



Obama: 'Law is on our side' despite immigration ruling

*By Gregory Korte and David Jackson
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President Obama said Tuesday he disagrees with a Texas judge whose ruling blocked his immigration actions, and his administration will appeal.

"The law is on our side and history is on our side," Obama said in the Oval Office. He said his actions to defer deportations for potentially millions of migrants will improve a broken immigration system.

The administration is suspending its plans to allow undocumented immigrants to apply for legal status, Homeland Security Secretary Jeh Johnson said. Until that ruling is overturned on appeal, "we recognize we must comply with it," he said.

U.S. District Judge Andrew Hanen's decision late Monday blocked implementation of Obama's policy that would have granted legal status to millions of undocumented immigrants, allowing them to get driver's licenses, work permits and other government benefits.

Hanen's ruling came just as one of those executive actions was set to take effect Wednesday. That's when about 300,000 undocumented immigrants who came to the USA before age 16 — and who have lived here since 2010 — were eligible to apply for legal status. An additional 4 million who came to the USA as adults would become eligible in May.

The ruling comes as Congress debates how to extend funding authority for the Department of Homeland Security. House Republicans have passed a bill that would fund the department through September but block funding to enforce any of Obama's executive actions.

Senate Democrats threatened a filibuster, and the White House threatened a veto.

Other executive actions Obama announced last November are not affected by the court ruling, and Homeland Security will still defer the deportation of undocumented immigrants considered a low priority by the administration.

"This is something that we necessarily have to make choices about, because we have 11 million people here who we're not all going to deport," Obama said. "They are American by any other name except their legal papers."

In [a 123-page opinion](#), Hanen ruled that the Department of Homeland Security took an illegal shortcut by failing to allow public comment on the new policies. Despite the public perception that Obama made the policy change through executive order, Hanen said, decision-making responsibility actually falls to Johnson — and he has to follow the notice-and-comment rulemaking process in the Administrative Procedure Act.



President Obama meets with a group in the Oval Office of the White House on Feb. 4. (Photo: Evan Vucci, AP)

Attorney General Eric Holder said the Justice Department is examining the opinion to determine the best way to proceed.

"I think that we have to look at this decision for what it is. It is ... a decision by one federal district court judge,"

Holder said at the National Press Club on Tuesday. "I have always expected that this is a matter that will be ultimately decided by a higher court — if not the Supreme Court, then a federal court of appeals." An appeal would go to the 5th Circuit Court of Appeals in New Orleans. As of late Tuesday, the government had not requested a stay of the decision.

The case could have a long procedural road ahead. The judge's ruling did not address the merits of the immigration policy or Obama's right to change how immigration laws are enforced without congressional action. Rather, the judge said he was simply keeping the current system in place while both sides in the lawsuit argue the case.

"Despite the anti-immigrant rhetoric in the judge's 123-page opinion, the temporary injunction itself is narrow," said Stephen Yale-Loehr, a Cornell University law professor. He said the administration is likely to prevail on the merits because federal courts have often given the president broad authority to shape the enforcement and implementation of immigration laws.

The plaintiffs in the case — Texas and 25 other states that filed suit in December — argue that Obama's immigration actions violated his constitutional responsibility to "take care that the laws be faithfully executed."

"We live in a nation governed by a system of checks and balances, and the president's attempt to bypass the will of the American people was successfully checked today," said Texas Gov. Greg Abbott in a statement. He filed the lawsuit when he was state attorney general.

The injunction applies to a program known as Deferred Action for Parents of Americans and Lawful Permanent Residents, or DAPA. The program allowed undocumented parents of lawful U.S. citizens or permanent residents to defer deportation and seek job benefits. Texas has standing to bring the lawsuit, the judge ruled, because the federal action would make thousands of newly legalized immigrants eligible for Texas driver's licenses.

The state charges \$24 per license, but they cost nearly \$200 for the state to process — in part because of federal mandates under the REAL ID Act of 2005. That means extending federal benefits imposes a cost on the states.



Protesters gather outside the Brownsville, Texas, federal courthouse Jan. 15 to share stories of their immigration struggles. (Photo: Yvette Vela, AP)

"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," Hanen wrote. "Once these services are provided, there will be no effective way of putting the toothpaste back in the tube should plaintiffs ultimately prevail on the merits."

The judge made clear that his ruling does not apply to the almost 700,000 teenagers and young adults granted legal status under the 2012 Deferred Action for Childhood Arrivals program, or DACA. Hanen, a district judge sitting in Brownsville, Texas, was nominated by President George W. Bush in 2002.

"The plaintiffs were very careful in where they brought this action, to a district court judge on the border," said Laura Foote Reiff, an immigration lawyer at Greenberg Traurig.

She's the chairwoman of the National Immigration Forum, which has advised the White House on immigration policy. "I think the standing issue is a huge one. And the states that brought this case were very clever."

The 25 states joining Texas in the lawsuit are Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Indiana, Kansas, Louisiana, Maine, Michigan, Mississippi, Montana, Nebraska, Nevada, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Utah, West Virginia and Wisconsin.

Unless it's overturned on appeal, the ruling could delay implementation of the executive actions by at least six to 12 months, Reiff said. That's the amount of time it would take to allow public comment on the policy — which could be struck down by the court in a final ruling.

Immigrant rights groups noted that the injunction was temporary and procedural and urged undocumented immigrants to prepare to apply to the president's program.

"Our communities need to be ready to benefit from this," said Marielena Hincapié, executive director of the National Immigration Law Center, which filed a legal brief supporting the president's plan. She called the court challenge a "political lawsuit" aimed at causing confusion and fear among eligible immigrants.

In his comments in the Oval Office, Obama said he acted on immigration last year because Congress did not.

"With a new Congress, my hope has been that they now get serious in solving the problem," he said. Instead, Congress has made "threats to defund the Department of Homeland Security, which would make it even harder for us to protect our borders and keep our people safe."

The court ruling could give Republicans a way out of the impasse over Homeland Security funding by handing them a big win that allows them to drop the provision that would block funding for the executive actions. "Some Republicans might see this as an opportunity to declare victory and pull out," said Jack Pitney, a political scientist at Claremont McKenna College in California.

"Others, however, will see it as an opportunity to declare war and press ahead harder than ever. The question is which sentiment will prevail in Republican ranks."

Tuesday, both sides were digging in. House Republicans, led by Speaker John Boehner, R-Ohio, renewed their demand that the Senate take up the House-passed Homeland Security bill. Senate Democrats insisted on a "clean" bill without any immigration provisions.

"It's perfectly appropriate to take this issue to court, but it is completely unacceptable for Republicans to hold up funding for the Department of Homeland Security while the case wends its way through the legal system," Sen. Charles Schumer, D-N.Y., said in a statement.

Former Florida governor Jeb Bush, a prospective GOP candidate to succeed Obama, said that Obama "overstepped his executive authority and, in turn, hurt the effort toward a common-sense immigration solution." He said the ruling should bring Obama and Congress back to the table to work out an immigration bill.