



Federal Judge Declares Obama Immigration Actions “Unconstitutional”

In an opinion filed on December 16, in the U.S. District Court for the Western District of Pennsylvania, federal Judge Arthur Schwab said President Obama’s immigration actions are invalid, effectively count as “legislation” from the executive branch, and concludes that they are “unconstitutional.”

In rendering his opinion in the case, *United States of America, Plaintiff v. Elionardo Juarez-Escobar, Defendant*, Judge Schwab cited and quoted from President Obama’s November 20 nationwide address announcing his executive actions related to granting “deferred deportation” to millions of aliens living in the United States illegally.



Schwab prefaced his opinion:

On November 20, 2014, President Obama announced an Executive Action on immigration, which will affect approximately four million undocumented immigrants who are unlawfully present in the United States of America. This Executive Action raises concerns about the separation of powers between the legislative and executive branches of government. This core constitutional issue necessitates judicial review to ensure that executive power is governed by and answerable to the law such that “the sword that executeth the law is in it, and not above it.”

In its report on the case, Fox News noted that Schwab’s opinion is unique because it did not come in response to a challenge to Obama’s immigration executive action announcement. It is also unclear, noted the Fox News report, if the opinion will have any impact other than to rally critics and fuel momentum behind other lawsuits.

Among those lawsuits, [reported *The New American* on December 4](#), was one filed jointly by 17 states the previous day that named the top immigration enforcement agencies as defendants. The federal lawsuit involves the following states: Alabama, Georgia, Idaho, Indiana, Kansas, Louisiana, Maine, Mississippi, Montana, Nebraska, North Carolina, South Carolina, South Dakota, Texas, Utah, West Virginia, and Wisconsin. (The subsequent joining of Arizona, Florida, and Ohio as parties to the lawsuit brought the number to 20.)

Texas Attorney General and Governor-elect Greg Abbott said during a news conference in Austin, Texas, that Obama’s actions “directly violate the fundamental promise to the American people” by ignoring the Constitution.

“The ability of the president to dispense with laws was specifically considered and unanimously rejected at the Constitutional Convention,” Abbott added.

Fox News reported Schwab issued his opinion in response to a criminal case against Honduran illegal



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immigrant Elionardo Juarez-Escobar, who had previously been deported in 2005 and was apprehended in the United States again earlier this year. After Juarez-Escobar pleaded guilty to the charge of “re-entry of a removed alien,” the court subsequently examined the impact of Obama’s immigration actions on the case. As part of that review, Schwab left open whether the actions might apply to Juarez-Escobar but determined that the executive actions themselves were unconstitutional.

After summarizing how the defendant’s case came to be before the court, Schwab went on to pose the question: “Is President Obama’s November 20, 2014 Executive Action on Immigration Constitutional or Unconstitutional?” Under the heading, “Separation of Powers Under the Constitution,” Schwab noted:

Under our system of government in the United States, Congress enacts laws and the President, acting at times through agencies, “faithfully execute[s]” them. U.S. Const., Art. II, § 3 (the “Take Care Clause”; also known as the “Faithful Execution Clause.”

In implementing his executive action on deferring the deportation of millions of illegal aliens, Obama acted through an agency — the Department of Homeland Security — when he issued a presidential Memorandum on November 21, that created a task force among all executive departments to determine additional steps the federal government can take to ensure its programs and policies are serving diverse communities, including immigrants.

Homeland Security Secretary Jeh Johnson also sent his own executive action memorandum to the heads of U.S. Citizenship and Immigration Services; U.S. Immigration and Customs Enforcement; and U.S. Customs and Border Protection, thereby expanding “deferred action” (another name for amnesty) by directing “USCIS to establish a process, similar to DACA, for exercising prosecutorial discretion through the use of deferred action to certain categories of individuals, principally those who had a son or daughter who is a U.S. citizen or lawful permanent resident.”

However, neither Obama’s memorandum nor that of Johnson served to execute laws passed by Congress, but represented unilateral executive department action, hence the question of their constitutionality.

Continuing, Schwab posed the problem: “In determining whether the Executive Action is applicable to this Defendant, this Court must first determine whether the Executive Action is constitutional.” He then summarized Obama’s justification for using the executive action route:

President Obama contended that although legislation is the most appropriate course of action to solve the immigration debate, his Executive Action was necessary because of Congress’s failure to pass legislation, acceptable to him, in this regard. This proposition is arbitrary and does not negate the requirement that the November 20, 2014 Executive Action be lawfully within the President’s executive authority. It is not.

Schwab then cited the 1952 Supreme Court case, *Youngstown Sheet & Tube Co. v. Sawyer*, which stated, in part:

In the framework of our Constitution, the President’s power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker. The Constitution limits his functions in the lawmaking process to the recommending of laws he thinks wise and the vetoing of laws he thinks bad.

Schwab concluded his opinion as follows:

President Obama’s unilateral legislative action violates the separation of powers provided for in the



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United States Constitution as well as the Take Care Clause, and therefore, is unconstitutional.

Reaction to Judge Schwab's opinion, as might expected, was mixed.

Fox News quoted a Justice Department spokesperson, who said:

The decision is unfounded and the court had no basis to issue such an order. No party in the case challenged the constitutionality of the immigration-related executive actions and the department's filing made it clear that the executive actions did not apply to the criminal matter before the court. Moreover, the court's analysis of the legality of the executive actions is flatly wrong. We will respond to the court's decision at the appropriate time.

However, John Eastman, law professor at Chapman University, said in a statement to Fox:

The President's unilateral executive action suspending the nation's immigration laws for roughly five million illegal aliens has received its first judicial test, and it has failed.

It is almost impossible that Judge Schwab's opinion — in and of itself — will invalidate the Obama executive actions, since only the Supreme Court (or a subsequent executive order by a future president) has that power. It nevertheless can serve a valuable purpose. For one thing, consider the above-mentioned lawsuit against the Obama administration that 20 states have currently become plaintiffs to. Since judges make heavy use of precedents in deciding cases, *United States of America v. Elionardo Juarez-Escobar* provides valuable precedence for those arguing that the Obama executive actions are unconstitutional.

The careful research and case citations that Schwab included in his opinion also help supply documentation for other entities that wish to challenge the Obama actions in the courts.

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