



## Obama Immigration Amnesty Action Is on Hold as Appeals Are Planned

Though President Obama said at a February 17 press conference that he disagreed with U.S. District Judge Andrew S. Hanen's ruling the previous day that temporarily blocked his plans to grant amnesty to four million illegal aliens — and that the Justice Department would appeal the decision — any appeals will likely take months to go through the federal courts. In the meantime, the administration's plans to start accepting applications on February 18 from illegal aliens seeking amnesty under the DAPA (Deferred Action for Parents of Americans and Lawful Permanent Residents) program have been placed on indefinite hold.



White House Press Secretary Josh Earnest told reporters at the White House on February 20 that the Justice Department will seek a stay of an order by a federal judge. Earnest stated:

There is a solid legal foundation for the president to take the steps that he announced late last year. We're going to continue to pursue this case through the legal system.

Earnest said the Justice Department will file paperwork to seek a stay by Monday, February 23.

An emergency motion seeking a stay is one of several options available to the Obama administration in the appeals process. An emergency motion seeking a stay of a ruling is a special motion that asks a court to consider a decision quickly in order to avoid what is generally termed "immediate and irreparable harm."

The latest statement by Earnest is a reversal of a statement attributed to Obama administration sources by *ABC News* on February 17, which said the Department of Justice would be unlikely to seek an emergency stay to block the judge's order because DOJ officials believe they would not succeed in that effort. The sources also said they believe the department will ultimately prevail with their overall appeal.

Any DOJ appeal would go first to Hanen's court, the U.S. District Court for the Southern District of Texas, where it would very likely be denied. It would then go to the U.S. Court of Appeals for the Fifth Circuit in New Orleans, which has appellate jurisdiction over district court in Texas.

Josh Gerstein, a White House reporter for *Politico*, noted in a February 19 article that the Fifth Circuit court "is considered the nation's most conservative appeals court." Gerstein noted that if the Fifth Circuit rules against the Obama administration, it could ask the Supreme Court to allow the administration's "deferred action" program to proceed while the legal battle continues.

Noting that cases in the Fifth Circuit commonly take almost nine months from filing to resolution, Gerstein quoted an opinion from Paul Virtue, a former Immigration and Naturalization Service general



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counsel now with law firm Mayer Brown, who said:

I don't think the administration can afford to wait while this works its way through the appellate process, but at the same time they're enjoined from implementing it. It's a difficult situation.

It remains to be seen what effect — if any — the ongoing legal battle in the courts over Hanen's ruling will have on another battle in Congress: the fate of a House-passed bill to fund the Department of Homeland Security while withholding funding of the Obama deferred action programs. The House passed the Department of Homeland Security Appropriations Act, 2015 (H.R. 240) on January 14 by a vote of 236-191, but since Republicans lack the 60-vote majority in the Senate necessary to invoke cloture, Democrats in the upper house have successfully filibustered the bill, preventing a vote on it.

Reuters reported on February 19 that Hanen's ruling strengthened the resolve of House conservatives who said they will continue their campaign against the Obama immigration orders next week, even if it increases the chances of a partial Department of Homeland Security shutdown on February 27.

Hanen's ruling "gives momentum to our position," Reuters quoted Representative Jim Jordan, (R-Ohio), who leads the 35-member House Freedom Caucus, as saying.

"The conservative Republicans won this round. So why are people now looking at us to change the bill that we passed?" said Representative Mick Mulvaney (R-S.C.), who added that was the "overwhelming consensus" expressed during a February 18 conference call among the caucus members.

On the other side of the Capitol, Senator John McCain (R-Ariz.) expressed a different view about how the court ruling should impact the GOP's approach to funding Homeland Security. *The Hill* reported McCain's statement on the matter:

It's not a good idea to shut down the Department of Homeland Security. We should be working together despite the obstruction of our Democratic colleagues to resolve this issue so that we don't shut it down. Now we have the perfect reason to not shut it down because the courts have decided, at least initially, in our favor.

Unlike more conservative Republicans — especially in the House — McCain does not have a history of strongly opposing amnesty for illegal aliens. He was one of the "Gang of Eight" who drafted the Border Security, Economic Opportunity, and Immigration Modernization Act of 2013 that was passed by the Senate on June 27, 2013. Speaker of the House John Boehner never allowed that bill to come up for a vote because conservative Republicans objected to the "path to citizenship" for illegal aliens that it provided.

On May 14, 2013, six House Republicans gathered on the steps of the Capitol to denounce the "Gang of Eight" bill, expressing their concern about the huge negative impact that the bill's grant of amnesty for 11 million illegal aliens would have on the national debt, as well as its damaging effect on the rule of law.

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