



## COMMUNITY FAQ<sup>1</sup>

### Status of the Keeping Families Together Parole Process, Possible Outcomes of the Ongoing Lawsuit, and Risks of Applying Now

#### Update 11/12/2024

Last week, the federal judge hearing the case against KFT ruled against the program and stopped it. We do not yet know whether the Biden administration will appeal this ruling, but regardless, it is unlikely that the government will continue to defend the program once Trump is in office in January. **This ruling likely means the permanent end of the KFT program.**

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The [Keeping Families Together](#) process (KFT), which was announced by the Department of Homeland Security (DHS) in June 2024, could help up to 550,000 individuals in mixed-status families stay together in the United States. Sixteen Republican-led states sued to prevent the program from going forward, in effect seeking to deprive these individuals of family unity. For now, U.S. Citizenship and Immigration Services (USCIS) can accept KFT applications, but USCIS cannot approve or deny applications. Through this community FAQ, you will learn more about the KFT process and the lawsuit challenging the process, what may happen with the program after the November election, and what the risks of applying for KFT are right now.

#### 1. What is the Keeping Families Together process?

Federal law allows certain spouses of U.S. citizens to become lawful permanent residents (LPR) and get their green cards while living in the United States, and after a number of years, apply to become a United States citizen. However, people who entered the country without permission have a harder path, and usually must take additional steps before they can get green cards through their U.S. citizen spouses, if they are able to get them at all. The KFT would help

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spouses (and some children) of U.S. citizens who came to the United States without permission receive their green cards without taking these additional steps. This can happen through a temporary status called parole-in-place.

Without KFT parole, a person who wants to get a green card through marriage and who entered without permission would have to leave the United States and get the green card from the U.S. consulate in the country where they last resided. However, leaving the United States to do this process through the U.S. consulate presents concerns. If a person has spent more than 180 days in the United States without any legal status since the age of 18, that person will trigger a penalty when they leave the United States. The penalty requires the person to stay out of the United States from 3 to 10 years.

A [waiver](#) or request to be spared from the penalty is available if the person can show that their LPR or U.S. citizen spouse or parent would suffer extreme hardship if the person returns to their country of origin without their family or the family relocated together to the person's country of origin. Those people who have an LPR or U.S. citizen spouse or parent could seek this waiver. But those who don't will not be able to leave the United States without being forced to remain outside of the country for 3 to 10 years. Even those who can obtain the waiver will have to leave the United States to receive the green card, which may present risks depending on their circumstances. KFT would allow those who entered the United States without permission to avoid traveling and, in turn, the risks associated with traveling to pursue consular processing. KFT would allow people to receive their green cards while remaining in the United States with their families.

## **2. What is the lawsuit challenging the Keeping Families Together process?**

This [lawsuit](#) set up a legal battle between individual states that are anti-KFT and the federal government that proposed KFT. The lawsuit is led by the state of Texas and was lodged in federal court within a week of USCIS starting to accept KFT parole applications on August 19, 2024. The states sought a Temporary Restraining Order. A Temporary Restraining Order asks a court to order a certain action to stop. Here, Texas and the 15 other states asked the court to order DHS to stop implementing the KFT process. The United States District Court for the Eastern District of Texas issued an Administrative Stay for 14 days. An Administrative Stay freezes action on the case to allow the court to consider a request by one of the parties. The Administrative Stay prevents DHS from issuing any grants or denials of parole under the KFT process. USCIS could continue to accept and process KFT parole applications, but USCIS could not approve or deny them during the stay.

Mixed-status families who had applied for KFT parole filed a [Motion to Intervene](#) in the lawsuit to ensure that the perspectives of directly impacted persons are taken into account by the court. A

Motion to Intervene is a request by a non-party who would be affected by the outcome of the case to join the lawsuit. Without the voices of these impacted families, the lawsuit would only consider the arguments of the federal and state governments, which are the parties to the case. When the District Court denied the interveners' motion, the families appealed the decision to the Fifth Circuit Court of Appeals. The Appeals Court paused the District Court's proceedings and set a hearing for October 10, 2024 on the Motion to Intervene. The Appeals Court had extended the Administrative Stay on grants of parole until October 10, 2024, which meant that during this period USCIS continued to accept and process KFT parole applications, but could not approve them. However, on October 4, 2024, the Appeals Court sided with the state of Texas and denied the interveners' appeal, canceled the hearing on the question of intervention, and sent the case back to the District Court. Within two hours of the Appeals Court decision, the District Court set a trial for November 5, 2024 and extended the Administrative Stay on grants of parole until then. **This means that until November 5, 2024 USCIS can continue to accept KFT applications, but USCIS cannot approve or deny them.**

It is not yet known whether the intervenors will seek an appeal of the Appeals Court decision to the U.S. Supreme Court. The District Court's briefing schedule before the appeal by the intervenors was aggressive and fast, and so too was the District Court's timing on setting a trial date for November 5, 2024. Appeals and more stays could further delay USCIS's adjudication of KFT parole applications, likely dragging a final decision out well beyond the November election.

### **3. Why did the states choose this court?**

The anti-KFT states chose to file in the Eastern District of Texas because they know that most of the judges at that court are conservative and tend to rule against immigrants in their cases. Also, the Eastern District of Texas is within the geographical area that the Fifth Circuit Court of Appeals controls; the Fifth Circuit is also known to have a majority of conservative judges who are hostile to immigrant rights.

### **4. Who is the judge in this case and why does it matter?**

Judge J. Campbell Baker was appointed by Donald Trump and was formerly the Deputy Solicitor of Texas. He is known to be a conservative judge, and when he was a Deputy Solicitor General, he helped bring anti-immigrant lawsuits like the one challenging the KFT process. Judge Baker's politics may influence how he ultimately rules on the case.

### **5. What are the risks of applying for the Keeping Families Together process?**

While the application remains open, USCIS will not grant any more KFT applications or allow people who received KFT parole-in-place to move forward in getting their green cards until the

District Court says that the program can continue. That decision could take many months, or a court could say that the program must stop altogether. Therefore, it is important to consider the risks of applying.

Applicants should keep in mind that if no immigration agency is aware of their presence in the United States, they will be revealing themselves by applying. This risk is especially great for people who have criminal convictions and who might be an enforcement priority, as discussed below. But there is no guarantee that ICE will not use the information, even if the applicant has never been arrested. For example, in 2017, Immigration and Customs Enforcement (ICE) agents in Seattle [detained](#) a 24-year-old DACA recipient without a criminal record when the agents went to his father's apartment to detain his father, who had a criminal record. DHS revoked his DACA status.

#### *A. Any criminal history*

While people who have [minor criminal convictions may be eligible](#) for the KFT process, applying is risky for anyone with a criminal history. People who have criminal convictions may be treated as an enforcement priority, and applying could amount to “outing” themselves to DHS. USCIS could share the person’s information from the application with ICE to make it easier for ICE to deport that person. It could become much riskier to apply for KFT parole if Trump is elected president again in November 2024.

#### *B. Multiple entries or prior deportations*

A person who received a prior order of deportation is presumptively ineligible for KFT. This presumption means that those who have a prior order of removal have the opportunity of presenting extenuating factors—compelling facts or details that are important for USCIS to fully understanding their situation—that may outweigh the presumption of ineligibility. It is risky for people who have been ordered deported to apply for KFT and it is even riskier for people who left the United States after getting a deportation order and re-entered the country without permission because of penalties that apply to this scenario. Both groups of people may be treated as enforcement priorities; applying could “out” them to DHS and [place them at risk of deportation](#), even if they may be eligible under the terms of the program.

### **6. How will the upcoming presidential election affect the KFT process?**

If Donald Trump is elected, he will almost certainly end the KFT process, or at the very least stop defending it in court. If Kamala Harris is elected, her administration will likely continue to defend the KFT process in court. Under a Trump presidency, there is a greater risk of ICE using

application information for enforcement. But it is possible a Harris administration would also use application information in cases they believe are an enforcement priority.

**7. Will USCIS refund my \$580 application fee if the KFT process ends or if my application is denied?**

No, and there is no fee waiver available. If paying the filing fee would be a hardship for you or your family, consider waiting until the court makes a decision before applying. People who apply now will not have the fee returned to them even if the court later decides that the program cannot continue.

**8. If KFT ends, what are my options for getting a green card through my spouse?**

If you can show that your U.S. citizen or LPR spouse or parent would suffer extreme hardship if they are separated from you or if you relocate together to your country of origin, you may be eligible for a waiver of the 3- or 10-year penalty (explained in Question 1 of this FAQ). The Obama Administration created a process where people can get their waivers “provisionally” approved while remaining in the United States. Provisionally means that the officials in the consulate can still discover a separate ground of inadmissibility and revoke the waiver approval. That said, it is important to remember that leaving the United States is always risky, and would be riskier under a second Trump Administration.