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IMMIGRATION RULING SHOWS LAWYERS PLAYING VENUE SHOPPING ODDS

By Associated Press
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A federal judge's ruling last month blocking President Barack Obama's immigration executive action lays bare a pervasive practice in federal district courts: venue shopping.

It is a game of odds in which lawyers pick a court to file their case where a judge or case law is likely to be more favorable. Law experts say venue shopping is commonplace in politically-sensitive cases as a way to advance a case toward the ultimate goal of a hearing before the U.S. Supreme Court.

"Everybody does this to the extent they can," said Stephen Yale-Loehr, an immigration professor at Cornell Law School in Ithaca, New York.

When lawyers for Texas filed suit in Brownsville to block the president's executive action on immigration, they knew they had a 50 percent chance the case would be given to U.S. District Judge Andrew Hanen, an appointee of George W. Bush who had previously spoken scathingly of Obama's immigration policies.

Hanen, who was assigned the case through an automated system, is one of only two judges in that division of the Southern District of Texas, so he hears half of all civil cases. The other is U.S. District Judge Hilda Tagle, an appointee of Democratic President Bill Clinton. Not all district courts have just two judges.

"They knew they would strike gold if they got in front of Judge Hanen," said Kica Matos, spokeswoman for Fair Immigration Reform Movement, a national advocacy organization for immigrants. "This is a judge who has gone out of his way to express his anti-immigrant sentiments."

On Feb. 16, Texas Governor Greg Abbott and 25 other states opposed to Obama's action got exactly what they wanted. Hanen issued a preliminary injunction halting the orders, which would have spared as many as 5 million people who are in the U.S. illegally from deportation.

Venue selection has long been used by the American Civil Liberties Union and the National Association for the Advancement of Colored People in cases seeking wide-ranging reforms, said Georgene Vairo, a professor of law at Loyola Law School in Los Angeles. More recently the tactic has been adopted by conservative groups, she said.

It was probably a factor in the mammoth job discrimination suit filed against Wal-Mart by 1.5 million women claiming unfair pay and promotion practices, Vairo said. That case was pursued in the California courts, where it would be heard by the liberal-leaning 9th Circuit on appeal. The 9th Circuit ruled in favor of the women, though the Supreme Court in 2011 did not.

"We are not supposed to talk about judges being political," Vairo said. "But in a close case it's likely to make a difference, so they head count, they look at the decisions, they think about all these things before they decide where to file."

Ahmed Taha, a professor of law at Pepperdine University in California, said he has documented venue shopping.

In a 2010 paper, Taha said he found that when the portion of judges appointed by Republican presidents increases by 25 percent in courts, prisoners' rights filings and job discrimination suits drop by about 11 percent, and product-related injury cases by 23 percent, on average. This shows that lawyers in these cases feel their chances are worse with courts leaning conservative, he said.

When filing a case, lawyers must show that a venue is "proper," or that the case has some relationship to where it has been filed. President Obama's wide-ranging actions on immigration meant that any suit attempting to block them could be filed wherever immigrants who stood to benefit lived. Almost any court in Texas would have sufficed.

Abbott, who was Texas attorney general before being elected governor in November, led the lawsuit. His spokeswoman Amelia Chasse said in a statement that the suit was "appropriately filed" in Brownsville, calling the city the "epicenter" of the recent immigration crises.

The Justice Department is appealing Hanen's decision to the 5th U.S. Circuit Court in New Orleans. The 5th Circuit also is considered conservative-leaning, and it hears all Texas appeals. There are currently 15 judges and 8 senior judges in the 5th circuit, and a panel of three will be selected through an automated system to hear the case.

It is impossible to predict the outcome of the appeal just based on the general leaning of the court, said Yale-Loehr, the immigration law professor.

"It really depends on which particular judges in the 5th circuit would get, for example, the stay request," Yale-Loehr said.

Lance Wells, an immigration and criminal attorney in Phoenix, Arizona, said he doesn't view venue shopping as manipulating the system or that the lawyers for Texas did anything wrong in filing in Brownsville.

"I don't like the outcome from my personal perspective," he said. "But I think it was a smart move."