



Written by [Jack Kenny](#) on April 8, 2015

Texas Judge Refuses to Lift Block of Obama Immigration Executive Action

The Obama administration lost one and won one Tuesday in federal court decisions on the president's executive actions regarding the enforcement of the nation's immigration laws. A federal judge in Texas turned down the administration's request to lift the stay he had put on President Obama's executive action of November 2014, deferring deportation of an estimated five million illegal immigrants and allowing work permits for those who qualify. Meanwhile, the Fifth Circuit Court of Appeals in New Orleans upheld a lower court ruling dismissing a suit against the administration over Obama's June 2012 policy directive on Deferred Action on Childhood Arrivals, allowing illegal immigrants who came to the United States as children to apply for legal status and gain work permits.



Judge Andrew S. Hanen of the U.S. District Court for the Southern District of Texas refused to lift the stay he issued in February on Obama's November executive action, saying implementation should be delayed while awaiting court rulings on the constitutionality of the president's directive to the Department of Homeland Security.

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"In summary, the chief executive has ordered that the laws requiring removal of illegal immigrants that conflict with the 2014 DHS directive are not to be enforced, and that anyone who attempts to do so will be punished," Judge Hanen [wrote](#). "This is not merely ineffective enforcement. This is total non-enforcement," the judge continued, citing statements by Obama that the judge said undermine the administration's case. Hanen referred to a February town hall meeting in which the president warned immigration agents to adhere to his policies or else face "consequences." The judge said the March hearing on the administration's appeal only "reinforced" his view that his February ruling was correct.

"It is obvious that there is no pressing, emergent need for this program," he wrote. Hanen, a 2002 appointee of President George W. Bush, also wrote that the government [misled the court](#) at last month's hearing by claiming that 100,000 work permit renewals had been granted to illegal immigrants before the court blocked the administration from implementing the policy. The government also claimed that the district court lacked the jurisdiction for a ban on the entire program, arguing that the injunction applied only to the court's southern Texas jurisdiction. Hanen dismissed that claim, saying the Constitution requires "uniform" immigration laws and pointing out that in arguing for nullification of Arizona's controversial immigration law in 2012, the administration claimed a "comprehensive and unified system" of laws on immigration was required for the entire nation.



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“There is a lengthy history of precedent concerning the need for a uniform approach to immigration, and this Court sees no reason to depart from those cases,” Hanen wrote.

In dismissing the suit against the Deferred Action on Childhood Arrivals (DACA), the Fifth Circuit Court ruled not on the merits of the executive action or its constitutionality, but on a finding that [the plaintiffs lacked standing to sue](#). The court ruled that both the Immigration and Customs Enforcement officials who were party to the suit and the state of Mississippi failed to show they are harmed by the policy. The immigration officials claimed they would be subject to retribution if they detained an immigrant eligible for the DACA program. The court held that directives from the Department of Homeland Security allow the agents discretion in such cases.

“The fact that the directives give this degree of discretion to the agent to deal with each alien on a case by case basis makes it highly unlikely that the agency would impose an employment sanction against an employee who exercises his discretion to detain an illegal alien,” the court ruled. The judges also rejected Mississippi’s argument that a 2006 study, which found that illegal immigrants were costing the state \$25 million a year in school, health care and law enforcement expenditures, indicated that the DACA program would add to that financial burden. The court rejected the study on the grounds that it was completed six years before the DACA program began and its relevance to the program was “purely speculative.”

“We conclude that neither the agents nor the state of Mississippi has demonstrated the concrete and particularized injury required to give them standing to maintain this suit,” the court stated in its unanimous opinion.

The nation, meanwhile, still awaits a definitive ruling on whether its chief executive may, on his own authority, set aside laws duly enacted by Congress and passed into law by past presidents. Technical legal questions aside, the answer should be clear from the first sentence of the first article of the Constitution of the United States:

“All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.”



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