



Written by [Warren Mass](#) on December 15, 2014

Rand Paul Introduces Bill to Counter Obama Executive Amnesty

Senator Rand Paul introduced the Preventing Executive Overreach on Immigration Act on December 12. The bill (which has not yet been assigned a bill number, but has been placed on the Senate's legislative calendar) is a companion legislation to Rep. Ted Yoho's bill of the same name (H.R. 5759) that passed the House of Representatives on December 4, 2014 on a 219-197 vote.



In a release place on his Senate webpage, Paul explained:

This legislation would end President Obama's executive action on immigration and restore the Congress' constitutional role as the body to craft legislation. Article I of the Constitution places the legislative powers in Congress. The President does not have the power under the Constitution to rewrite immigration laws to exempt classes of people from a law that was passed by Congress and signed into law.

"I believe that the Constitution is clear that the legislative power resides in Congress. The President is not a king and he does not have the power to enact laws then execute his own laws. Our Constitution is being violated by this executive order and other actions by the Obama Administration to govern by executive fiat," Sen. Paul stated.

The legislation was written as a direct response to President Obama's nationwide address on November 20, in which the president said he was announcing actions he would take to implement some of the provisions found in the "Gang of Eight" immigration bill passed by the Senate but never acted on by the House. Among the provisions of that bill Obama touted was "giving undocumented immigrants [illegal aliens] a pathway to citizenship [amnesty]."

Obama announced in his November speech:

Now, I continue to believe that the best way to solve this problem is by working together to pass that kind of common sense law. But until that happens, there are actions I have the legal authority to take as President -- the same kinds of actions taken by Democratic and Republican presidents before me -- that will help make our immigration system more fair and more just.

The most significant part of the plan Obama unveiled was to offer to those who have been in the United States for more than five years or who have children who are U.S. citizens or legal residents the ability to stay in this country temporarily "without fear of deportation."

Paul was one of the earliest and most outspoken critics of the Obama plan, saying after the announcement that he "will not sit idly by and let the President bypass Congress and our Constitution."

"President Obama is not above the law and has no right to issue executive amnesty. His actions blatantly ignore the separations of powers and the principles our country was founded on. The President has said 22 times previously that he does not have the power to legislate on immigration,"



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Paul added.

Among those 22 times was Obama's statement during a Univision Town Hall held on March 28, 2011 at Bell Multicultural High School in Washington, D.C.:

Congress passes the law. The Executive branch's job is to enforce and implement those laws and then the Judiciary has to interpret the laws. There are enough laws on the books by Congress that are very clear in terms on how we have to enforce our immigration system, that for me to simply though executive order ignore those congressional mandates would not conform with my appropriate role as President.

Obama made the same point during his 2008 campaign for president at a Town Hall meeting in Lancaster, Pennsylvania, in which he condemned President Bush's attempts to bypass Congress:

The biggest problems that we're facing right now have to do with George Bush trying to bring more and more power into the executive branch and not go through Congress at all, and that's what I intend to reverse when I'm president of the United States of America.

After announcing his intentions to reverse his previous position on executive authority, Obama issued a presidential Memorandum on November 21 that created a task force among all executive departments that "will help determine additional steps the Federal Government can take to ensure its programs and policies are serving diverse communities that include new Americans [immigrants]."

Homeland Security Secretary Jeh Johnson (who was tasked by Obama with publishing the memorandum in the *Federal Register*) sent an executive action memorandum on November 20 to the heads of U.S. Citizenship and Immigration Services, U.S. Immigration and Customs Enforcement; and U.S. Customs and Border Protection.

The memorandum expanded DACA (Deferred Action for Childhood Arrivals) by removing its age cap and extending work authorization to three years. Johnson's order also expanded "deferred action" (another name for amnesty) by directing,

USCIS [U.S. Citizenship and Immigration Services] to establish a process, similar to DACA, for exercising prosecutorial discretion through the use of deferred action, on a case-by-case basis, to those individuals who:

- have, on the date of this memorandum, a son or daughter who is a U.S. citizen or lawful permanent resident;
- have continuously resided in the United States since before January 1, 2010;
- are physically present in the United States on the date of this memorandum, and at the time of making a request for consideration of deferred action with USCIS....

The Executive Amnesty Prevention Act made reference to Johnson's memorandum, making the Constitution its prime point of contention in condemning Obama's amnesty executive action, citing article I, section 8, of the Constitution, which states that the Congress has the power to "establish a uniform Rule of Naturalization."

The bill juxtaposed that phrase with a citation from the Supreme Court's decision in *Galvan v. Press*: "that the formulation of ... policies [pertaining to the entry of aliens and their right to remain here] is entrusted exclusively to Congress has become about as firmly imbedded in the legislative and judicial tissues of our body politic as any aspect of our government."



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The bill next cited article II, section 3, of the Constitution, stating that the president is required to “take Care that the Laws be faithfully executed.”

The legislation summed up its argument nicely, referring to Secretary Johnson’s memorandum, as we noted previously:

President Obama’s grant of deferred action to more than 4,000,000 unlawfully present aliens, as directed in a November 20, 2014, memorandum issued by Secretary of Homeland Security Jeh Charles Johnson, is without any constitutional or statutory basis.

With the days of the 113th Congress growing short, the chances of the Preventing Executive Overreach on Immigration Act doing anything other than die of neglect in this Democrat-controlled Senate are unthinkable. For this reason, even some amnesty opponents who are in basic agreement with Paul on this issue have dismissed it as inconsequential. Senator Ted Cruz (R-Texas) called the bill’s passage by the House as a “show vote.”

However opponents of amnesty for illegal immigrants such as Paul, Cruz, and Jeff Sessions (R-Ala.) will have another opportunity in the 114th Congress, when Republicans control the Senate.

As we noted in our December 5 article about the passage of H.R. 5759: “If the Executive Amnesty Prevention Act of 2014 did nothing else ... it did present an excellent constitutional argument and provide some good talking points for legislators who want to move on to the next step.”

Paul has taken the next step, but the battle most certainly will have to resume in January.

Photo of Sen. Rand Paul: AP Images

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