CYRUS D. MEHTA & PARTNERS PLLC
US IMMIGRATION & NATIONALITY LAW

TEXAS HAS TURNED BLUE. COULD THAT CHANGE THE FUTURE OF IMMIGRATION?

*Posted on November 8, 2026 by Cyrus Mehta & Kaitlyn Box**

By Cyrus D Mehta and Kaitlyn Box

Democrats have won control of both the House and the Senate in this week's midterm elections. The Hill's reporting describes the scale of the Republican losses. Will that make an impact on immigration policy? Perhaps not as much as one might expect. Most immigration policy under President Trump has been made through executive actions and rulemaking, not through changes in the law enacted by Congress. A Democratic Congress can investigate, hold hearings, and use its power over funding, but it cannot easily reverse policies that were never passed as bills.

Still, the control of Texas by a Democratic governor and a new Democratic attorney general is significant. Texas has repeatedly opposed immigrant-friendly policies by suing the Obama and Biden administrations. In the Trump era, it has facilitated restrictive immigration policy. A different Texas leadership could change that pattern, and it prompts the question of what happens when a state that has repeatedly gone to court to block immigration relief elects leaders who could choose a different course.

The change is substantial, but precision matters. Democrats won the governorship and the attorney general's office, and the Associated Press projected a Democratic majority in the Texas House. Republicans retained the state Senate. Texas has therefore not become a Democratic trifecta; it faces divided government. For immigration litigation, however, the change in the attorney general's office may be especially consequential. CBS Texas's election reporting explains that distinction.

That brings us to a central question: **What if Texas withdraws the DACA**

lawsuit? The possibility deserves serious attention. But so does the difference between ending a state's opposition and undoing the legal consequences of years of litigation.

TEXAS HELPED TURN IMMIGRATION POLICY INTO A COURTROOM BATTLE

It would be too broad to say that Texas has always opposed the federal government. The more accurate point is that its Republican leadership repeatedly challenged immigration initiatives under Presidents Obama and Biden—and, under President Trump, has sometimes worked with the federal government to dismantle those initiatives.

Under Obama, Texas led the challenge to Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) and the expansion of DACA. The litigation blocked implementation; in 2016, an equally divided Supreme Court left the lower court's judgment in place. That was not a majority Supreme Court ruling resolving the merits. The case history in United States v. Texas shows how decisively state litigation can shape federal policy without Congress changing the statute.

Under Biden, Texas challenged humanitarian parole processes for Cubans, Haitians, Nicaraguans, and Venezuelans. That litigation did not establish that the processes were unlawful: the district court dismissed for lack of standing in 2024, as discussed in a prior blog, and the Fifth Circuit later vacated that decision and dismissed the case as moot in 2025 following the administration's move to terminate the processes. The litigation record is a reminder that these cases have different procedural histories and cannot all be treated as pending lawsuits waiting to be withdrawn.

Texas also led the challenge to Keeping Families Together, Biden's parole-in-place initiative for certain noncitizen spouses and stepchildren of U.S. citizens. A federal district court vacated that initiative in November 2024. AILA's litigation history documents that outcome. A change in Texas leadership cannot, by itself, restore an initiative already set aside by a court.

Nor did Texas win every confrontation over discretion. In the 2023 United States v. Texas decision concerning Biden's immigration enforcement priorities, the Supreme Court held that Texas and Louisiana lacked standing, as discussed

in a prior blog. The Court did not decide that every form of immigration discretion was lawful. This analysis of the decision explains why that distinction matters.

The pattern extends to immigration court administration. In June 2026, Texas and the Justice Department agreed to a consent judgment vacating the 2024 docket-management rule, including its administrative-closure provisions. Administrative closure pauses a case; it does not itself grant lawful immigration status. The Immigrant Legal Resource Center's September advisory describes both the judgment and its broader effects.

These disputes are not interchangeable. But together they illustrate why the identity of a state attorney general can matter to immigrants far beyond that state's borders.

WHAT IF TEXAS WITHDRAWS THE DACA LAWSUIT?

DACA—Deferred Action for Childhood Arrivals—is the most immediate test of what a different Texas could mean. The program provides temporary deferred action and eligibility to request employment authorization for qualifying people brought here as children. It does not confer lawful immigration status. USCIS's published guidance continues to say that renewals and accompanying work-permit applications are processed, while initial requests are accepted but not processed. That is the operative agency guidance, not a benefit changed by election returns.

In its January 17, 2025 decision, the Fifth Circuit largely affirmed the judgment against the DACA rule but narrowed the remedy to Texas and separated the policy of forbearance from the challenged benefits provisions, including work authorization. It also maintained a stay pending further appeal. The opinion makes clear why "DACA survived" and "DACA was struck down" are both inadequate descriptions.

We believe the incoming attorney general should make ending Texas's attack on DACA a priority. The state could seek to withdraw its claims and ask the court to address the continuing orders. That could materially change the posture of a case in which the remedy has been tied specifically to Texas. It would also send an unmistakable message: the state need not define its interests as being opposed to the ability of Dreamers to live and work here.

But withdrawal would raise questions rather than answer all of them. Could another plaintiff state establish an independent basis to continue? What relief would the district court grant concerning the existing judgment and injunction? How would the appellate mandate constrain the proceedings? The Fifth Circuit's decision supplies the framework, not a guarantee that Texas's departure would automatically end every legal barrier.

Until now, Texas's litigation against DACA has allowed the Trump administration to sit by. The administration has not had to take the lead in dismantling the program because Texas has been doing it in court. If Texas withdraws, that dynamic changes. Another plaintiff could seek to intervene and carry on the challenge, although it would have to establish its own standing. The Fifth Circuit found that Texas was the only state that had demonstrated an injury, which is why it limited the injunction to Texas. Courthouse News's account of the ruling explains that point.

The Trump administration could also try to rescind DACA itself, but that would not be a quick fix. In August 2022, the Department of Homeland Security issued a Biden-era final rule that "preserves and fortifies" DACA in federal regulations. The Congressional Research Service's summary describes the rule and the earlier attempt to rescind the program in Trump's first term, which the Supreme Court held violated procedural requirements in 2020. We analyzed the rule's legal basis in our Insightful Immigration Blog post, "The Legal Basis for DACA as Expressed in the Final Rule" (August 31, 2022). Even though the courts have held the rule unlawful and the remedy is now limited to Texas, a rule on the books generally cannot be undone by a simple memo. We expect that ending DACA through the administration would require a formal rulemaking and would likely draw new litigation.

A withdrawal is not an eraser. Existing judgments and injunctions require separate attention. Federal Rule of Civil Procedure 60(b)(5), for example, permits a party to seek relief when applying a judgment prospectively is no longer equitable, but filing such a motion does not suspend the judgment. Whether relief is available would depend on the record and the governing law—not simply on a change of political preference. Rule 60 underscores the need for a court-approved legal path.

The responsible claim is therefore narrower, but still important: Texas could stop pressing its challenge and support efforts to remove the resulting

obstacles. It could not promise that first-time DACA approvals would immediately resume, that every prior decision would disappear, or that a federal administration would adopt a particular policy.

SB4 AND THE LIMITS OF AN ELECTION VICTORY

The same distinction between political change and legal change applies to Texas's 2023 SB4. The law creates state immigration offenses and authorizes state officials to undertake enforcement and removal-related actions. The American Immigration Council reported that a late-May 2026 appellate ruling allowed the law to take effect while litigation continued. Its explanation of SB4 describes the stakes for families, communities, and employers.

We regard this attempt to build a state immigration-enforcement system as deeply troubling. The incoming leadership should pursue repeal and reassess how state resources are used. But winning the governorship or the attorney general's office does not repeal a statute. With Republicans retaining the Texas Senate, repeal would require legislative agreement across party lines. Nor should anyone assume that a new attorney general's position alone would control every official's enforcement duties.

Existing judgments concerning parole in place or administrative closure present a different problem from legislation. Texas could reconsider its litigation positions and, where legally available, support requests to modify or vacate continuing relief. Courts would still have to decide those requests. And federal officials would still make their own policy choices within the limits of federal law.

A NEW CHIEF OF STAFF SIGNALS CONTINUITY IN FEDERAL ENFORCEMENT

A change in Texas does not change who sets enforcement policy in Washington. On November 6, President Trump announced that Stephen Miller, currently deputy chief of staff for policy, will become White House chief of staff on Monday, November 9, replacing Susie Wiles. The Hill's report quotes the president's announcement.

Miller has been widely described as the architect of the administration's immigration enforcement program, including its push for 3,000 arrests per day.

CBS News's profile details that record. The promotion came days after midterm losses for Republicans, and an AP voter poll found that about six in ten voters said immigration enforcement had gone too far.

Observers therefore expect continuity, not retreat. A former ICE official told NewsNation that the appointment "sends a pretty loud message" that there will be no slowdown in the crackdown. That assessment is an expectation, not an announced policy. But it is a reasonable one: with Miller running the White House, the administration is likely to keep pursuing enforcement according to his approach.

This sharpens the stakes. A Texas that stops litigating against immigrants could remove one obstacle, but it would not alter federal enforcement priorities. The state's change of course would matter most for DACA recipients and families affected by Texas's own litigation and laws—while federal enforcement policy would remain a separate fight.

FROM BLOCKING RELIEF TO MAKING ROOM FOR IT

The election should be treated as an opening, not a promise that immigration policy has already changed. Our proposed agenda for the incoming Texas leadership is straightforward: review the state's immigration litigation, prioritize ending the DACA challenge, examine lawful avenues for relief from continuing court orders, and pursue repeal of SB4. Those are recommendations—not announced commitments by the incoming officials.

What has Governor-elect Gina Hinojosa said since the election? At her first press conference on November 5, she promised "a bipartisan administration and government in Texas," adding, "People are tired of the divisions, of the fighting, tired of the culture wars," and "I'm going to be the governor for all the people of Texas." NBC DFW's report of the press conference carries those remarks. The Texas Tribune reported that she did not bring up any policy issues at that news conference and did not respond to its questions about Operation Lone Star. The Tribune's analysis describes what she and Attorney General-elect Johnson inherit. President Trump, by contrast, has already addressed her on the subject. Asked on November 5 whether he is ready to reinforce the Texas border if the new governor withdraws state personnel, he said, "I'm sure they'll continue my policy. And if they don't continue my policies, I will." KRLD's report carries that exchange. As of now, we have not found a

public reply from her.

The New York Times has since published her first post-election interview, along with a video titled "Gina Hinojosa on Data Centers, Immigration and a Blue Texas". The Times's summary says she will try to deliver on her campaign promises and that the changes will not happen overnight. We could not access the full text of the interview, so we cannot report what she said there about DACA, SB4, or the pending lawsuits. Before the election, in an October interview with the Times, she was asked about SB4 and said, "I don't support it, and I voted against it, and I stand by my record," as the Texas Tribune reported. That is a statement of opposition, not a commitment to repeal or to change Texas's litigation positions. The Times also reports that Democrats plan a reversal of Texas's hard-line immigration policies, but we have not seen Hinojosa herself commit to the specific steps we recommend.

Attorney General-elect Nathan Johnson, a Democratic state senator from Dallas, matters more to the lawsuits because the attorney general controls the state's litigation. After his win, he said Texans "voted for an attorney general who will represent them and the interest of our state, and who will above all uphold the rule of law." The Hill's coverage of his victory reports that statement and his pledge to be a legal stopgap against Trump administration overreach. Before the election, he said he would sue the Trump administration when he believes the federal government is overstepping in Texas, and his campaign opposed federal border policies and tactics that he said violate the Constitution. The Texas Tribune's account and the Texas Tribune candidate profile describe those positions. He has also said he would not make the office "a political stronghold." We did not find a statement from Johnson about DACA, SB4, or the pending cases discussed above, so whether and how Texas changes its positions in them remains an open question.

There is also a national lesson. Temporary executive protection is not the same thing as durable legal status. USCIS expressly describes DACA as deferred action rather than lawful status. That distinction is why we believe Congress should provide a permanent legislative solution, rather than leave Dreamers' futures to successive administrations and lawsuits.

Texas need not agree with every federal immigration policy. But disagreement need not mean reflexively trying to eliminate every avenue of protection. The state can insist on lawful government while recognizing that family unity, fair

procedures, and the ability to work are legitimate public interests.

What if Texas withdraws the DACA lawsuit? It would not solve everything. But it could mark a profound change in direction: from using the state's legal power to narrow immigrants' possibilities to asking how that power can help protect them. That is a change worth demanding—not merely celebrating.

This commentary reflects sources reviewed on November 8, 2026. Election reporting and immigration litigation can change; it is not individualized legal advice.