

PRESIDENT OBAMA HAS THE AUTHORITY TO ACT BOLDLY



After his election, President Obama repeatedly called on Congress to pass a comprehensive immigration reform bill. He has offered to work with the members and more often has stood back and given them the room to get something done in a bipartisan manner. When the Senate passed a comprehensive immigration reform bill, President Obama praised their efforts and encouraged the House of Representatives to get to work on a similar bill.

But House leadership, capitulating to the extremists in its ranks, never allowed any reform bills to be voted on. The president warned the House that if they couldn't get anything done on this issue, he would do what he could to fix the immigration system.

On June 30, 2014, when it became clear that the House leadership was going to block any votes on immigration bills for the rest of the year, President Obama gave a Rose Garden address criticizing the Republicans and reiterating his commitment to comprehensive reform. While he preferred the permanent reforms that could only be achieved through legislation, the president directed

Secretary of Homeland Security Jeh Johnson and Attorney General Eric Holder to start identifying additional administrative actions that could be taken through the executive authority allowed to any president, to try to fix as much of the immigration system as possible by the end of the summer.

But on September 6, 2014, after a few Senate Democrats in close reelection campaigns bought into the politics of fear and pressured the president, the Obama administration announced that they would delay a much-anticipated executive action on immigration until after the midterm elections. The Latino and immigrant communities are profoundly disappointed and have kept up the pressure on the White House. Since that time, in various appearances, the president has stated that he will take action before the end of 2014.

The president can't change immigration laws, but he can use his authority to establish a process for aspiring Americans to come forward, register, and apply for work permits. Using his authority to set priorities is common sense and would improve the functioning of the immigration system.

The President Has the Legal Authority

Constitutional lawyers and professors have weighed in on whether the president has the legal authority to initiate executive action on immigration. These legal experts have said that the president can use his authority to prioritize the use of resources.

In fact, [a recent letter](#) signed by 136 constitutional lawyers, professors, and other experts details the legal foundation for executive actions on immigration.

This follows a similar [letter](#), signed by 95 constitutional experts, on the president's legitimate use of executive powers in establishing the Deferred Action for Childhood Arrivals (DACA) program.

In addition, former Bush Attorney General Alberto Gonzales has also expressed his view in an op-ed in [USA Today](#), stating, "What is clear is that the courts have generally been inclined to defer to the executive's discretion in executing the law based upon competing priorities and budgetary constraints."

"No one is suggesting that the president unilaterally change the rules for granting permanent residence or citizenship. All that is on the table are temporary reprieves. More fundamentally, the U.S. immigration system is one of selective admissions, selective enforcement, and broad executive branch discretion. As this system's chief prosecutor, the president must establish enforcement priorities, and then make sure that discretionary decisions to apply those priorities are uniform, predictable, and nondiscriminatory. As long as the president acts within this role, exercising his prosecutorial discretion to administer enforcement consistent with rule of law principles, he remains well within his legal authority."

UCLA Professor of Law Hiroshi Motomura's report, [The President's Discretion, Immigration Enforcement, and the Rule of Law](#)

The History of Presidential Executive Actions on Immigration

Even before President Obama takes any additional executive action on immigration, he is being criticized for overstepping his legal authority. But when looking at the history of

presidential executive actions, this criticism appears to be misguided and often political.

[The history of immigration policy](#) demonstrates that it is almost routine for presidents to act first to protect large numbers of people from deportation, with legislation ratifying the executive action later. Presidents have exercised their discretion more than 20 times since the mid-'70s to permit people already in the United States from being returned to their home countries.

- Fidel Castro coming to power pushed 900,000 Cubans to flee to the United States. The vast majority were paroled into the country by Presidents Eisenhower, Kennedy, and Johnson. It wasn't until seven years after the influx began that the Cuban Adjustment Act was passed by Congress.
- In 1987, President Reagan directed the Immigration and Naturalization Service (INS) not to deport the estimated 200,000 Nicaraguans in the United States whose asylum had been denied. President George H.W. Bush offered temporary protected status for 190,000 Salvadorans fleeing their country's civil war. It was more than a decade later when Congress passed a law allowing these immigrants to become lawful permanent residents.
- In 1989, President George H.W. Bush instructed the INS to provide temporary deferred enforced departure status to some 80,000 Chinese students in the United States who feared returning to the civil strife that eventually led to the Tiananmen Square massacre. Some three years later, Congress passed the Chinese Student Protection Act, after which the students became eligible for lawful permanent resident status.

Many more examples exist from modern presidents for immigrants from every part of the globe—from the Soviet Union to Ethiopia to Haiti. Presidents from both parties have used their discretionary powers to protect various groups from deportation for a wide variety of reasons.

Many of these executive actions were controversial when first announced. But the fact that Congress later affirmed virtually all of them—without reversing any of them—suggests that over time they were widely accepted by the American people.

Deferred Action for Childhood Arrivals

This would not be the first time that the president has set new priorities for enforcement. In June 2012, the president announced Deferred Action for Childhood Arrivals, or DACA. The initiative grants temporary relief from deportation to certain undocumented youth who were brought to the United States as children, undergo criminal background checks, and meet other requirements. DACA has received widespread support from across the political spectrum. In the two years since the president's announcement, more than half a million DACA applications have been approved, allowing many undocumented youth who have grown up in this country to pursue their ambitions free from fear of being deported. These youth have used their new status to enroll in higher education, contribute to their families and communities, pay taxes, and gain access to banking services and other essential resources.

Presidential Executive Action Could Be the Catalyst for Comprehensive Legislation

Conventional wisdom tells us that effective enforcement efforts would clear the way for

congressional action on immigration reform. But President Obama's administration has conducted the most aggressive effort in U.S. history, and no legislation has passed.

Some now argue that executive action will somehow hurt the chances of a comprehensive bill in the future. While comprehensive immigration legislation is far preferable, the reality is that House Republicans squandered the best opportunity in a generation to pass bipartisan legislation, and since the president has the authority to act, he must use it.

The president's heavy lifting on immigration now could create the space needed for Congress to act later. Perhaps like his predecessors, President Obama will be the spark for congressional efforts. Given history, the president's executive action could reshape the debate in a way that catalyzes, rather than impedes, legislation.

President Obama on Immigration

"It makes no sense to expel talented young people, who, for all intents and purposes, are Americans—they've been raised as Americans, understand themselves to be part of this country—to expel these young people who want to staff our labs, or start new businesses, or defend our country simply because of the actions of their parents—or because of the inaction of politicians."

June 15, 2012. [White House Rose Garden Speech on Announcement of DACA Program](#)

"We have a unique opportunity to fix our broken system in a way that upholds our traditions as a nation of laws and a nation of immigrants. We just need Congress to finish the job."

June 27, 2013. [Statement by the President on Senate Passage of Immigration Reform](#)

"If we are serious about economic growth, it is time to heed the call of business leaders, labor leaders, faith leaders, and law enforcement—and fix our broken immigration system."

January 28, 2014. [State of the Union Address](#)

"Immigration reform is the right thing to do for our economy, our security, and our future. A vast majority of the American people agree. The only thing standing in the way is the unwillingness of Republicans in Congress to catch up with the rest of the country. And I want to thank the leaders in Congress who are doing their part to move us forward."

March 26, 2014. [Statement by the President on Republican House Leaders' Refusal to Bring Immigration Reform Up for a Vote](#)

"If Congress will not do their job, at least we can do ours... If House Republicans are really concerned about me taking too many executive actions, the best solution to that is passing bills."

June 30, 2014. [White House Rose Garden Speech on the Republican Leaders' Failure on Immigration Reform](#)

"I've said before that if Congress failed to live up to its responsibilities to solve this problem, I would act to fix as much of our immigration system as I can on my own, and I meant what I said. So this is not a question of if, but when."

October 3, 2014. [Congressional Hispanic Caucus Institute Gala Speech](#)



The Reality of President Obama's Aggressive Enforcement Efforts

Despite partisan criticism from Republicans who claim that Obama has been soft on illegal immigration, in reality, the Obama administration has built on efforts of previous administrations and has directed the most aggressive immigration enforcement efforts in U.S. history. His administration has significantly increased the budgets of both Customs and Border Protection and the Immigration and Customs Enforcement agency and deported a record number of undocumented immigrants. The Department of Homeland Security spent \$18 billion on immigration enforcement in 2012 alone. This is more money than what is being spent on all federal law enforcement agencies combined.

Nearly the same amount of immigrants were deported in the first five years of the Obama presidency (1.9 million) as during George W. Bush's two terms (2 million). A [New York Times](#) analysis of internal government records shows that since President Obama took office, two-thirds of the nearly two million deportation cases involve people who had committed minor infractions, including traffic violations, or had no criminal record at all. And the deportations continue at a pace of [1,100 per day](#).

These deportations have wreaked havoc and instability on communities across the country, resulting in the devastating separation of families that affects U.S. citizens, legal and undocumented immigrants alike. Between 2010 and 2012, more than [200,000 parents](#) of U.S.-citizen children were deported. Many of those children end up being placed in foster care.