



Written by [Warren Mass](#) on May 27, 2015

## Appeals Court Lets Stand Injunction Against Obama Amnesty

The U.S. Court of Appeals for the Fifth Circuit, in New Orleans, decided on May 25 to let stand a February 16 injunction issued by U.S. District Judge Andrew Hanen of the U.S. District Court in Brownsville, Texas, that blocked President Obama's executive action to grant amnesty to four million illegal aliens.



Hanen's ruling was issued in response to a lawsuit filed by Texas and 25 other states against executive actions President Obama and Homeland Security Secretary Jeh Johnson took in November. The injunction enjoined the federal government, and specifically Secretary Johnson, from implementing the Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) program described in Johnson's November 20 memorandum.

On March 12, after Hanen issued his injunction, the Obama administration's Department of Justice filed an appeal with the New Orleans court stating that the federal government "seeks an immediate stay pending appeal of a nationwide preliminary injunction against the Department of Homeland Security (DHS)."

The appeals court heard oral arguments from both sides on April 17, and a panel of three judges finally issued its decision on May 25. Two of the three judges — Jerry Smith and Jennifer Elrod — refused to overturn Hanen's order, and among the statements they made in the 70-page opinion was that Texas (the lead plaintiff in the case) had shown that it would incur significant costs in issuing driver's licenses to illegal immigrants who would be allowed to stay in the country.

The *New York Times* noted that the judges also rejected the administration's argument that its immigration programs could not be reviewed by the courts because they stemmed from policy decisions by the president on how to enforce the immigration laws.

The dissenting judge, Stephen Higginson, wrote that the administration was "adhering to the law, not derogating from it."

The *Times* reported that this latest ruling pertained only to the administration's request for an emergency stay of Hanen's ruling. However, in addition to that emergency stay, the appeals court is also considering the administration's appeal of the injunction, which is a more lengthy process. The court has tentatively scheduled oral arguments on the appeal for the week of July 6.

In response to the decision, Texas Governor Greg Abbott said in a statement: "The President's attempt



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to bypass the will of the American people was successfully checked again today.”

Texas was the lead plaintiff in a lawsuit (*State of Texas, et al vs. United States, et al*) against the Obama administration that was joined by 25 other states. The states charged in the suit: “The President candidly admitted that, in [suspending enforcement of deportation by means of executive actions], he unilaterally rewrote the law: ‘What you’re not paying attention to is, *I just took an action to change the law.*’” (Emphasis in original.)

After the decision was announced, White House spokeswoman Brandi Hoffine asserted, “Today, two judges of the 5th Circuit chose to misinterpret the facts and the law in denying the government’s request for a stay.”

“As the powerful dissent from Judge Higginson recognizes, President Obama’s immigration executive actions are fully consistent with the law,” Hoffine continued.

The May 26 decision may not settle this issue for good. As noted, that decision ruled only on the government’s emergency appeal, and the court has tentatively scheduled oral arguments on the overall appeal for the week of July 6.

Whichever side loses may be expected to appeal to the Supreme Court. And in addition to what the federal courts may decide to do, it remains to be seen if Congress will continue to allow the president to rule by decree in violation of the U.S. Constitution.

Finally, there is the matter of states’ rights. The states have the option of exercising the authority they possess to protect their own borders, and, if necessary, to nullify federal laws that may interfere with that sovereign authority.

(The Tenth Amendment Center published an excellent essay on the latter topic, entitled: “[The States Have the Power to Protect their Borders.](#)”)

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