



Written by [Raven Clabough](#) on May 5, 2020

Court Blocks Enforcement of Requirement for Immigrants to Pay for Their Own Healthcare

A divided three-judge panel of the Ninth Circuit has denied the Trump administration's motion for a stay pending appeal of a nationwide injunction that blocks the administration from enforcing a presidential proclamation requiring would-be legal immigrants to be able to pay for their own healthcare costs, prompting a blistering dissent from the panel's dissenting judge on the court's judicial overreach.



Under Presidential Proclamation No. 9945, *Suspension of Entry of Immigrants Who Will Financially Burden the United States Health Care System*, only immigrants who can be covered by approved health insurance within 30 days of the alien's entry into the U.S. or those who possess the financial resources to pay for "reasonably foreseeable medical costs" may enter the United States.

The October 2019 [proclamation](#) states:

While our healthcare system grapples with the challenges caused by uncompensated care, the United States Government is making the problem worse by admitting thousands of aliens who have not demonstrated any ability to pay for their healthcare costs. Notably, data show that lawful immigrants are about three times more likely than United States citizens to lack health insurance. Immigrants who enter this country should not further saddle our healthcare system, and subsequently American taxpayers, with higher costs.

Seven American citizens sued the administration alongside the Latino Network over the rule, claiming they were sponsoring family members who would be barred by the rule, Courthouse News reports. The lawsuit claimed the proclamation represented efforts to create "a draconian effect on the immigration system through presidential fiat."

U.S. District Judge Michael Simon [issued](#) a nationwide preliminary injunction barring the enforcement of the proclamation in November to allow the lawsuit to play out. Judge Simon added he believed the proclamation to be illegal because it would create family separations, something the visa system was designed to prevent. Simon also claimed the proclamation failed to prove immigrants cost the United States \$35 billion a year and that the proclamation violates a 1990 amendment to the Immigration Nationality Act.

The Trump administration filed a motion for an emergency temporary stay of the district court's order, a request that was [rejected](#) by a three-judge panel on the Ninth Circuit Court of Appeals in December after the court claimed allowing the rule to take effect would "disrupt" the status quo and bring about "major and unprecedented" changes to immigration policy.

On Monday, the same three-judge panel [issued](#) a lengthier ruling refusing the government's request for a stay pending appeal. U.S. Circuit Judge Sidney Thomas and U.S. Circuit Judge Marsha Berzon, both Clinton appointees, determined the federal government has failed to prove the required irreparable



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harm necessary to “justify a stay pending appeal,” since the federal government failed to provide evidence that recent immigrants were more likely to lack health insurance than American citizens.

“There is no citation in the proclamation for this statistic, nor is one to be found anywhere in the record,” Thomas wrote. “Nor could the government provide any source for this assertion in briefing or at oral argument. And the proclamation contains no further cost quantification.”

On the other hand, Thomas claimed the plaintiffs in the case proved they would face irreparable harm if the rule was enforced by being separated from their families.

Judge Thomas also wrote the policy would create a “Catch-22” for immigrants: “They cannot obtain an ‘approved’ unsubsidized insurance plan unless they have been legally admitted, but they cannot be legally admitted unless they have obtained an ‘approved’ insurance plan.” The proclamation does not require immigrants to have approved insurance before entering the United States, however. It simply requires would-be immigrants to demonstrate that they are able to pay for their own healthcare, so as not to further burden the American healthcare system.

U.S. Circuit Judge Daniel Bress dissented, criticizing both the district court’s “deeply flawed” reasoning in issuing its nationwide injunction and the Ninth Circuit panel majority’s ruling as an “unjustified intrusion on presidential prerogative.”

It is a bad day for the separation of powers when the Executive — operating at the apex of his constitutional mandate — loses out to players who lack the authority that the Constitution and Congress entrusted to him. And it is an equally bad day for the rule of law when the majority opinion endorses arguments that the Supreme Court expressly rejected two years ago in *Trump v. Hawaii*. As with many immigration policies, reasonable minds will differ as to whether Proclamation No. 9945 is good or bad policy. But the great policy debates of our time should be resolved in the halls of Congress, the public square, and at the ballot box, not by a district court in Oregon or a three-judge panel in San Francisco. What I know is that Proclamation No. 9945 is valid as a matter of law. And that is what matters here.

Judge Bress takes issue with the district court’s issuance of a nationwide injunction, stating such universal injunctions “raise many issues, as the Supreme Court has signaled in repeatedly staying lower courts’ (and our court’s) universal injunctions.”

Judge Bress concludes by observing the only solace is the fact that majority’s ruling only denies a stay of the injunction and is hopeful the “merits panel” will “see things differently,” but adds that decision will not be issued for “many months from now, if not longer.” In the meantime, the lawsuit against Trump’s proclamation will proceed with the injunction against the enforcement of the proclamation in effect.

But despite the constitutional concerns raised by the court’s ruling, the Latino Network celebrated the panel’s decision, Willamette Week reports.

“Today’s decision is a gratifying step towards our families’ reunification and a reinforced commitment to the family-based immigration system that has been in place in our country for over a hundred years,” said Carmen Rubio, executive director of the Latino Network.

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