

Is President Obama overstepping his bounds?

Executive action not unprecedented in recent encounters of presidents with immigration policy | BY R. MARK FREY

It's over and done with. President Obama failed to take action on immigration by the end of the summer as he promised a few months ago. He recently announced, as a consolation, that he'll act after the November elections and before the end of the year. For months, we have heard critics and the White House trade barbs as to the legitimacy of executive action in the immigration realm, an area typically viewed as lying within the purview of Congress. Does President Obama have the authority to take such action, especially in a period when the legislative branch seems more intent on obstruction than working collaboratively in doing the people's business and tackling reform of our immigration system?

The simple answer is that, yes, President Obama does indeed have the authority to take such action. As head of the executive branch, he is authorized to issue directives to the Department of Homeland



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Security (DHS) about matters involving the enforcement of our immigration laws. Known in various law enforcement contexts as "prosecutorial discretion," DHS may exercise discretion in either foregoing enforcement

(e.g., prioritizing the deportation of certain individuals over others) or providing a remedy to deportation (e.g., stay of removal). But, this delay in enforcing a law should not, by any stretch of the imagination, be considered a way to obtain permanent residence. Rather, it means that undocumented immigrants are provided a respite from an enforcement action. On its face, it seems reasonable that the agency empowered to enforce our laws and regulations knows best how to administer them under the leadership of the head of the executive branch, the president.

It's worth noting that President Obama is not the first president to take such action on immigration

matters. As both the American Immigration Council (AIC) and the Center for American Progress (CAP) have noted in recent issue papers, many of our past presidents, both Republican and Democrat, have sought to make adjustments when Congress failed to adequately address the issues.

Consider, for example, the following facts provided by AIC and CAP about immigration-related executive actions by our presidents. Presidents have taken executive action on 39 occasions from 1956 to the present; that is, every president since President Dwight Eisenhower up to and including President Obama.

In more concrete terms, President Eisenhower paroled (1956 to 1958), just over 31,000 Hungarians who escaped Hungary after the failed 1956 uprising against the Soviet Union. In like fashion, from 1962 to 1965, Presidents John F. Kennedy and Lyndon B. Johnson paroled roughly 15,000 Chinese

who fled to Hong Kong in early 1962. From 1975 to 1979, Presidents Gerald Ford and Jimmy Carter paroled about 360,000 Indochinese from Vietnam, Cambodia, and Laos following the end of the Vietnam War. And from 1977 to 1982, Presidents Carter and Ronald Reagan extended voluntary departure for approximately 15,000 Ethiopians. President Carter also paroled over 50,000 Soviet refugees from 1977 to 1980 while, in 1987, President Reagan, through Attorney General Edwin Meese, ordered the deferral of deportation (and ordered work authorization for eligible candidates) for approximately 200,000 Nicaraguans.

In 1987, President Reagan, through Attorney General Edwin Meese, ordered the deferment of deportation proceedings for "compelling or humanitarian factors" affecting roughly 100,000 families. This eventually becoming known as the Reagan-Bush, Sr. administration's Family Fairness Policy. In 1990, President George H.W. Bush

issued an executive order formally granting about 80,000 Chinese nationals Deferred Enforced Departure in the aftermath of Tiananmen Square. Again, in 1990, President Bush ordered the deferral of deportation of those unauthorized spouses and children of individuals legalized under the 1986 Immigration Reform and Control Act (IRCA), affecting roughly 1.5 million people.

In 1997, President Bill Clinton granted Deferred Enforced Departure to about 40,000 Haitians and, in 1998, through Attorney General Janet Reno, temporarily suspended the deportation of about 150,000 people to El Salvador, Guatemala, Honduras, and Nicaragua as a result of the havoc wrought by Hurricane Mitch. In 2005, President George W. Bush ordered Deferred Action for those foreign academic students affected by Hurricane Katrina. And, in 2012, President Obama ordered Deferred Action for Childhood Arrivals (DACA) that has affected roughly 1.8 million young people.

Clearly, both Republican and Democrat presidents have exercised executive action when events dictated a quick response. Today, there is an escalating clamor for changes in our immigration system in the face of Congress' failure to implement legislative reforms.

It is anybody's guess what President Obama will do, but in the past, from 1956 to the present, presidents have favored use of their executive power to defer removal of immigrants when the Congress has failed to act or not had enough time to act. Time will tell. Let's hope President Obama follows through and provides the relief he has promised for many months. ●

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