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Immigration showdown brews in New Orleans court

Judge set to consider if feds misled states

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WASHINGTON — A hearing in Brownsville this week examining whether the Obama administration misled a federal court may ultimately have no bearing on the outcome of a blockbuster immigration case but could strain relations between the judge and government lawyers.

U.S. District Judge Andrew Hanen could choose to grant a motion for early discovery, enabling Texas and 25 other states suing the government to learn unknown details about the administration's drive to grant legal protections to millions of undocumented immigrants.

Conceivably, he could expand his injunction blocking the president's executive actions on immigration in a way that affects some of the 100,000 immigrants granted deportation reprieves in the months leading up to his ruling, legal experts said.

"I suppose he could find the government in contempt. But what the implications of that are, I'm not sure. He's not going to put the president in jail," said Paul Virtue, who was general counsel in the former Immigration and Naturalization Service working under three presidents.

But any outcome is likely to be far less significant than deliberations underway in an appeals court in New Orleans, where the Justice Department is pressing an emergency motion to block Hanen's ruling.

As lawyers prepared for the hearing in Brownsville, the administration hastened its effort to allow its executive actions to proceed. Contending that Hanen's Feb. 16 preliminary injunction "is unprecedented and wrong," Justice Department lawyers Thursday asked the 5th Circuit Court of Appeals to decide by March 26 on their request to block the ruling.

The department also requested an expedited schedule for the government's appeal, which it hopes to begin as early as March 30.

Before the flurry, Hanen already has ordered all sides to his courtroom Thursday based on a March 3 "advisory" from the government. That disclosed that U.S. Citizenship and

Immigration Services had recently granted three-year deportation reprieves for roughly 100,000 young immigrants who qualified under the 2012 Deferred Action for Childhood Arrivals program, known as DACA.

The original DACA gave some young immigrants here illegally a two-year reprieve from deportation and a work permit, which they could renew. When Obama announced in November that he was expanding DACA and giving work permits to the undocumented immigrant parents of some U.S. citizens and lawful permanent residents, he said recipients of both programs, including those who renewed their 2012 DACA permits, would receive benefits for three years.

The latest dispute hinges on whether a government lawyer misled Hanen by failing to disclose at a January hearing that the administration granted three-year work permits to immigrants who had already received two-year DACA benefits up for renewal.

The 2012 program was not covered in the judge's injunction. But a day after the administration's surprise admission, Texas and its allies turned up in Hanen's court alleging that the actions had violated assurances from a government lawyer.

Texas Attorney General Ken Paxton contends that they would have moved to speed up action in the court in Brownsville had they known of the DACA expansion and perhaps sought a temporary restraining order.

Even with the main venue shifting to New Orleans, Paxton asserted that "the most pressing issue at hand is the extent to which the Obama administration has already issued expanded work permits to illegal immigrants, in direct contradiction to what they told the district court."

The dispute focuses on Justice Department lawyer Kathleen Hartnett's response when Hanen asked in January whether anything would be happening in coming weeks with regard to applications under DACA.

"No, your honor," Hartnett replied, noting that she was referring to "revised DACA."

Texas and the other plaintiffs seized on the March 3 disclosure as evidence of deception. They are seeking early discovery into Homeland Security Department operations, which could tie up government lawyers in flurries of motions and perhaps unearth information harmful to the government's case.

On Thursday, the Justice Department will refer to a Nov. 20 Homeland Security memo announcing the new policies for deferred action. Among them, the agency declared that on Nov. 24, the two-year period DACA and accompanying employment authorization would be extended to three years.

In a filing last week, the Justice Department said it regretted the confusion and "in no way intended to obscure the fact" that the Homeland Security Department was operating under 2012 DACA — in line with the Nov. 20 memo.

In ordering Thursday's hearing, Hanen referred to "the seriousness of the matter," sounding sympathetic to Texas and the other plaintiffs. But the outcome is hard to predict.

"This is what we call an unforced error," said Josh Blackman, a law professor at South Texas College of Law who filed a friend of the court brief in the case on behalf of the libertarian Cato Institute.

"Once you get into the business of misrepresenting to the court, you're in a precarious position," he added.

Daniel Eaton, a professor at San Diego State University and a lawyer for employers, said the credibility of Justice Department lawyers could suffer. He noted the potential effect on the 100,000 people granted extended DACA renewal between Nov. 24 and Feb. 16.

"You're talking about real people who are depending on assurances they've gotten from government officials that all of a sudden are called into question in a political and legal battle over which they have no control," he said.

He was referring to people such as Benjamin Rubio, 24, who is from Mexico and has lived in San Antonio illegally for 13 years. When Rubio received his DACA renewal in January, he was surprised to get a three-year work permit.

"I just got it in the mail, and I looked at the work permit and I said, 'Hey it's for three years,' so I took it as an unexpected pleasure," said Rubio, who is in graduate school studying counseling and mental health at Texas A&M University-San Antonio.

Because it costs nearly $500 to apply for deferred action, the extra year is a benefit. More importantly, it helps because the program isn't permanent, he said.

"So if another president comes in and does away with the executive order, that's one more year I have to be in the United States."

The judge's ruling notwithstanding, executive action on immigration is just a stopgap measure, Rubio said.

"What we're really hoping to get, and the only thing that would really matter, would be immigration reform. Right now, I only have three years to be in the U.S, and that's the only thing I know for sure," he said.

Stephanie Vazquez, a 20-year-old from Mexico studying nursing at St. Philip's College, said she was disappointed when she received her two-year deferred action renewal last week — an effect of Hanen's ruling.

"But at least it's something. It's better than not having a permit at all," she said.

Her parents would be potentially eligible for Deferred Action for Parents of Americans and Lawful Permanent Residents, known as DAPA, because her 12-year-old brother was born in the United States. But Hanen's ruling put a hold on that.

"They're upset, because they were really looking forward to getting a better job," Vazquez said. "They were starting to take English classes to better their English to apply for a better job. They already had money saved up, because the application costs were going to be the same. They're waiting now."