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Fifth Circuit Strikes Down Immigration Program

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BY **JULIÁN AGUILAR** NOV. 9, 2015 8 PM CENTRAL

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Scott Keller, the Texas Solicitor General, speaks to reporters after delivering oral arguments before the U.S. Court of Appeals for the Fifth Circuit in New Orleans. 📷 Julian Aguilar

Editor's note: This story has been updated with additional comment.

A three-judge panel of the U.S. 5th Circuit Court of Appeals has once again ruled against the Obama administration's controversial immigration program, upholding a lower court's injunction barring the plan from taking effect while awaiting the outcome of a full trial on the lawsuit's underlying arguments.

The policy, called Deferred Action for Parents of Americans and Lawful Permanent Residents, was announced in November 2014 and would have allowed for more than 4 million undocumented immigrants nationwide to apply for three-year renewable work permits and reprieves from deportation proceedings.

Gov. [Greg Abbott](#) filed a lawsuit challenging the policy in his former role as attorney general last December, and 25 states joined the lawsuit.

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"The court's decision is a vindication for the rule of law and the Constitution," Abbott said in a statement. "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."

The 2-1 decision late Monday marks the second time the New Orleans appellate court has denied the administration's request to let the program move forward. It follows a February ruling by U.S. District Judge Andrew Hanen of Brownsville that the Obama administration did not comply with the [Administrative Procedure Act](#) governing how federal regulations are made, and how much input the public has.

"Today, the Fifth Circuit asserted that the separation of powers remains the law of the land, and the president must follow the rule of law, just like everybody else," said Attorney General [Ken Paxton](#), who took over the case when he was elected. "Throughout this process, the Obama administration has aggressively disregarded the constitutional limits on executive power, and Texas, leading a charge of 26 states, has secured an important victory to put a halt to the president's lawlessness."

In May, the appellate court denied a request by the White House to let the program proceed while the case played out in the courts. The federal

government tried again to have the injunction lifted, arguing that Hanen had misused his discretion in granting the injunction.

Judge Jerry E. Smith, who was appointed by former President Ronald Reagan, and Judge Jennifer Elrod, who was appointed by former President George W. Bush, voted to deny the request. Judge Carolyn Dineen King, appointed by former President Jimmy Carter, cast the dissenting vote.

Attorneys for the state of Texas had argued that in addition to circumventing Congress and abusing his authority to enact immigration laws, the president's order would cause the state harm in the cost of providing undocumented immigrants driver's licenses and other benefits.

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Smith and Elrod agreed.

"The states have satisfied the other requirements for a preliminary injunction," the [opinion](#) states. "DAPA beneficiaries would be eligible for driver's licenses and other benefits, and a substantial number of the more than four million potential beneficiaries—many of whom live in the plaintiff states—would take advantage of that opportunity."

The panel also rejected the administration's argument that halting the program would harm the administration's ability to prioritize its resources.

"Separately, the United States postulates that the injunction prevents DHS from effectively prioritizing illegal aliens for removal. But the injunction 'does not enjoin or impair the Secretary's ability to marshal his assets or deploy the resources of the DHS [or] to set priorities,'" the opinion states.

The next step for the administration will likely be an appeal before the U.S. Supreme Court. But it's unclear whether the high court, which began its current term last month, has enough time to consider the case.

“In this case the time line has always been a critical element of the outcome since it is a presidential discretionary order,” Muzaffar Chishti, an attorney and director of the Migration Policy Institute’s office at New York University School of Law, told the Tribune in October. “Whether it can happen during the life of this presidency has always been the dominant question.”

Chishti added that November might be the last month the Obama administration could ask the high court to consider the case. If it does, a ruling could come as late as June.

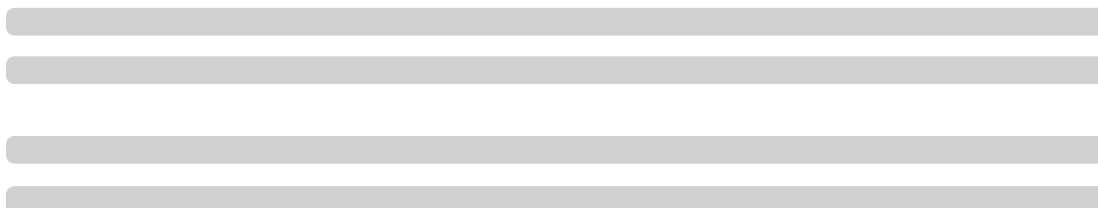
Even if the Supreme Court rules in favor of the administration, the president will be in the final months of his eight-year presidency, which will likely factor into whether potentially eligible immigrants apply for the protection.

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Supporters of the immigration plan were quick to pounce on the state's leadership for filing the lawsuit.

"The 5th Circuit ruling is a setback, but it is Greg Abbott and his continued opposition to immigration reform that hurts Texas workers, families, and businesses," said Cristina Tzintzún, the executive director of the Workers Defense Project.

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