

Executive Branch Plans Immigration Amnesty

BY GENE NELSON, PH.D.

The American Immigration Lawyers Association (AILA), via its 501(c)3 body, the American Immigration Council (AIC), and its Immigration Policy Center (IPC), is aggressively urging the Obama administration to implement an Executive Branch immigration amnesty, since legislation to grant immigration amnesties has failed to pass for more than a decade.

If such Executive Branch policy is implemented on a large scale, it will contravene the Plenary Power of Congress to regulate immigration. If immigration policy is changed, it will serve as another example of immigration policy serving narrow special interests instead of the national interest.

The Obama Executive Branch is proposing an immigration amnesty via the use of policies and procedures that previously have been applied to very limited numbers of illegal immigrants under very specific circumstances. The Obama administration proposals have provoked U.S. House legislation that specifically targets the usurpation of the power of Congress to regulate immigration.

Jessica Vaughan, Director of Policy Studies at the Center for Immigration Studies (CIS), provided excellent justification for the proposed House legislation in her July 26, 2011, House testimony in support of U.S. Rep. Lamar Smith's HALT Act (the "Hinder the Administration's Legalization Temptation Act," H.R. 2497, which was introduced on July 12, 2011, and currently has 44 cosponsors). Given the unprecedented numbers of immigrants legally admitted in the past decade, there is no justification for an immigration amnesty for illegal aliens. The Obama administration has pushed many policy changes that amount to an immigration amnesty, including non-enforcement of existing laws. However, non-enforcement of immigration law is un-

popular, unfair, and unsafe. (As a specific example, see the author's recent summary of the case of illegal alien Ingmar Guandique, the convicted murderer of Chandra Levy in Washington, D.C., a so-called "sanctuary city." http://www.thesocialcontract.com/pdf/twentyone-four/tsc_21_4_nelson.pdf) Jessica Vaughan then discusses the administration's de facto immigration amnesty policies advanced to date and summarizes the rationale for the HALT Act. Her testimony may be found at <http://judiciary.house.gov/hearings/pdf/Vaughan07262011.pdf>.

Margaret Orchowski, in "Who are the DREAMers," *The Hill*, September 14, 2011, sets a likely lower estimate for the number of illegal aliens (250,000) as potential beneficiaries of the proposed Executive Branch DREAM Act immigration amnesty. These illegal aliens would be freed from detention and given work visas. <http://thehill.com/blogs/congress-blog/education/181607-who-are-the-qdreamersq>

Orchowski cautions that with the wide loopholes and lack of enforcement language, the actual number of illegal aliens affected could eventually number in the millions. As the 1986 immigration amnesty illustrated, implementation of such an amnesty would provide an inducement for future illegal immigration. Those aliens would hope for yet another immigration amnesty.

Congress Has the Plenary Power to Regulate Immigration

For example, in immigration law, Congress, under the Plenary Power Doctrine, has the power to make immigration policy free from judicial review. This doctrine was established at the end of the nineteenth century, when the Supreme Court declared that Congress had "plenary power" to regulate immigration, Indian tribes, and newly acquired territories. The doctrine is based on the concept that immigration is a question of national sovereignty, relating to a nation's right to define its own borders. Courts generally refrain from interfering in immigration matters. To date

Gene Nelson, a contributor to The Social Contract, has testified twice in the U.S. House of Representatives and twice to the National Academy of Sciences (NAS) on the controversial H-1B Visa program.

there have been no successful challenges to federal legislation that refuses admission to classes of non-citizens or removes resident aliens.

<http://definitions.uslegal.com/p/plenary/>

AILA's Objections to the HALT Act

AILA's position paper is found in their July 25, 2011, published objections to Rep. Smith's HALT Act, which is found here: <http://www.immigrationpolicy.org/just-facts/dissecting-halt-act-impact-eliminating-discretion-our-immigration-system>

A longer paper dated September 1, 2011, by IPC Director and Immigration Attorney Mary Giovagnoli is found here: <http://www.immigrationpolicy.org/perspectives/using-all-tools-toolbox>

AILA's "prosecutorial discretion" page is here: Prosecutorial Discretion and Executive Action: A Resource Page — What the Administration Can Do in the Absence of Congressional Action. Apparently this page was created on April 19, 2011. <http://www.immigrationpolicy.org/just-facts/prosecutorial-discretion-and-executive-action-resource-page>

AILA objects to These HALT Act Provisions:

Blockage of waiver of the 3 and 10 Year Bars to Admission

Blockage of general application of Humanitarian Parole

Blockage of widespread application of Cancellation of Removal

Blockage of application of Temporary Protected Status to a broad class of illegal aliens already in the U.S.

Blockage of application of Deferred Action and Extended Voluntary Departure to a broad class of illegal aliens already present in the U.S.

A bar to the of granting of employment authorizations to general classes of illegal aliens already present in the U.S.

In counterpoint, Rep. Lamar Smith issued two press releases regarding the HALT Act:

<http://republicans.judiciary.house.gov/news/08182011.html>

<http://judiciary.house.gov/news/07262011.html> ■

Because the truth is, reforming our immigration system is crucial for our economic future.

That's why it doesn't make sense that we educate more foreign-born workers than any country in the world, but our broken, outdated immigration system often sends them home to invent and build and grow their companies someplace else. It doesn't make any sense that immigrant workers are forced into the shadows, earning unfair wages, at the same time that businesses are breaking the rules and getting away with it, while those that follow the rules get punished.

We need an immigration policy that works, one that meets the needs of our families and our businesses while honoring our tradition as a nation of immigrants and a nation of laws. Because no matter what you may hear, in this country there is no "us" or "them." There is only "us." One nation, under God, indivisible. (Applause.) And immigrants are part of that American family and a source of our strength. (Applause.)

Now, as I mentioned when I was at La Raza a few weeks back, I wish I had a magic wand and could make this all happen on my own. There are times where — until Nancy Pelosi is speaker again — (applause) — I'd like to work my way around Congress. (Applause.)

[W]e live up to the idea that no matter what you look like, no matter where you come from, no matter what your surname — whether your ancestors landed at Ellis Island, or came over on a slave ship, or crossed the Rio Grande — we are all connected, and we all rise and fall together. (Applause.)

**—Barack Obama
Congressional Hispanic Caucus Institute
September 14, 2011**