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Federal Court Temporarily Halts U.S. President Barack Obama's Executive Order on Immigration

by Carlos Navarro

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A US federal judge ordered a temporary halt to US President Barack Obama's executive order on immigration, creating new uncertainties for millions of undocumented immigrants who would have benefited from the plan. US District Judge Andrew Scott Hanen in Brownsville, Texas, handed down the decision in response to legal action filed by 26 states, which argued that Obama had overstepped his authority.

Under the plan announced by Obama in November 2014 ([SourceMex, Dec. 10, 2014](#)), 4 to 5 million unauthorized immigrants would become eligible for protection from deportation and a three-year work permit. A Pew Research analysis found that the largest group—at least 3.5 million—consists of unauthorized immigrant parents who have lived in the US for at least five years and have children who either were born in the US or are legal permanent residents. Of these, about 700,000 have adult children and the remaining 2.8 million have children younger than 18. The estimates are based on data compiled in 2012. Eligible immigrants would be covered by a program called Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA).

The new policy also expands eligibility for the president's Deferred Action for Childhood Arrivals (DACA) program that benefits young adults brought to the US illegally as children. By some estimates, the program would allow an additional 330,000 people to apply for and receive temporary deportation relief. "Previously, the program was available only to those up to age 30, but the executive action would lift that age cap," said the report from the Pew Research Center. "In addition, the program would allow immigrants who arrived as children illegally before Jan. 1, 2010, to become eligible, expanding the program beyond the original June 15, 2007, cutoff date."

Judge says administration did not follow proper procedures

In an order filed on Feb. 16, Judge Hanen prohibited the Obama administration from implementing the measures on the premise that the order had not complied with procedures needed for putting into effect the immigration moves. The judge announced the procedures after House Republicans blocked bipartisan immigration legislation passed by the Senate in 2013 ([SourceMex, July 10, 2013](#)).

"It represents a massive change in immigration practice, and will have a significant effect on, not only illegally present immigrants, but also the nation's entire immigration scheme and the states who must bear the lion's share of its consequences," Hanen wrote in reference to the changes announced by Obama in 2014.

The rejection at the state level to Obama's executive orders is not universal. Twelve states and the District of Columbia came out publicly in support of the Obama policy, arguing that they would benefit from the increased wages and taxes that would result if illegal immigrant workers came out of the underground. The mayors of 33 cities, including New York and Los Angeles, and the Conference of Mayors also supported the Obama administration.

"The strong entrepreneurial spirit of immigrants to the United States has significantly boosted local economies and local labor markets," the mayors wrote in their filing.

Some experts suggested that the lawsuit filed by the 26 states was based more on political considerations than on legal factors, since the executive orders issued by Obama are protected by the US Constitution. "It's a partisan political attack disguised as lawsuit," said Marshall Fitz, vice president of immigration policy at the Center for American Progress (CAP). "More than half of foreign born residents live in the 12 states and 33 cities supporting Obama's action. ... This is not really about the burden on specific states, it's a political stunt in an effort to block progress on something extraordinarily important to immigrant communities."

Hanen's decision, added Fitz, is a clear case of "judicial activism on the part of an extremist judge who in the past has criticized this administration's immigration policies."

Mexican government 'regrets' court decision

Hanen's ruling elicited the expected reaction from the Mexican government, which expressed regret about the decision but noted that an appeal is expected from the Obama administration. "The Mexican Embassy in Washington and the consular network in the US will follow the process closely and any judicial developments," the SRE said in a statement. "We reiterate that these programs are a good migratory solution to millions of families and could strengthen the significant contributions that Mexican migrants make to the economy and society of the US."

In the wake of the decision, the SRE also urged Mexicans to remain informed about attempts by third parties to defraud them. "Because of this decision, the [US] government is not accepting any applications for DACA and DAPA programs," the SRE said in a message to expatriates in the US.

Obama says executive order allowed by US Constitution

The Obama administration, meanwhile, issued a statement rebutting Judge Hanen's decision. The White House said the executive action fell within Obama's presidential powers. Still, officials emphasized that the best solution is for Congress to pass meaningful immigration reform.

"The Department of Justice, legal scholars, immigration experts and the district court in Washington, D.C., have determined that the president's actions are well within his legal authority," the White House said in a statement. "The district court's decision wrongly prevents these lawful, common sense policies from taking effect."

The administration said it would swiftly appeal to the US Court of Appeals for the Fifth Circuit in New Orleans. "We are confident that we are going to succeed because the Department of Homeland Security drafted the executive actions very carefully," White House aide Cecilia Muñoz told the US Spanish-language television network Univisión.

"We have to appeal, we have to continue fighting, and this administration, this Justice Department, this president, will continue fighting," added Muñoz, who holds the title of assistant to the US President and director of the Domestic Policy Council.

In an opinion piece a few days after the decision, Obama called Hanen's ruling misguided. "Make no mistake, I disagree with this judge's ruling," Obama wrote in the Washington, DC, political

newspaper The Hill. "My administration will fight this ruling with every tool at our disposal, and I have full confidence that these actions will ultimately be upheld."

The US president is also fighting attempts by Republicans in Congress to roll back the actions contained in the executive order. Conservative Republicans in the House have threatened to hold back funding for the Department of Homeland Security (DHS) unless Obama cancels the immigration measures or Democrats in Congress join them in voting for a reversal of the immigration programs announced by the president. Funding for the DHS, which oversees immigration and border security, is due to run out at the end of February unless Congress approves a measure to keep money flowing into the department.

Republicans in the Senate have attempted to forge a compromise by separating the DHS funding and the move to reverse the Obama executive order into two different measures. It was uncertain whether the Republican leadership in the House would go along with this approach.

With the Republicans controlling both houses of Congress, the approval of a repeal measure would be a strong possibility. However, Obama would be likely to veto the legislation once it reached his desk.

Success of appeal uncertain

Observers are mixed on the chances of success for an appeal. One respected legal scholar noted the court was likely to stop the ruling from taking effect while it considers the case. "Federal supremacy with respect to immigration matters makes the states a kind of interloper in disputes between the president and Congress," Laurence H. Tribe, a professor of constitutional law at Harvard, told The New York Times. "They don't have any right of their own."

Others were more skeptical, including Enrique Berruga Filloy, who served as Mexican ambassador to the UN in 2003-2007. The former ambassador raised the possibility that the appeal could remain stuck in the New Orleans court during the remainder of Obama's term in office. This would be an unfortunate turn of events for undocumented immigrants, since the administration has few other options, he said.

"The Obama administration has its hands tied," said Berruga Filloy, who also served as deputy foreign relations secretary in 2000-2003, during the administration of ex-President Vicente Fox (2000-2006). "In the next two years, the government will not be able to implement its executive order [on immigration] nor will there be the type of amnesty that it is seeking."

Berruga Filloy, however, also criticized the Mexican government for lacking a strong policy to support expatriates who leave the country as well as those who return via deportation. "We have to take charge and recognize one thing: our country has never had a policy regarding the migrants who leave. In the best-case scenario, we simply wish good luck to those who depart, that they cross the [Rio Bravo] safely, and that they arrive at their destination safely," the diplomat said in an interview with the daily newspaper Excélsior.

"We Mexicans do not have a policy toward the largest diaspora in the planet: 30 million of our fellow citizens," added Berruga Filloy, who is vice president of the organization Mexicans and Americans Thinking Together. "This is a very serious situation because of recent tendencies, including the massive deportations on the part of the Obama government ([SourceMex, Jan. 22, 2014](#)). There are now 1.7 million deportees. "

Furthermore, noted Berruga Filloy, Mexico has had no policy to help migrants who had to return because of a lack of employment opportunities north of the border during recent years of recession. "Mexicans are no longer staying in the US for long periods," he said.

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