1

00:00:14,760 --> 00:00:15,430

Welcome back to another episode of

2

00:00:15,430 --> 00:00:19,280

Law and Liberty,

a Texas Attorney General podcast.

3

00:00:19,520 --> 00:00:24,291

I'm your host Kayleigh Date, and joining

me is Deputy for Special Litigation, Patrick Sweeten.

4

00:00:24,680 --> 00:00:28,460

An issue of immigration law hits the

main stage during and after each election

5

00:00:28,461 --> 00:00:30,020

cycle. But during this one,

6

00:00:30,021 --> 00:00:33,650

President Biden's administration took a

dramatic step in drastically changing

7

00:00:33,651 --> 00:00:37,580

election law during his first

day in office. On day one,

8

00:00:37,610 --> 00:00:40,910

the Biden administration suspended

the removal of illegal aliens,

9

00:00:40,911 --> 00:00:44,720

even though the law specifically

compels those laws to be followed.

10

00:00:45,200 --> 00:00:48,680

Patrick Sweeten led the charge in

litigation opposing this executive order.

11

00:00:48,710 --> 00:00:52,190

So I was hoping today that you could

give us a broad overview of this case and

12

00:00:52,191 --> 00:00:53,024

the issue at hand.

13

00:00:53,240 --> 00:00:56,030

Sure. As you said, the memorandum,

14

00:00:56,090 --> 00:00:58,760

the agency memorandum was

issued on January 20th,

15

00:00:58,761 --> 00:01:02,990

the first day of the Biden administration.

What it did was that it instituted,

16

00:01:04,790 --> 00:01:09,500

100 day pause and the vast

majority of removals of illegal

17

00:01:09,501 --> 00:01:10,730

aliens from the

18

00:01:10,760 --> 00:01:15,650

U.S. and what that means is

that it included a number of

19

00:01:15,651 --> 00:01:18,020

people who had already been

given due process had been,

20

00:01:18,050 --> 00:01:22,040

had gone to hearing and administrative

law judge, uh, had later found that,

21

00:01:22,041 --> 00:01:24,980

that they were removable

as illegal aliens.

22

00:01:25,100 --> 00:01:29,330

And it put a pause on all the

importations, except for a few,

23

00:01:29,331 --> 00:01:33,860

with a few exceptions, uh, for a

hundred days. Um, as far as the timing,

24

00:01:34,670 --> 00:01:39,620

of it, the order was issued on

the 20th. Um, we reviewed the order,

25

00:01:40,070 --> 00:01:44,930

here in the special litigation division.

And we, we acted immediately,

26

00:01:45,290 --> 00:01:48,580

by Friday, two days after

the issuance of the memo,

27

00:01:48,581 --> 00:01:52,310

we had filed a complaint against the

administration and we had filed a motion,

28

00:01:52,760 --> 00:01:56,030

uh, for, uh, a temporary

restraining order.

29

00:01:56,060 --> 00:02:00,860

We were actually in hearing by 4:00PM

on Friday of the week that it was

30

00:02:00,861 --> 00:02:03,230

issued. And then the following Tuesday,

31

00:02:03,260 --> 00:02:06,500

the TRO was entered that restricted, uh,

32

00:02:06,510 --> 00:02:08,990

the government from

enforcing the 100 day pause.

33

00:02:09,470 --> 00:02:11,630

And, and I know there's a

lot of meat in this case,

34

00:02:11,631 --> 00:02:14,360

but can you explain a little bit

of what the state's lawsuit did?

35

00:02:15,110 --> 00:02:19,520

Sure, the state alleged

multiple causes of action. Um,

36

00:02:19,550 --> 00:02:23,870

the first is that contrary to

federal law, uh, that, that the,

37

00:02:23,900 --> 00:02:27,800

that the a hundred day

pause basically stopped, uh,

38

00:02:27,860 --> 00:02:32,450

almost every kind of, of removal

action in federal law under 8USC-1231-A1A,

39

00:02:32,990 --> 00:02:37,640

says the DHS

shall remove the alien from the

40

00:02:37,641 --> 00:02:42,080

United States within a period of 90 days,

that was Congress's act.

41

00:02:42,620 --> 00:02:47,270

And so there was that cause of

action. We also had a number of, uh,

42

00:02:47,390 --> 00:02:50,390

APA claims, which are

administrative procedures act claim.

43

00:02:50,391 --> 00:02:54,410

And the one was that there was

no explanation, uh, given, uh,

44

00:02:54,440 --> 00:02:58,550

for the memo and that's referred to under

the APA is arbitrary and capricious.

45

00:02:59,560 --> 00:03:00,640

Um, another was that,

46

00:03:00,641 --> 00:03:04,960

that there was no notice and comment

given to stakeholders to comment

47

00:03:05,340 --> 00:03:07,720

on the proposed action. Another was,

48

00:03:07,721 --> 00:03:12,220

we alleged that it was a violation of

the "Take Care" clause of the constitution.

49

00:03:12,221 --> 00:03:14,740

And then finally, we, we alleged that, uh,

50

00:03:14,800 --> 00:03:17,980

it violated an agreement that DHS, uh,

51

00:03:18,010 --> 00:03:21,400

and the state of Texas had

related to immigration changes.

52

00:03:21,960 --> 00:03:25,680

Yeah. A lot of charges. And it seems

that the court did agree with you,

53

00:03:25,710 --> 00:03:28,500

the us district court for the

Southern district of Texas.

54

00:03:28,530 --> 00:03:33,150

And one of my favorite agreements

did say that the memorandum lacked a

55

00:03:33,151 --> 00:03:37,440

rational explanation and they discuss

the significant impact that this change

56

00:03:37,441 --> 00:03:42,240

would have on Texas. And this is

often construed as a financial impact,

57

00:03:42,510 --> 00:03:46,530

but can you explain a little bit on

what burdens Texas would face if this

58

00:03:46,531 --> 00:03:48,240

actually came down and was implemented.

59

00:03:48,690 --> 00:03:53,220

The state developed evidence on a number

of costs that the state has to incur,

60

00:03:53,221 --> 00:03:56,790

and this is just a few of those,

but, but, um, as you know,

61

00:03:56,791 --> 00:04:00,660

Texas has a long border, uh,

with our neighbor Mexico, um,

62

00:04:00,870 --> 00:04:05,460

and that's right. And so we are, we are

the recipient of, of a whole lot of, uh,

63

00:04:05,520 --> 00:04:09,720

illegal immigration will that has costs

to taxpayers in the state and federal

64

00:04:09,721 --> 00:04:13,590

taxpayers. Um, first it

has healthcare costs. Um,

65

00:04:13,620 --> 00:04:17,790

the federal law requires Texas to

include illegal aliens in the emergency

66

00:04:17,791 --> 00:04:21,540

Medicaid program. Uh, the

family violence program, uh,

67

00:04:21,570 --> 00:04:25,140

Texas spends more than a million dollars

a year providing services to illegal

68

00:04:25,141 --> 00:04:29,790

aliens through that, through the Texas

children's, uh, health insurance program,

69

00:04:29,791 --> 00:04:33,450

we spend tens of millions of

dollars each year on, on, uh,

70

00:04:33,540 --> 00:04:37,320

on perinatal coverage for,

in, for illegal aliens. Um,

71

00:04:37,380 --> 00:04:42,090

then there's another category

education costs under federal law. Um,

72

00:04:42,120 --> 00:04:44,460

the, the state of Texas, uh,

73

00:04:44,490 --> 00:04:48,990

pays something close to

$31 to $63 million, uh,

74

00:04:49,020 --> 00:04:53,550

for educating unaccompanied minors. And

then incarceration costs are very high,

75

00:04:53,760 --> 00:04:58,470

um, Texas houses, uh, I believe it

last year, the figures were 8,900,

76

00:04:58,890 --> 00:05:03,300

uh, illegal, illegal aliens in our prison

systems. And of course it, you know,

77

00:05:03,300 --> 00:05:07,589

those bear, those, uh, have,

uh, significant financial costs.

78

00:05:07,591 --> 00:05:10,570

And I think the estimate that

we were able to develop, uh,

79

00:05:10,571 --> 00:05:12,330

and provide the court was that it was

80

00:05:14,040 --> 00:05:16,020

$152 million for Texas to

house those illegal aliens.

81

00:05:16,021 --> 00:05:18,720

Those are just some of the costs

of course, are societal costs.

82

00:05:19,170 --> 00:05:22,070

And part of this case, we

spoke with a, you know,

83

00:05:22,170 --> 00:05:24,840

a number of law enforcement

agencies about, you know,

84

00:05:24,841 --> 00:05:28,740

problems that are caused by illegal

immigration and, and, and those,

85

00:05:28,770 --> 00:05:29,890

those are vast. And,

86

00:05:29,891 --> 00:05:32,880

and so some of them are numerical

and some of them are societal.

87

00:05:34,050 --> 00:05:36,990

Yes. And those consequences.

And tell me if I'm wrong here,

88

00:05:36,991 --> 00:05:41,970

but that is a big factor in DHS is

existing agreement with Texas about

89

00:05:41,971 --> 00:05:44,880

any kind of immigration law

changes or enforcement changes.

90

00:05:45,270 --> 00:05:46,800

This was talked about a lot in the news,

91

00:05:46,801 --> 00:05:50,610

but can you explain a little bit about

what was stipulated in that agreement

92

00:05:50,611 --> 00:05:51,444

with DHS?

93

00:05:52,440 --> 00:05:56,850

Texas in DHS entered the memorandum

of understanding and that memorandum

94

00:05:56,870 --> 00:05:58,130

provided, uh,

95

00:05:58,131 --> 00:06:02,030

that Texas would be able to have

input and dialogue regarding upcoming

96

00:06:02,031 --> 00:06:06,560

immigration changes. Um, those

immigration changes, uh, well,

97

00:06:06,561 --> 00:06:08,690

another really key component is,

98

00:06:08,720 --> 00:06:13,580

is that we would have 180 days notice

of, of any major immigration changes.

99

00:06:13,581 --> 00:06:15,590

That's important because as we said,

100

00:06:15,591 --> 00:06:20,420

Texas is a recipient of a large

portion of illegal immigration

101

00:06:20,720 --> 00:06:24,200

and, and Texas bears a lot

of the consequences of that.

102

00:06:25,120 --> 00:06:25,570

Yeah.

103

00:06:25,570 --> 00:06:28,690

And issuing a memorandum like that on

day one definitely violates any kind of

104

00:06:28,691 --> 00:06:29,740

180 day

105

00:06:30,440 --> 00:06:33,090

Yeah. I would agree with that. And

that, that was what we contended.

106

00:06:33,820 --> 00:06:37,060

That is correct. And so

looking at it from this view,

107

00:06:37,061 --> 00:06:39,370

with that order coming down

from the executive branch,

108

00:06:39,670 --> 00:06:44,410

does the Biden administration have any

kind of unilateral authority to affect

109

00:06:44,411 --> 00:06:46,600

immigration laws this way?

Can they just change a law?

110

00:06:47,110 --> 00:06:50,650

Well, I, I think in this

instance, the a hundred day pause,

111

00:06:50,680 --> 00:06:54,250

the court found that it did not,

the court found that, that the, uh,

112

00:06:54,280 --> 00:06:58,060

that it was done at the manner and method

through which the order was entered.

113

00:06:58,061 --> 00:06:59,980

The agency memorandum was entered,

114

00:07:00,490 --> 00:07:04,120

that was arbitrary and capricious that

it was inconsistent with federal law.

115

00:07:04,510 --> 00:07:09,100

And it did not provide as the APA provides

the public or interested stakeholders

116

00:07:09,460 --> 00:07:11,590

to, to provide meaningful

notice and comment. In fact,

117

00:07:11,591 --> 00:07:15,580

there was no ability to provide notice

and comment to that agency decision.

118

00:07:15,581 --> 00:07:16,930

That was very impactful.

119

00:07:17,710 --> 00:07:21,100

Yeah. Did you expect a case of this

magnitude to come down on day one?

120

00:07:21,640 --> 00:07:21,911

Well,

121

00:07:21,911 --> 00:07:26,740

obviously a change was expected with the

incoming administration on immigration

122

00:07:26,741 --> 00:07:28,210

policy. I think the, uh,

123

00:07:28,270 --> 00:07:32,200

the magnitude of the changes that we've

seen just here in the first two months,

124

00:07:32,770 --> 00:07:33,970

uh, has, has been jarring.

125

00:07:34,000 --> 00:07:36,670

There've been wholesale changes

made to immigration policy,

126

00:07:36,671 --> 00:07:40,390

and we now have significant

problems at the border. Uh,

127

00:07:40,391 --> 00:07:44,200

we have spoken with law enforcement

agencies who have, who have, you know,

128

00:07:44,201 --> 00:07:48,150

advised us of, of the,

uh, the impact of, of,

129

00:07:48,151 --> 00:07:52,930

of those policies. Uh, just on the

18th of March, uh, press secretary,

130

00:07:53,260 --> 00:07:57,160

Jen Psaki, uh, indicated that, uh,

there was a crisis at the border,

131

00:07:58,390 --> 00:08:02,200

um, that crisis wasn't there

three months ago. Um, and,

132

00:08:02,260 --> 00:08:06,340

and so it's something that we are

continuing to look at, uh, the changes,

133

00:08:06,341 --> 00:08:08,120

the wholesale changes that

have been made, and we're,

134

00:08:08,170 --> 00:08:11,830

we're continuing to evaluate,

uh, our legal options on those.

135

00:08:12,340 --> 00:08:15,790

And obviously this case

involves federal law and policy,

136

00:08:15,791 --> 00:08:19,720

which Texas itself doesn't affect outside

of our representatives or senators.

137

00:08:19,721 --> 00:08:24,580

So how can we go about through the

Biden administration ensuring that

138

00:08:24,610 --> 00:08:25,900

they do uphold the law,

139

00:08:25,930 --> 00:08:29,170

and it's not just an abandonment of law

and order even when those laws already

140

00:08:29,171 --> 00:08:29,710

exist.

141

00:08:29,710 --> 00:08:29,981

Right.

142

00:08:29,981 --> 00:08:33,880

So the office of attorney general and the

special litigation unit in particular,

143

00:08:33,881 --> 00:08:36,340

I mean, we continue to evaluate, uh,

144

00:08:36,370 --> 00:08:41,140

immigration policy orders that

have been issued. Um, and, and we,

145

00:08:41,170 --> 00:08:45,370

you know, obviously we're here to protect

the state of Texas, his interests.

146

00:08:46,240 --> 00:08:50,440

Um, and we, uh, and, and so I would

just say that that review continues and,

147

00:08:50,470 --> 00:08:52,240

and I would stay tuned on this issue.

148

00:08:52,660 --> 00:08:54,310

Awesome. Thank you so much, Patrick.

149

00:08:54,311 --> 00:08:57,450

I appreciate hanging out with us here

and giving us more information about this

150

00:08:57,451 --> 00:09:01,860

case now. Um, Ken Paxton has done

several interviews about this as well.

151

00:09:01,861 --> 00:09:04,110

So you can check out our

Twitter and Facebook pages,

152

00:09:04,111 --> 00:09:07,560

if you would like to see those in

addition to this wonderful segment here,

153

00:09:10,020 --> 00:09:13,170

Oh, it's always a joy and we

will go ahead and wrap it up.

154

00:09:13,200 --> 00:09:15,720

That'll do it for this

episode of Law & Liberty.

155

00:09:15,721 --> 00:09:19,230

Thank you so much for tuning

in, check out our next episode,

156

00:09:19,231 --> 00:09:21,300

and I appreciate your

viewership as always.

157

00:09:21,740 --> 00:09:22,370

Thanks y'all!