

QUESTION OF THE WEEK

Should the Obama administration be permitted to exercise "prosecutorial discretion" in the enforcement of federal immigration laws?

Obama's prosecutorial discretion: Setting our priorities straight

By Rana Odeh

The Obama administration has announced a policy change in immigration that would suspend the deportation of several thousand undocumented immigrants who pose no threat to the U.S. and meet certain criteria based on the Morton Memo, which are similar to ones proposed for the DREAM Act. The purpose of the administration's use of "prosecutorial discretion" in judging undocumented immigrants on a case-by-case basis is to focus on the national security of the U.S. and to more effectively use immigration "removal" resources.

Before we answer any philosophical questions about the validity of the Obama administration's use of prosecutorial discretion in the enforcement of federal immigration laws, let's look at what prosecutorial discretion entails and decide if the administration is permitted to exercise it. According to the Immigration Policy Center (IPC), prosecutorial discretion "is the authority of an agency or officer charged with enforcing

immigrants who have strong ties to the U.S. or any undocumented immigrant with no criminal history and who poses no threat to the U.S. With that criteria set in place, it eliminates a large group of immigrants that ICE officials need to focus on, so they can more effectively focus on undocumented immigrants who actually pose a threat to the U.S.

The Obama administration made this policy shift after it hit a modern record high number of deportations; approximately 800,000 in the past two years. It is safe to say that the 2012 elections have something to do with the decision to use prosecutorial discretion at this moment. The Latino community has grown increasingly vocal about their disappointment in President Obama's immigration policy, and the very large community could play a great role in Obama's 2012 bid for re-election. Currently, this policy change leaves undocumented immigrants in legal limbo. Their cases are delayed so they do not face deportation but they have not been

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a law to decide whether to enforce the law in a particular case."

In the 1985 case of *Heckler v. Chaney*, the Supreme Court decided that "an agency's decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion." Essentially, prosecutorial discretion is exercised when any government official has to decide whether to enforce a law against someone, and according to the IPC, "good stewardship of limited government resources, balancing government priorities, and humanitarian concerns are all legitimate reasons for exercising discretion." It is clear that the executive branch, in addition to a wide range of agencies, has the authority to use prosecutorial discretion in shifting immigration policy.

It is important to note that the Obama administration has not changed any law and does not plan to give amnesty to undocumented immigrants; its decision solely delays the removal of immigrants who have not committed any crime in the U.S. and who meet certain criteria. Congress will then review each case and decide whether to "remove" each individual. Obama's announcement is not a substantial change in U.S. immigration law, but rather a shift in the administration's priorities.

Those who are huffing and puffing about tightening immigration enforcement along an increasingly dangerous Mexican border are missing one key element: resources. During a recession when resources are limited and Immigration and Customs Enforcement (ICE) is unable to enforce immigration laws on every undocumented immigrant residing in the U.S., it seems to be a wise decision to focus on criminal immigrants first. That is the first and most important criteria to consider when deciding against whom to enforce the law. I don't think we need to worry about undocumented immigrants who entered the U.S. under the age of 15, college students, undocumented immigrants who are patriotically serving in the U.S. military, nursing/pregnant mothers, the elderly, victims of crime,

granted positive immigration status, which can only be conferred by Congress. The timing of the decision is superb, but the administration needs to make more substantial changes to immigration law in order to grant amnesty to the immigrants who meet the above-mentioned criteria.

Regardless of Obama's personal reasons for his decision, he did a good thing for a great community, and that is all that matters. Trying to attack President Obama's intentions for the immigration policy shift is the equivalent of complaining that he is trying to create jobs to gain the vote of the unemployed; politics aside, he made an undeniably just decision. Immigrants play a vital role in enriching American culture and in the development of the U.S. economy.

U.S. Senator Dick Durbin (D-IL), Assistant Majority Leader, phrased it nicely: "The Obama administration has made the right decision in changing the way they handle deportations of DREAM Act students. These students are the future doctors, lawyers, teachers and, maybe, senators who will make America stronger. We need to be doing all we can to keep these talented, dedicated, American students here, not wasting increasingly precious resources sending them away to countries they barely remember. The administration's new process is a fair and just way to deal with an important group of immigrant students." I would argue all immigrants, not just students, should be treated as individuals on a case-by-case basis.



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Prosecutorial discretion: Just another way to say "administrative amnesty"

By David H. Landon

In 1660, six Landon brothers from Herefordshire, England boarded a ship bound for Boston and the New World. Although there are no clear records available, upon their arrival, they probably didn't face a cumbersome immigration bureaucracy. At that time there was no waiting list to come to America. No lines... no forms... no passports... no quotas. If you could pay for the trip, you were New World bound. There were no restrictions as to numbers of immigrants or to country of origin. Some immigrants had the means to simply buy their passage to America. But many others, making up about 50 percent of early immigrants, arrived as indentured servants.

Daniel Landon, one of those six brothers, from whom my family descended, likely arrived with his brothers as an indentured servant. Three of the brothers, including Daniel, fought for England in King Phillip's War (1675-1676) for which they were awarded land grants in Connecticut. Their American dream was at hand. While each colony had specific borders, there were relatively no restrictions on who could immigrate. There was an entire continent to fill and room for millions of colonists.

Eventually there would be restrictions on the number of immigrants allowed into the country, but not until after a couple of centuries of relatively unfettered growth.

Between 1630 and 1643, about 20,000 people settled in the New England colonies. They came for many reasons including, but not limited to: practicing their religion freely, owning land, escaping poor harvests and earning a better living. The Atlantic Ocean became a much busier body of water in the 1700s. It's reported that the number of ships crossing each year from Britain tripled by

the late 1730s. The effect was that the English colonial population doubled almost every 25 years in the 1700s. The first U.S. census in 1790 recorded about four million people living in the colonies. Of these, about 700,000 were of African descent (their immigration to America was neither voluntary nor planned); two million of English descent; and some 400,000 Europeans coming from countries other than England.

That pattern of ever-growing numbers of immigrants coming to America has continued through to this day. In the mid-1800s the wave of immigration was from Ireland. At the turn of the 20th century, immigrants from Eastern Europe including Poland, Greece and Italy poured into the country. In the 1960s the immigration laws were changed by eliminating ethnic quotas, to give a greater emphasis to Third World countries. Even today the U.S. has the most aggressive immigration policy in the world. The U.S. admitted more legal immigrants from 1991 to 2010, nearly 20 million, than in any previous two decades in our history. As of 2006, the U.S. accepted more legal immigrants as permanent residents than all other countries in the world combined. Family reunification accounts for approximately two-thirds of legal immigration to the U.S. every year.

By now you probably are asking: why the history lesson on U.S. immigration? The purpose is to remind readers of our long history of promoting legal immigration as public policy here in this country. It is a domestic policy that, while adjusted at times when economic circumstances require, has always promoted expanding immigrant population. There is no other nation on Earth with our propensity to absorb so many new immigrants into this country with open arms. It is part of what makes us a great nation. From around the world, immigrants long to come to America because, unlike the situation in their own countries, America is a country that operates under the rule of law rather than the rule of man.

That is why the recent action by President Obama, circumventing the Congress and creating a de facto "administrative amnesty" program is so offensive. In a blatant power grab, the Obama administration has announced that they will now choose which immigration laws to enforce and which to ignore. The idea that a president would be permitted by using "prosecutorial discretion" to decide not to enforce laws simply because of an ideological disagreement is wrong. It runs counter to the very principals of separation of power envisioned by the Founders in Article II, Section 3 of the Constitution. There it states that the president "shall take Care that the Laws be faithfully executed." The phrase "if he agrees with the law" appears nowhere.

In addition to being unconstitutional, the president's amnesty ruling is bad public policy. A sovereign nation must have the ability to control and secure access to its own border or it will eventually cease to be a nation. In the past few years, the enforcement of the Bush administration's Secure Communities program had begun to work. Under that program, the Obama administration has removed almost 400,000 illegal

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immigrants annually. That's out of an estimated 12 million illegal immigrants living in America. Enforcement of Secure Communities sends a warning to those thinking of illegally entering the U.S. In light of the president's edict, all of that is now out the door.

Although in the past 25 years we have granted amnesty seven times to more than five million people, in recent years, Congress has defeated attempts at amnesty for illegal immigrants. Congress and a majority of Americans feel that granting blanket amnesty awards unlawful behavior and opens the flood gates to more illegal immigrants than our society can absorb. If the president gets his way, millions of illegal immigrants will be allowed to legally live and work in the U.S. without a vote of Congress. The new Obama policy is pure politics. Looking towards the 2012 election, it is an attempt to win the Hispanic vote even at the expense of the rule of law.



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