

# HOUSTON CHRONICLE

## **Fate of Obama's landmark immigration order in doubt**

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Last winter, Cesar Espinosa's advocacy group fielded hundreds of calls from jubilant immigrants in Houston seeking to apply for work permits under President Barack Obama's executive action on immigration.

Even after a Brownsville judge halted the program from starting last spring, Espinosa and other immigrants remained hopeful, streaming to New Orleans this summer, where a federal appeals panel heard arguments on the initiatives. But more than three months later, the panel has yet to issue an opinion, making it increasingly unlikely the program could start before the last months of Obama's term, if at all.

The potential failure of one of the president's signature reforms, a legacy program that would have shielded nearly 5 million people from deportation, comes at a time when the divide on immigration in Washington has grown into a gulf and the possibility of reform seems slimmer than ever.

"We're looking at a very long timeline," said Espinosa, executive director of FIEL Houston. "People are extremely disappointed. They'd rather not talk about it."

The few families funding White House ambitions Latino immigration to Texas drops as Asian migration grows FILE - In this Feb. 25, 2015, file photo, President Barack Obama speaks during a town hall meeting on immigration hosted by Telemundo and MSNBC, at Florida International University in Miami. New government figures show deportations of immigrants in the United States illegally have declined for the third consecutive year. The figures obtained by The Associated Press show that the Obama administration deported just over 231,000 people during the past 12 months ending September 28. (AP Photo/Evan Vucci) U.S. deports fewest immigrants in nearly a decade Texas' shifting views not yet fully reflected in electorate Supreme Court to start new term

Most observers expect the Fifth Circuit, considered one of the nation's most conservative benches, to rule against the administration, which would then appeal its case to the Supreme Court. But if the panel does not decide on the case by mid-November, legal experts say it's doubtful that justices would be able to consider it in their current term that runs through June.

"When you start getting to November, it's difficult to have a case heard this year absent an expedited hearing from the Supreme Court," said Josh Blackman, a constitutional law professor at South Texas College of Law who filed an amicus brief against Obama's immigration plan on behalf of the Cato Institute, a libertarian think tank in Washington D.C. "I don't think they can get this done. ... The clock has run out."

The coming weeks are key in the program's fate. Two of the judges on the three-member federal panel, Jerry E. Smith and Jennifer Walker Elrod, have already considered the case earlier this year when they decided not to lift Judge Andrew Hanen's injunction and allow the program to continue as the legal questions over it were addressed.

To some, that suggests they'll also rule against the government in the larger case, which centers on whether Texas and 25 other states had standing to bring the lawsuit against the federal government in the first place. The judges are also considering whether the administration violated an obscure statute overseeing how the federal government makes regulations after it didn't give public notice of its plans and allow people to submit comments.

If the Fifth Circuit sides with the states, the government can request the Supreme Court review its decision. But it takes about three months from when such a petition is filed to when justices can decide on whether they'll take the case. To fit it into their caseloads, they generally must accept it between December and early February, meaning the request must be filed in November at the latest, necessitating a decision soon, said Karen Tumlin, legal director for the National Immigration Law Center, an immigrant advocacy group in Los Angeles.

"Now is the anxious period," she said. "All eyes are on the Fifth Circuit."

If the Fifth Circuit issues a decision in late November or December, she said the government could still request the Supreme Court speed up the case by arguing that it is an issue of national significance.

"They do have the ability to squeeze in or add extra cases when they want to, but that's exceptional and it's rare," Tumlin said.

But it has occurred, most notably in the 2000 presidential election, when the court took up the case and decided in George W. Bush's favor in a matter of weeks.

"The clock is ticking," said Steve Vladeck, an American University Washington College of Law professor who specializes in the Supreme Court and has been following the Obama case in the lower courts.

He called the silence from the Fifth Circuit, which usually tries to issue opinions in such cases within 60 days, unusual. While it can technically take as long as it wants, he said the court typically decides relatively quickly on cases of national importance; moreover, two of the judges already are familiar with the key issues at hand.

"This delay is quite surprising," he said.

If the case can get to the Supreme Court, Vladeck predicts the government has a strong chance of prevailing.

"The Supreme Court historically has been very skeptical in states having standing to sue the federal government," he said.

In 2012, the court struck down three portions of a controversial Arizona law that made it a state crime for an immigrant not to be carrying papers, allowed warrantless searches in some situations and forbid immigrants here illegally from working in the state. Though the court upheld Arizona's right to determine the immigration status of a person suspected of being here illegally, justices said states could not overstep the government's immigrant-enforcement authority but could partner in that effort.

"In the Arizona case, the majority was quite sympathetic to the enforcement discretion for the executive branch and that's the real key here, just how much discretion has Congress given the president to set immigration enforcement priorities," Vladeck said.

The White House maintains it has the authority to grant temporary work permits to certain immigrants and choose not to immediately deport them. A similar program for some youth here illegally, known as the "dreamer" initiative, has seen no comparable legal or political outcry.

For advocates on the ground, the pendulum has swung once again from extreme optimism to hopelessness. Carolina Ramirez, a Houston organizer with United We Dream, the largest immigrant youth-led organization in the nation, said the community is dejected. Many incorrectly believe the dreamer program also is now stalled and she said the number of renewals and first-time applicants are down. Their focus now is on motivating immigrant families for the coming elections.

"We know this is something politically motivated," she said. "We want to make sure we hold people accountable."