the status quo is pertinent. In *Strange v. Searcy*, the Supreme Court denied a stay of a federal injunction preventing the Attorney General of Alabama from enforcing several provisions of Alabama law defining marriage as a legal union of one man and one woman pending review by the Court. The Court ultimately denied the stay, requiring Alabama to begin issuing marriage licenses for same-sex unions. As a result, individuals undoubtedly have begun receiving licenses, benefits, and services that they otherwise would not be eligible to receive. If Alabama is to succeed on the merits, it will be required to void

marriages and retract all benefits and services provided as a result of the marriages. In objecting to the denial of the stay, Justices Thomas and Scalia wrote:

The [Supreme] Court look[ed] the other way as yet another Federal District Judge casts aside state laws without making any effort to preserve the status quo pending the Court's resolution of a constitutional question . . . This acquiescence may well be seen as a signal of the Court's intended resolution of that question. This is not the proper way to discharge our Article III responsibilities. And, it is indecorous for this Court to pretend that it is.

574 U.S. \_\_\_, 2015 U.S. LEXIS 912, \*\*3-4 (Feb. 9, 2015) (Thomas, J., dissenting).

This Court should reaffirm the importance of preserving the status quo until a final resolution on the merits is reached. *See Veasey v. Perry*, 769 F.3d 890, 892 (5th Cir. 2014) (“A stay pending appeal ‘simply suspends judicial alteration of the status quo.’” (*quoting Nken v. Holder*, 556 U.S. 418, 429 (2009))); *see also Dayton Board of Education v. Brinkman*, 439 U.S. 1358, 1359 (1978) (“[T]he maintenance of the status quo is an important consideration in granting a stay.”); *Houchins v. KQED, Inc.*, 429 U.S. 1341, 1346 (1977) (“[T]he preservation of that status quo is an important factor favoring a stay.”). If the Court were to grant Defendants’ motion, it would cast aside immigration laws passed by Congress and signed by the President. These laws have been in place for almost 30 years. In seeking a stay, Defendants fail to demonstrate why destroying 30 years of status quo and undermining duly enacted laws is necessary at this immediate date. None of the reasons cited by Defendants in their motion answer the question: why today? The Court should not discharge its Article III responsibilities by acquiescing to the unsubstantiated pleas of Defendants. It should deny the motion.

**CONCLUSION**

For the foregoing reasons, Defendants' Emergency Expedited Motion should be denied.

Dated: February 25, 2015

Respectfully submitted,

By: /s/ Mitchell L. Herren  
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