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How Obama can fix immigration without Congress

By Alex Nowrasteh
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President Obama seems poised to act on immigration, with or without the help of Congress. Last week, he announced that he's "beginning a new effort to fix as much of our immigration system as I can on my own, without Congress." Critics have decried this very pledge as illegal. But there are legal executive actions he can take to improve our dysfunctional immigration system now.

Granted, without Congress, Obama's options are limited. Like making small repairs on a totaled vehicle, he's left tinkering around the edges of a broken system so long as Congress remains deadlocked. Still, even relatively small fixes could improve the lot of millions of immigrants and smooth out some of the rough patches in our overly restrictive system.

For example, Obama could allow some illegal immigrants to apply for green cards through the current immigration system. Currently, unlawful immigrants can't earn a green card because, in order to apply, they have to leave the country. This then triggers a legal catch-22 that bars them from re-entering.

The president could institute a "parole in place" for unlawful immigrants who are minors, parents or spouses of U.S. citizens – people who are otherwise eligible for green cards – and allow them to apply for green cards without leaving the country. Stuart Anderson of the National Foundation for American Policy estimates that this reform could legalize 3.5 to 5 million current unauthorized immigrants.

Obama could also pressure federal agencies to repeal the onerous regulations they've created that stymie current guest worker visas for lower-skilled immigrants. These administrative rules go beyond what the law requires.

For instance, regulations enacted in 2010 significantly raised the costs for farmers to employ guest workers. The agricultural guest worker visa is theoretically has no cap, but complex regulations imposed by four different federal agencies have stymied the system so much that only 74,192 visas were issued in 2013. According to a special survey

conducted in 2011, 59 percent of farmers in Georgia said that the program was too costly, too bureaucratically complex, and unworkable.

One farmer complained that after his wife spent two months filling out the application for guest workers, the government changed the wage rate. Instead of simply amending their application, the farmer said, “we had to start over, and to top it off, our workers were late.”

Recognizing the burden this placed on both farmers and immigrants, the Georgia Department of Agriculture suggested creating a new government program to help farmers apply for agricultural guest workers. Instead, Obama should relieve this bureaucratic burden unilaterally by pressing the Department of Labor to streamline and deregulate the program as much as possible. This would decrease demand for unauthorized immigrant workers and relieve the pressure to immigrate illegally. When the government reformed agricultural guest worker visas in the 1950s, the unauthorized immigrant population dropped by over 90 percent because they were channeled into the legal system and new migrants were able to come legally.

It’s not just agriculture. Employers in some seasonal hospitality and service sector jobs have access to 66,000. For the H-2B visa, the Department of Labor shortened the work period from 11 months in 2009 to 10 months in 2012 and required the employer to be financially responsible for all inbound and outbound travel to the United States.

Such rules decrease the incentive to hire lawful guest workers and thus exacerbate the illegal immigrant worker problem. The good news is that Congress has not mandated it to be this way. Obama can easily pressure federal agencies to reverse or loosen these obstructive administrative regulations and escape accusations from Republicans that he is exceeding his authority.

Most of the public debate over immigration reform centers on the 11 to 12 million unauthorized immigrants who are already here. Solving this mess requires long-term solutions that channel immigrants into the legal immigration system, instead of providing incentives for them to come illegally.

But with a Congress that’s afraid to tackle immigration reform, the President is left to take practical, and legal, steps in the meantime to improve the system as it currently exists.

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