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In Courts, Running Out the Clock on Obama Immigration Plan

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WASHINGTON — The prime-time assertion of executive power was audacious and far-reaching. Nearly a year ago, President Obama vowed that his administration would provide up to four million undocumented immigrants the ability to live and work in the United States without fear of immediate deportation.

It almost certainly will not happen for the vast majority of them.

The conservative legal campaign against the centerpiece of Mr. Obama's immigration overhaul has largely succeeded in running out the clock, blocking the president's executive actions from taking effect while judges consider their legality. Now, even if Mr. Obama ultimately prevails in the legal battle — which would occur next summer at the earliest — there will probably be time for at most a few hundred thousand of those immigrants to qualify for protection before the end of the president's term.

Worse for the administration, in the next few weeks, the states fighting to stop Mr. Obama may score their biggest victory yet — achieving a long-enough delay in the lower courts to prevent the Supreme Court from even considering and ruling on the case until after next year's presidential election. That timing would leave any final decision about immigration to Mr. Obama's successor.

The immediate holdup is the United States Court of Appeals for the Fifth Circuit, in New Orleans, where a three-judge panel has been deliberating the president's actions for more than three months — far longer than the court's goal to decide “within 60 days after argument” in most cases. White House officials are bracing for a loss in the appeals court, in part because two of the three judges have already ruled against the administration in an earlier decision.

But Mr. Obama needs a ruling soon from that panel so his lawyers can try to persuade the Supreme Court to take the case. If the decision does not come quickly, his hopes for a late-hour appeal to the Supreme Court this year will disappear.

Already, disappointed immigration activists are preparing a fallback strategy to try to turn the fate of Mr. Obama's promise into a political issue on the 2016 campaign trail. Their goal is to

motivate immigrants who are citizens to vote by focusing on what the activists say is the once-in-a-lifetime chance that has slipped away for millions who are undocumented.

Starting Wednesday, about a dozen protesters will fast for nine days in the park across from the Fifth Circuit courthouse.

“The lack of action is taking on the tenor of political behavior that is unconscionable for a federal court,” said Kica Matos, the director of immigrant rights and racial justice for the Center for Community Change, an organizer of the protest. “We want to let the court know that we are watching. It is not acceptable to us that they are going to run out the clock to achieve political goals.”

The extended legal delays have upended the president’s hope for a final legacy-making success on immigration. After years of a fruitless battle with House Republicans to pass a comprehensive overhaul of the nation’s immigration laws, Mr. Obama last year concluded that he should, and could, act on his own. He announced his plans in a speech to the nation on Nov. 20.

But the president’s advisers urged him to move quickly to establish the program, known as Deferred Action for Parents of Americans. If millions signed up by the time Mr. Obama left office, they said, the next president would find it difficult to reverse, even if a Republican wins the White House.

Aides mapped out a plan to build a new bureaucracy to process millions of applications from undocumented immigrants. Officials quickly signed a \$7.8 million lease for a Washington-area building and began interviews to hire 1,000 new employees. Those efforts were scuttled when a Texas judge ordered a halt to the program.

Officials say they are prepared to begin that process again quickly once they receive a final go-ahead from the courts. In 2012, it took about 60 days to set up a similar but smaller program for undocumented immigrants who were brought to the United States as children. White House aides say they could restart the latest program in that time.

But the crawl of the legal system is working against them.

Almost immediately after Mr. Obama announced his executive actions, Texas and 25 other states filed a lawsuit seeking to stop him. In February, Judge Andrew S. Hanen of Federal District Court in Brownsville, Tex., ordered a preliminary injunction on the programs while he considered the constitutional and other issues in the suit. The government appealed, but the Fifth Circuit panel hearing that appeal has yet to decide.

The circuit court must decide soon to give the administration the time for a final appeal to the Supreme Court.

“What is the point of no return?” said Josh Blackman, a law professor at the South Texas College of Law who filed an appeals court brief opposing the president’s executive actions. “As long as we get a decision by the end of October or beginning of November, the case could be heard by the Supreme Court this term.”

John P. Elwood, a lawyer at Vinson & Elkins who follows Supreme Court procedures closely, said the Obama administration might have a few more weeks than that — until late November — to be heard in the current term once the Fifth Circuit rules.

But lawyers for the State of Texas, whose lawsuit is seeking to stop Mr. Obama, will then have the right to seek an extension beyond the usual 30 days to file briefs, another delay that could get in the way of prompt Supreme Court consideration.

“The petition seems like it would have to be filed by Nov. 27 or 30, if Texas is being cooperative,” for the case to be heard in the current term, Mr. Elwood said.

If the Supreme Court considers the case this term, activists are counting on the justices to overturn the lower courts and let Mr. Obama’s immigration program move forward.

But the earliest a positive Supreme Court decision is likely to come is in June 2016, leaving only a few months before the presidential elections. Add the amount of time it would take for officials to renew the lease, hire the new employees and print the documents, and that time shrinks even further.

By then, the presidential campaign will be at a fever pitch. Officials would be asking immigrants in the United States illegally to come forward and apply at the same time that the Republican candidate for president would probably be campaigning on a promise to end Mr. Obama’s program.

“That fear will definitely be there, and there will be people who will wait,” said Marielena Hincapié, the executive director of the National Immigration Law Center. But she added that “a positive Supreme Court decision will be an infusion of hope and energy for people to come out and vote.”

White House officials and advocates are pressing forward on parts of the president’s executive actions that were not blocked by the courts, including new enforcement priorities for immigration authorities that have reduced the number of deportations.

Officials are also trying to publicize a recent procedural change that could help hundreds of thousands of undocumented immigrants who are married to American citizens or legal residents to apply for green cards.

“We have been mobilizing all over the country, we have done hundreds of meetings and workshops, and our big message to the entire community was get ready, whenever it happens,” Ms. Matos said. “When we get closer to the election, the Republicans may start to realize that they need our votes.”