

Legal Sidebar

Federal Court Declines to Bar the Resettlement of Syrian Refugees in Texas

02/26/2016

In a [decision](#) issued on February 8, 2016, a federal district court denied the State of Texas's request that the federal government and a private refugee relief organization be temporarily barred from resettling Syrian refugees within the state pending resolution of Texas's challenge to such resettlement. Texas had filed this suit in December 2015, after terrorist attacks in [Paris, France](#) and [San Bernardino, California](#), perpetrated by persons with ties or allegiance to the [Islamic State](#), due to concerns that terrorists could enter the United States through the [refugee resettlement program](#).

The court's decision focused on the standards that plaintiffs must meet to obtain a preliminary injunction, discussed below. However, in so doing, the court construed language in [Section 412](#) of the Immigration and Nationality Act (INA) requiring the federal government to "consult regularly ... with State and local governments" about refugee placement. The court's reading of this provision could have implications for certain congressional proposals to give states greater control over refugee resettlement.

Overview of the Court's Decision

The court denied the preliminary injunction, in part, because it found that Texas had [failed to establish a substantial threat of irreparable injury](#) if the federal government and the private refugee relief organization were allowed to resettle Syrian refugees in Texas. Such a showing is [required for a preliminary injunction](#), along with a showing that (A) the party seeking the injunction has a substantial likelihood of success on the merits; (B) the alleged injury, if the injunction is denied, outweighs any harm that would result if the injunction is granted; and (C) the grant of an injunction will not disserve the public interest.

In finding that Texas failed to meet its burden of showing irreparable injury, the court noted that the evidence produced by Texas showed only that "[Syrian refugees pose some risk](#)." Texas did not, in the court's view, demonstrate that [terrorists have infiltrated the refugee program](#), or that the particular individuals whose settlement Texas sought to block are refugees "[intent on causing harm](#)." It thus found the evidence "[insufficient](#)" to establish a substantial risk of irreparable injury. The court similarly rejected Texas's argument that it was irreparably harmed because the defendants' failure to provide Texas with detailed information about any refugees settled in Texas deprived Texas of an alleged "[statutory right to foreknowledge](#)" of refugees' backgrounds that had been created by INA §412's requirement that federal agencies consult with state and local governments about refugee placement. The court further found that a clause in Texas's contract with the relief organization, which [purported to establish a presumption of irreparable harm](#) if the organization were to breach the contract was immaterial, since the [clause is not binding on the court](#) and [does not, in itself, justify the "extraordinary relief"](#) of a preliminary injunction.

The court also found that Texas was unlikely to succeed on the merits of its challenge to the refugee resettlement plans because "[it has no viable cause of action](#)" against the federal government. Texas's argument here had been based, in part, on its view that the federal government's actions in resettling refugees in Texas run afoul of [INA § 412](#), which, in relevant part, provides that federal officials:

shall consult regularly (not less often than quarterly) with State and local government and private nonprofit

voluntary agencies concerning the [refugee] sponsorship process and the intended distribution of refugees among the States and localities before their placement in those States and localities.

In particular, Texas took the view that this provision, along with the terms of its contract with private relief organization, required it to receive [detailed demographic, medical, security, and other information](#) about individual refugees before they are resettled in Texas.

The court did not reach the merits of this argument, instead finding that Texas cannot sue to enforce [INA § 412](#) because this provision does not create a private right of action. The court based this conclusion on [Supreme Court precedents](#) finding that private rights of action to enforce federal law must be created by Congress, and the “[judicial task is to interpret the statute](#) Congress passed to determine whether it displays an intent to create” such a right. In [INA § 412](#), the court found no such intent since the provisions of this section do not “[confer any rights directly on the States.](#)” Instead, they are framed as a “[general... command to a federal agency](#)” to federal officials to consult with their state counterparts. Such general prohibitions or commands have been seen as insufficient to create private rights of action in [other cases](#).

Implications of the Court's Decision

The court's finding that [INA § 412](#) does not create a private right of action could have implications for certain proposals in the 114th Congress to give states and localities greater input in the refugee resettlement process. [Many proposed bills](#) would expressly authorize state officials to decline the resettlement of particular refugees within their jurisdictions, a power which they lack under current law, as discussed in an [earlier Sidebar posting](#). However, [some bills](#) take a different approach and instead require that the federal government give state and local officials certain notices before placing refugees within their jurisdiction. If Congress wants to ensure that states and localities can enforce such notice requirements, it may wish to draft the latter type of measures in such a way that the statute can be seen as conferring rights directly on the states and local governments, rather than imposing general commands on federal agencies. Only if measures are so drafted would states and localities potentially be able to enforce the notice requirements (and even then other limits on the federal courts' jurisdiction could apply, such as the [mootness doctrine](#), if for example, the refugees are already settled within the state).

Posted at 02/26/2016 09:44 AM