



More States Suing Feds Over Immigration Executive Orders

More states have joined the original 18 that filed a lawsuit on December 3 against the federal government and several federal officials seeking relief against the defendants' violations of the Constitution and federal law resulting from President Obama's November 20 announcement that he would unilaterally suspend immigration law as applied to four million illegal immigrants.



The lawsuit charges: "The President candidly admitted that, in so doing, 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.)

The suit stated, clearly: "This lawsuit is not about immigration. It is about the rule of law, presidential power, and the U.S Constitution."

Texas Attorney General Ken Paxton, whose state took the lead in initiating the suit (represented by Governor Greg Abbott in his former capacity as state attorney general), announced on January 26 that with the addition of Nevada and Tennessee, 26 states are now parties to the legal complaint. The original lawsuit, filed in U.S. District Court for the Southern District of Texas, listed 18 states, with four state governors being identified by name. Paxton's statement read:

Texas is proud to lead a coalition that now includes a majority of the United States standing up against the President's rogue actions.... The momentum against the President's lawlessness continues to build with Tennessee and Nevada joining the effort to protect our states from the economic and public safety implications of illegal amnesty. As President Obama himself has said numerous times, he lacks the authority to impose amnesty. His actions represent a blatant case of overreach and clear abuse of power.

Paxton's statement listed the states that have joined Texas in the lawsuit as 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.

North Carolina Governor Pat McCrory said his state joined the effort because "the president has exceeded the balance of power provisions clearly laid out in the U.S. Constitution."

U.S. District Judge Andrew Hanen presided at a hearing to consider the lawsuit in Brownsville on January 15. A report from Bloomberg News noted that attorneys for the state of Texas urged Hanen to block the Obama administration's immigration policy immediately while he decides whether it is legal. "Granting an injunction would preserve the status quo," said Andrew Oldham, an attorney for Texas. "And give 25 states a day in court" before the policy takes effect, he added.

"The president does not get to decide what the law is," Oldham told Hanen at the hearing. Oldham said



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

the issue before the court is whether the president may “unilaterally suspend federal immigration laws,” create a “massive” bureaucracy, hand out millions of dollars in benefits, and then insulate that decision from review “by any court at any time by calling it executive action.” “States representing half of this country say he cannot,” he stated.

A statement that Hanen made to reporters the day of the hearing seemed to reflect more sympathy for the illegal immigrants than it did for the plight of those impacted by the executive actions: “We’re where the rubber meets the road,” said the judge. “Within a few miles of this courthouse, there are probably thousands of illegal aliens doing nothing more than trying to make a better life for their families.”

Kathleen Hartnett, a Justice Department lawyer, also addressed Hanen, asserting: “The purpose of this [immigration executive action] policy is to continue to focus on our priorities, which are to stop border crossings and remove threats to our nation.”

Hanen has not yet issued his ruling.

Bloomberg reported that White House lawyers have stated in court papers that judges do not have the authority to decide whether the president abused his power by changing immigration policies without the approval of Congress. The lawyers cited a 1985 Supreme Court ruling: “An agency’s decision not to exercise its enforcement authority, or to exercise it in a particular way, is presumed to be immune from judicial review.”

The online *Huffington Post* reported that a smaller group of 12 states and the District of Columbia have filed an amicus curiae brief in support of the Obama administration’s immigration executive action in the same district court as the 26-state suit. MSNBC listed the states as Washington, California, Connecticut, Hawaii, Illinois, Iowa, Maryland, Massachusetts, New Mexico, New York, Oregon, and Vermont.

The *Wall Street Journal* reported on January 25 that on Monday, the mayors of more than 30 cities, including Bill de Blasio of New York and Eric Garcetti of Los Angeles, announced two days earlier that they intended to file a brief claiming that the administration’s immigration actions serve the public interest. “Delaying implementation of the President’s executive action will further hurt our families, negatively impact our economies, and create unnecessary insecurity in our communities,” de Blasio asserted in a statement Friday announcing the filing.

The Obama administration has until January 30 to file additional briefings responding to the states’ request to block its immigration executive actions.

No matter which way Judge Hanen rules, it is extremely likely that the losing party will appeal the decision, and the issue may eventually be decided by the Supreme Court.

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