



Obama's latest immigration defeat sets up next round of fighting

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A conservative-dominated appellate court has delivered red meat to Republican presidential candidates, new challenges to the White House and a heads-up to the Supreme Court with its decision this week blocking the president's immigration plan.

Short term, the decision by a divided 5th U.S. Circuit Court of Appeals gave the GOP presidential candidates something juicy to chew over at the Tuesday night debate hosted by the Fox Business Network and the Wall Street Journal.

In a 2-1 decision, the appellate court ruled that President Barack Obama overstepped his bounds in issuing two executive orders. Both those orders would have allowed certain immigrants – mostly young people and the parents of U.S. citizens – to stay in the United States despite lacking legal documentation.

“A victory for rule of law,” Republican Sen. Ted Cruz of Texas said via Twitter.

Another Republican contender, Louisiana Gov. Bobby Jindal, added in a tweet that “immigration without assimilation is invasion.”

Longer term, the decision by two Republican-appointed appellate judges likely sets the table for a climactic court case that will test the limits of presidential clout.

“This is not the last word on the lawfulness of the president's action,” Walter Dellinger, a former acting solicitor general, told reporters Tuesday, adding that “the case is certainly ripe for Supreme Court review.”

And, for the unforeseeable future, the Monday night decision by the New Orleans-based appellate court keeps more than 4 million immigrants in a state of limbo while the political trumpets blare and the legal battle plays out.

The affected immigrants are those slated for protection from deportation under the administration's now-stalled Deferred Action for Parents of Americans program, known as DAPA, and the expanded Deferred Action for Childhood Arrivals program, known as DACA.

The Center for Migration Studies, a New York-based nonprofit that studies migration, estimates that the affected population includes 966,900 California residents, 684,000 Texas residents, 182,400 Florida residents and 125,000 North Carolina residents.

“California, in particular, has been hurt by this injunction,” California Attorney General Kamala Harris told reporters Tuesday, adding that the state “has a big stake in resolution of this issue.”

Texas and 25 other states challenged the programs, arguing that the immigrant influx would pose burdens on state budgets.

In the decision Monday written by Judge Jerry E. Smith, a Texas native appointed to the bench by President Ronald Reagan, the appellate court kept in place a trial judge’s preliminary injunction that blocks implementation of Obama’s deferred deportation plan.

“DAPA would dramatically increase the number of aliens eligible for work authorization, thereby undermining Congress’s stated goal of closely guarding access to work authorization and preserving jobs for those lawfully in the country,” Smith wrote.

The injunction upheld by the appellate court would be in place until a trial takes place. In response, the Obama administration said Tuesday it would appeal directly to the Supreme Court.

“The Department of Justice remains committed to taking steps that will resolve the immigration litigation as quickly as possible in order to allow DHS to bring greater accountability to our immigration system by prioritizing the removal of the worst offenders, not people who have long ties to the United States and who are raising American children,” Patrick Rodenbush, a spokesman for the Justice Department, said in a statement.

Rodenbush added that “the department disagrees with the 5th Circuit’s adverse ruling and intends to seek further review from the Supreme Court of the United States.”

White House Press Secretary Josh Earnest said the administration is deeply disappointed in the ruling.

“We obviously continue to believe strongly in the legal power of the arguments that we’ve been making for nearly a year now about the importance of giving our law enforcement officials the discretion to implement our immigration laws in a way that focuses on those who pose a genuine threat to our national security or to our communities,” he said at his daily briefing.

Administration officials could have asked for the decision by the randomly selected three-judge panel to be reviewed by the full 5th Circuit, which handles federal cases arising out of Louisiana, Mississippi and Texas. Republican appointees, though, outnumber Democratic appointees on the 15-member court, and a so-called en banc review would take time the White House may not have.

The petition to the higher court will have to happen fast, as the Supreme Court typically stops granting new cases in January for the term that ends in June.

Lynn Tramonte, deputy director of the immigrant advocacy group America’s Voice, pointed out that the department asked the Supreme Court to consider the marriage equality case in mid-November 2014. The court did and reached a ruling in June 2015.

“The same can happen here,” she said.

Dellinger added that “the court could decide to hear it, but not until the next term,” which starts in October 2016. If that happens, a final decision probably would come after Obama leaves office.

Alex Nowrasteh, an immigration policy analyst at the Cato Institute, a libertarian think tank, said Tuesday that while the appellate court’s decision is tough for the president, it could actually be a net positive for Democrats seeking to mobilize Latino voters.

“It’s quite a blow to the president’s immigration actions, but it could also be a boom to the Democratic presidential candidate, because this case could come up in 2016 during the election season,” Nowrasteh said.