

3-16-2015

26 States Sue Obama Over Immigration Plan

Lauren Carasik

Western New England University School of Law, lcarasik@law.wne.edu

Follow this and additional works at: <http://digitalcommons.law.wne.edu/media>



Part of the [Immigration Law Commons](#)

Recommended Citation

Lauren Carasik, 26 States Sue Obama Over Immigration Plan, ALJAZEERA AMERICA (Mar. 16, 2015), <http://america.aljazeera.com/opinions/2015/3/twenty-six-states-sue-obama-over-immigration-plan.html>

This Editorial is brought to you for free and open access by the Faculty Publications at Digital Commons @ Western New England University School of Law. It has been accepted for inclusion in Media Presence by an authorized administrator of Digital Commons @ Western New England University School of Law. For more information, please contact pnewcombe@law.wne.edu.

26 states sue Obama over immigration plan

The lawsuit serves only to prolong agony for families living in the shadows

March 16, 2015 2:00AM ET

by [Lauren Carasik](#) [@LCarasik](#)

For the past month, millions of undocumented immigrants have been left in legal limbo, thanks to a court fight between the White House and 26 states.

On Feb. 16, U.S. District Court Judge Andrew Hanen issued an injunction in response to lawsuit brought by the states, finding that President Barack Obama's executive actions on immigration amount to impermissible rulemaking.

The ruling halts temporary relief from deportation and other immigration benefits for more than 4 million immigrants. Obama's plan directed immigration enforcement authorities to focus on deporting felons, not families. It also allowed parents of U.S. citizens and permanent residents and hundreds of thousands of young adults who came to the U.S. as children to work legally without the constant threat of deportation.

On Feb. 23, the administration asked Hanen to limit his ban and allow the immigration plan to move forward without delay, citing security and humanitarian concerns. But the 26 states behind the lawsuit argue that the costs of supporting undocumented immigrants would cause them irreparable harm. A hearing on the plight of some 100,000 people, whom the government says [were already given a three-year deferred action](#) before Hanen's order, is set for March 19. On March 12, the Department of Justice asked the Fifth Circuit Court of Appeals for an immediate stay of Hanen's injunction.

Meanwhile, [12 states](#) are reportedly preparing to support the DOJ's appeal, arguing that migrants provide economic benefits, not burdens, to their states. While the administration should ultimately prevail because the president acted within his executive authority, the appeals process will likely take months or years. In the interim, unless Congress acts on immigration reform, millions of

law-abiding migrants who have toiled in the shadows for years will continue to live in fear that deportation will tear their families apart.

Partisan politics

Obama announced the executive actions on Nov. 20, 2014, after years of partisan wrangling blocked any progress on comprehensive immigration reform. In 2013 the [House refused to vote on a bipartisan](#) Senate bill that would have finally cleared the gridlock and provided relief for some of the nation's 11 million undocumented immigrants. The issue remained bitterly divisive, and the stakes for the GOP were raised when its latest efforts to derail the plan through a partial government shutdown failed on March 3 after Congress passed a funding bill without restrictions. Republican governors lead 24 of the 26 states involved in the lawsuit.

It is no accident that Hanen appears receptive to the plaintiffs' arguments. The states' selection of venue was informed by his clear predisposition to side with them. The judge's antipathy toward undocumented immigrants was evident in his prior decisions. Hanen, whose Brownville courthouse sits less than a mile from the Rio Grande, made his views clear in a 2013 child-trafficking case.

He was presiding over the prosecution of Mirtha Veronica Nava-Martinez for trafficking a 10-year-old girl from El Salvador to her undocumented mother in the United States. Nava-Martinez was arrested at a checkpoint, but authorities reunited the mother and daughter, as required by law. Despite claiming that his court "takes no position on immigration reform, nor should one read this opinion as commentary on that issue," Hanen [expressed](#) dismay at authorities for failing to prosecute or deport the mother. "Instead of enforcing the laws of the U.S.," he opined, "the government took direct steps to help the individuals who violated it." While the current suit is about executive authority, the judge again discussed the administration's immigration enforcement efforts, which he says have worsened illegal immigration and drained state coffers.

Opponents of Obama's plan may be savoring their temporary victory, but they are merely delaying the inevitable: The US must confront immigration reform sooner or later.

The plaintiffs claim that the states, which pay the costs of undocumented immigrants, have the right to bring the suit. The administration maintains that the executive branch has clear prosecutorial discretion to set priorities for deportation.

"The law is on our side, and history is on our side," Obama said last month after Hanen issued the injunction.

A group of [136 legal scholars](#) have written in support of Obama's legal authority, arguing that prosecutorial discretion is widely accepted and "unavoidable whenever the appropriated resources do not permit 100 percent enforcement." The fiscal [cost of deporting nearly 5 million immigrants](#) would be a staggering \$50 billion, a figure that does not include the [devastating](#) personal and familial toll of [inaction](#). The Obama administration deports nearly 400,000 undocumented immigrants every year. This makes prioritizing the targets of its deportation efforts a matter of necessity.

The Supreme Court has upheld prosecutorial discretion in immigration enforcement. In a 2012 case, [Arizona v. the U.S.](#), the court maintained that the deportation process allows immigration authorities to act with broad discretion, including whether to "pursue removal at all." Despite Hanen's injunction, the plan's priorities, which direct border patrol to focus on felons, serious criminals and recent border crossers, are [still in effect](#).

Obama's plan was tarnished from the outset by misinformation about its legality and the scope. An estimated 4 million immigrants who are parents of U.S. citizens or legal permanent residents and who have resided in the country for at least five years would be eligible for relief under the plan. It would expand

eligibility for nearly 300,000 people under the Deferred Action for Childhood Arrivals program, which initially covered 1.2 million people.

The plan would not reward recent border crossers, including Central American children whose plight made global headlines last summer, who are ineligible. In fact, most people who would be eligible have been in the U.S. for [more than 10 years](#). Moreover, their status would be temporary: It offers neither a path to citizenship nor permanent legal status. And the next president can revoke it.

Meanwhile, the administration has taken steps to counter perceptions of lax immigration enforcement. For example, in a five-day dragnet last week, authorities said they rounded up [2,000 immigrants who had criminal convictions](#). Obama's aggressive deportation policies already face challenges from other federal courts. On Feb. 20, a federal court in Washington, D.C., [blocked the administration from automatically detaining adult female and minor asylum seekers](#) as a policy to deter others from seeking refuge. And a week later, a court in California ordered the administration to allow people [deported under coercive tactics](#) the opportunity to return to the U.S. to seek legal status.

Out of step

Hanan's order is a temporary win for opponents of Obama's plan, but it runs afoul of popular sentiment. In a new [poll](#) by the Public Religion Research Institute released last month, [nearly three-quarters](#) of those polled said, "Congress should prioritize passing comprehensive immigration reform legislation over legislation that would overturn Obama's immigration policies." And nearly 60 percent support a path to citizenship for undocumented immigrants, including a [majority in every state](#). Tellingly, support for immigration reform fell when policies were associated with Obama, underscoring the partisan nature of the discourse.

Plaintiffs may be savoring their victory, but they are merely delaying the inevitable: The U.S. must confront immigration reform sooner or later. And it won't be a mass deportation of all 11 million people residing in the country without legal status. Most of them are productive and law-abiding people with

deep roots and familial ties in this nation of immigrants. Tearing families asunder for mere political brinkmanship is heartless and counterproductive. Instead, our elected representatives should make a good-faith effort to find common ground to resolve the nation's immigration crisis in a humane manner once and for all.

Lauren Carasik is a clinical professor of law and the director of the international human rights clinic at the Western New England University School of Law.

The views expressed in this article are the author's own and do not necessarily reflect Al Jazeera America's editorial policy.