



Written by [Jack Kenny](#) on November 20, 2014

Imperial Presidency Grows With Obama Immigration Orders

It is surely not surprising that the *New York Times* has announced its approval of President Obama's executive action on immigration enforcement even before the president announces it to the nation tonight. The *Times* has been encouraging such action since Obama announced last summer it would be forthcoming, and the Thursday morning endorsement, anticipating the president's address to the nation tonight, is but the latest in a series of editorials encouraging the chief executive to enact by executive order the provisions of the Senate's Bipartisan Immigration Reform Act, despite inaction by the House of Representatives.



Though the Senate passed the bill in June 2013, the House leadership had still not brought it up for a vote a year later. So on June 30 of this year, President Obama publicly vented his frustration over the ["failure of the House Republicans to pass a darn bill"](#) and announced he would act on immigration reform "without Congress." Tonight he will spell out his plan, which is expected to include temporary safety from deportation, along with work permits, for some four to five million people now residing in the United States illegally.

"Some immigrant advocacy groups have already denounced the plan as too cautious and too small," notes the *Times* editorial board, which itself faults the as-yet-unannounced plan for an anticipated ban on healthcare for the undocumented under the Affordable Care Act, and for not drawing the "circle of inclusion as large as possible — up to the eight million or so who might have qualified under an ambitious bipartisan bill that passed the Senate last year."

Indeed, a bill to grant legal status, work permits and a path to citizenship to roughly 2/3 of those now residing here illegally is indeed "ambitious," though the senators who passed the bill won't be the ones paying the price for admitting more undocumented workers into a labor force that already has too many unemployed and far too many underemployed Americans trying to survive on part-time jobs. But Obama's plan is even more ambitious in a different sense of the word. The president said in his post-election news conference that subsequent action by Congress would supersede whatever executive action he takes. But he is enough of a student of American political history to know the practical impossibility of rescinding a benefit or entitlement once granted. To take such action and then expect Congress to match or exceed it with legislation is to put the constitutional cart before the horse. It is ambitious in the sense that Caesar was ambitious. It is usurpation.

The Constitution, in its very first article, declares: "All legislative Powers herein granted shall be vested in a Congress of the United States which shall consist of a Senate and a House of Representatives."



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Both houses must pass a bill before it becomes law, while the president, according to his powers and duties as set forth in Article II, must “take Care that the Laws be faithfully executed.”

No one is demanding the practical impossibility of rounding up and deporting all of the estimated 11 to 12 million now residing in the United States illegally. But to declare entire classifications of people, numbering in the millions, exempt from the demands of the law is carrying “prosecutorial discretion” a bit far. Yet that is what Obama did in 2012 when he granted legal status and eligibility for work permits to some five million undocumented young people who were brought here as children. In so doing, the president implemented by executive decree provisions of the DREAM Act (for Development, Relief, and Education for Alien Minors) that had never been passed by both houses of Congress, despite numerous votes on varied versions of the bill since it was first introduced in 2001.

The House of Representative has filed a lawsuit against the president for unilaterally suspending enforcement of provisions of the Affordable Care Act, his signature legislative accomplishment. It is remarkable how little controversy there has been over the president’s announced intention to seek from Congress an authorization for the use of military force against the Islamic State in Iraq and Syria, months after he has already initiated such action. Perhaps that’s because he sought no authorization at all for his 2011 bombing campaign in Libya, despite the obvious fact that the Constitution gives to Congress the power to declare war.

In an exclusive [post-election interview](#) with the left-wing website Salon, Senator John McCain (R-Ariz.) adopted a supplicating posture, asking the president to be patient with Congress.

“Why couldn’t the president wait two, three, four months and then act with [an] executive order?” McCain asked, “At least give this new Congress some opportunity to act, and then, if he still feels that frustrated, then I still don’t agree with it, but I understand why he would do it. You see my point?” Others in Congress, Democrats as well as Republicans, have suggested the president wait to see what the new Congress might be willing to do on immigration reform. But McCain in his Salon interview, was asked specifically about a suggestion by Obama’s former political advisor David Axelrod that the president set a deadline for Congress to send him a bill, then take executive action if the lawmakers fail to meet it. Would McCain “be OK” with that?

“Frankly,” the senator answered, “whether I happen to like it or not, that would give a significant, I think, advantage to the president, P.R.-wise.”

The president giving Congress a deadline to pass legislation the president deems necessary? The Constitution has it the other way around. The Congress passes laws, with dates for their enactment, and the president has the duty to see that they are “faithfully executed.” What McCain has suggested would be a “P.R.” advantage for the president is but another sign of a growing disregard for constitutional law. Congress has for so long surrendered its lawmaking and warmaking powers to an overreaching executive that what was sometimes called the “imperial presidency” has become the political norm.

McCain’s position on immigration legislation has been a political zigzag over the past several years. He had previously sponsored a “bipartisan immigration reform” bill similar to the one that passed the Senate last year. But in 2007, as he was beginning his 2008 presidential bid, he backed away from it, realizing how unpopular it was, especially with Republican voters. “I got the message: secure the border first,” he said at the time.

But in 2013, when McCain led the Senate’s “Gang of Eight” to passage of the Bipartisan Immigration Reform Act, did he think our southern border was secure? Apparently, the governor and legislature of



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his home state didn't think so because they had only three years earlier passed a law giving Arizona law-enforcement personnel authority to uphold federal immigration law that federal authorities were unwilling to uphold. The U.S. Supreme Court later overruled the Arizona law, but the unsecured status of the border became abundantly clear earlier this year, when thousands of minors, from Central America and elsewhere, illegally entered the United States, [overwhelming border communities and states and straining the resources of states](#) to which they were dispatched by federal officials.

Perhaps the new Congress next year will want to revisit the arguments for and against the bill passed last year by the Senate. Perhaps this year the House of Representatives will vote on it. But a decision not to act on a bill is as much within the purview of each house of Congress as a decision to vote on and pass it. The Constitution does not give the Congress "All legislative Powers" until such time as the president has lost patience and enacts legislation on his own. Nor does that document give the chief executive authority to act as national physician, ordering a temporary cure until, as the *New York Times* put it, "some future day when the Republican fever breaks."

Perhaps the fever gripping the *New York Times* editorial board, as it calls for yet another expansion of nearly boundless executive authority, will break on some future day when an administration the editors view less kindly will remind them of the dangers of too much power concentrated in the hands of an ambitious executive.

Throne of Napoleon: Stuart Mudie



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