



Written by [Raven Clabough](#) on November 11, 2015

## Obama Admin. to Appeal to Supreme Court on Immigration Executive Action

On Monday, a three-judge panel from the  U.S. Court of Appeals for the Fifth Circuit [upheld an injunction](#) granted by U.S. District Judge Andrew Hanen on February 16 that blocked a series of President Obama's executive actions to grant amnesty to four million illegal aliens. By Tuesday, the Justice Department announced that it will take the case to the Supreme Court.

DOJ spokesman Patrick Rodenbush stated that a petition asking the Supreme Court to weigh in on the subject will be filed. "The department disagrees with the 5th Circuit's adverse ruling and intends to seek further review from the Supreme Court of the United States," Rodenbush said. "The Department of Justice remains committed to taking steps that will resolve the immigration litigation as quickly as possible in order to allow DHS to bring greater accountability to our immigration system by prioritizing the removal of the worst offenders, not people who have long ties to the United States and who are raising American children."

According to *Politico*, the Obama administration had the opportunity to take the issue to the Supreme Court in May when the Fifth Circuit refused to stay Judge Hanen's order, but decided instead to await the outcome of the appeal. The Fifth Circuit had promised to expedite its ruling, but the decision took longer than expected.

With the appeals court upholding Hanen's injunction, the Department of Justice is scrambling to file the appeal as quickly as possible so that it may be heard and decided through normal procedures this term.

South Texas College of Law professor Josh Blackman explains just how difficult this may be:

[Texas'] brief in opposition must be filed 30 days after the case is "placed on the docket." Therefore, if the [Obama administration's] cert petition is filed anytime between now and November 20 or so, Texas's brief in opposition would be filed on or before December 22, and the petition could be distributed for the January 8 conference.

The only wild card is if Texas either (a) waives the brief in opposition, forcing the Court to order them to file one, and thus stretching the clock or (b) requests an extension, pushing us past the January 8 conference. But in all likelihood, this case will be argued the last week in April or the first week in May of 2016, with a decision in June 2016.

This, of course, assumes that the Supreme Court will accept the case. *Politico* notes that the possibility is strong:

The justices are not obligated to hear the appeal, but they often do so when a major presidential or administration initiative has been blocked by a court or when a large number of states and the federal government square off about the scope of their powers.

If the Supreme Court decides instead not to hear the case, the injunction would stand until the case's final resolution, which could come under the next president, *The Atlantic* notes.



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The timeline is tight even if the Supreme Court sides with the Obama administration. The *New York Times* asserts that President Obama would have little time to execute his programs and sign up millions of undocumented immigrants in the remaining months of his presidency.

While some view this case as an opportunity to address illegal immigration, others note the significant impact that a ruling could have on executive authority on issues that go far beyond immigration.

Judge Andrew Hanen granted the injunction after Texas and 16 other states (nine other would later join the suit) filed a lawsuit that objected to executive orders that President Obama signed last November, which unilaterally created one immigration program, expanded another, and eased the threat of deportation for four million illegal immigrants.

According to the White House, the executive action fell well within Obama's presidential powers, despite the fact that under the U.S. Constitution, only the Congress makes laws. "The Supreme Court and Congress have made clear that federal officials can set priorities in enforcing our immigration laws, and we are confident that the President's executive actions are well within his legal authorities," a White House official told Fox News.

The 26-state lawsuit raised three specific objections to Obama's execution action: Obama is violating the Constitution's "Take Care Clause," which states that the president "shall take care that the laws are faithfully executed"; the executive branch is acting in violation of rulemaking procedures; and the executive order will "exacerbate the humanitarian crisis along the southern border."

In February, Judge Hanen determined that there was sufficient merit to the states' challenge to warrant a suspension while the case goes forward.

In his memorandum opinion, Judge Hanen wrote that no such law exists that enables the administration the power "to give 4.3 million removable aliens what the Department of Homeland Security itself labels as 'legal presence.'"

"In fact the law mandates that these illegally-present individuals be removed," he added.

The Fifth Circuit agreed on Monday with Hanen's determination that the states "have standing."

Greg Abbott, the Republican governor of Texas, which led the 26-state coalition that filed the lawsuit against the president's actions, called the lower court decision a "vindication for the rule of law and the Constitution." He declared, "The president's job is to enforce the immigration laws, not rewrite them. President Obama should abandon his lawless executive amnesty program and start enforcing the law today."



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