

Obama Falsifies Principle and Precedent to Justify His Decrees

By JOHN VINSON

President Obama knows perfectly well that he has no legal authority to offer legal status and work permits to an estimated five million illegal aliens. Before he acceded to political expediency and issued his legalization decree, he argued quite eloquently on a number of occasions on why he had no authority to do what he ended up doing.

Among his statements: “I, as president, am obligated to enforce the law. I don’t have a choice about that.... With respect to the notion that I can just suspend deportations through executive order, that’s not the case, because there are laws on the books that Congress has passed.... [F]or me to simply, through executive order, [to] ignore those congressional mandates would not conform to my appropriate role as president.”¹

On another occasion he stated, “I know some people want me to bypass Congress and change the laws on my own...not just immigration reform. But that’s not how our system works. That’s not how our democracy functions. That’s not how our Constitution is written.”²

By not conforming to his “appropriate role,” Obama is acting in a dictatorial fashion. Obviously, he can’t admit that without risking impeachment, so he and his enablers have conjured up bogus legal justifications to make his unconstitutional actions appear legitimate.

The leading one is that he is simply following the recognized legal principle of prosecutorial discretion, which allows authorities to set priorities of enforcement. To illustrate, authorities might decide to devote more enforcement against heroin pushers than marijuana pushers because heroin is a more dangerous drug. But prosecutorial discretion doesn’t give authorities the right to proclaim that the law against marijuana pushing will not be enforced at all—and that marijuana dealers can apply for and obtain certificates to sell their drug legally. Those latter steps would not be setting priorities of law enforcement. They would be acts of remaking law.

The analogy above illustrates exactly what Obama has done, both with his recent decree and his previous edict granting legal status to illegal aliens under the Dream Act. He has declared broad groups of illegal aliens off limits to prosecution and has offered them work permits and other benefits. With respect to the work permits, he has arbitrarily repealed the existing law that forbids employment of illegal aliens.

U.S. District Judge Andrew Hanen confirmed this assessment in a case dealing with illegal immigration. “This court,” said Hanen, “is not opposed to the concept of prosecutorial discretion, if that discretion is exercised with a sense of justice and common sense. Nevertheless, it is not aware of any legal principle . . . that not only allows the government to decline prosecution, but further allows it to complete the intended criminal mission. The [Department of Homeland Security] should enforce the laws of the United States—not break them.”³

To get around this problem, Obama and his supporters claim that other presidents have done what he has done, and that these alleged legal precedents justify his actions. Some past presidents indeed have allowed foreigners to live in the U.S. outside of normal immigration procedures. But in form, context, and degree, their actions were not precedents for what Obama is trying to do.

Many of those cases involved upheavals in foreign countries, and the presidents acted to let people from those countries to remain here. They acted under the established principle that presidents have legal leeway to promote foreign policy objectives. These presidents did not use prosecutorial discretion to justify their actions. Indeed, that principle would not have applied to many of the people in question because they had not entered the U.S. without initial authorization, but were here on legal visas. Also, the numbers were nowhere near the millions that Obama proposes.⁴

A further point to consider is that the legality of what these presidents did was not clear-cut. To set bounds on presidential action, Congress in 1990 passed legislation restricting that action to foreign nationals facing “extraordinary and temporary conditions” that threaten their safety such as armed conflict, natural

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disasters, and epidemics. Obama has made no effort to apply these standards to his decrees. Thus he ignores the expressed intention of Congress.⁵

Another group Obama cites as a precedent are the spouses and children of illegal aliens granted amnesty by the 1986 immigration act. Presidents Ronald Reagan and George H.W. Bush allowed people in these groups to stay. But they did so because the 1986 law legislation was not clear as to whether they should be included. They decided to exercise the option of a generous interpretation. The Bush Administration worked with Congress in its passage of legislation in 1990 to offer legal status to people in those categories.⁶

Several months prior to the law’s enactment, in anticipation that it would pass, the Bush Administration gave legal status to a small number of illegal aliens. After passage, approximately 140,000 spouses and children took advantage of it. The claim of edict supporters that it extended to 1.5 million people is simply false.⁷

The actions of Reagan and Bush showed respect for the lawmaking authority of Congress, and their actions were consistent with that authority. Obama, in contrast, has flatly defied Congress by decreeing laws that Congress chose not to pass. His Dream Act decree and his latest edict, offer legal status to nearly six million illegal aliens—twice the number who received amnesty from Congress in 1986. His actions are not mere tweaking of the law, but in terms of sheer numbers they are unprecedented overreaches of lawmaking.

Once again, as the president so plainly stated, “[T]hat’s not how our system works. That’s not how

our democracy functions. That’s not how our Constitution is written.” No truer words have ever been said, and they’re just as true now as when he said them. ■

Endnotes

1. The White House Office of the Press Secretary, Remarks by the President at Univision Town Hall, Bell Multicultural High School, Washington, D.C., 3/28/11.
2. The White House Office of the Press Secretary, Remarks by the President to the National Council of La Raza, Marriott Wardman Park Hotel, Washington, D.C., 7/25/11.
3. Townhall.com, Judge Hearing Obama Amnesty Challenge Foresaw 2014 Border Crisis, Conn Carroll, 12/9/14
4. Nation Review Online, Indiscrete Discretion, Mark Krikorian, 8/15/14. Also, Center for Immigration Studies Backgrounder: President Obama’s ‘Deferred Action’ Program for Illegal Aliens Is Plainly Unconstitutional, Jan C. Ting, 12/14. And National Review Online, Precedents and Prosecutorial Discretion, Jan C. Ting, 11/24/14.
5. Ibid.
6. Ibid.
7. National Review Online, Obama’s Unprecedented Amnesty, Mark Krikorian, 11/18/14. And the *Washington Post*, Obama’s Claim that George H.W. Bush Gave Relief to ‘40 percent’ of Undocumented Immigrants, Glenn Kessler, 11/24/14.



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