

# The Washington Post

## Trump's 'orders' are essentially memos to his advisers

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President Trump seems to be testing just how gullible his anti-immigration supporters are. The “executive orders” issued today on defunding sanctuary cities, building the wall and reviewing past executive orders are not so much orders — in the sense that they change things on the ground — at all. These are props for glorified press events to take the place of real action. For the vast majority of his intended actions, the only immediate action is planning, meeting, etc. Cato Institute scholar Alex Nowrasteh observed via email, “These orders are pretty weak compared to his campaign promises — for which we can be (temporarily) thankful.”

Legal scholar John Yoo, renowned for his robust interpretation of executive power, agrees the wall cannot be built without Congress. “If President Trump wants to build a wall along the U.S.-Mexico border, he will need Congress’s cooperation. Under Article I of the Constitution, only Congress can appropriate the funds necessary to construct a wall, a fence, or even a walking path along the border.” He adds, “There may be some loose change sitting around unspent from past appropriations, but nothing in the range of the \$12 billion or more needed. Without the enactment of a new law by Congress, the only thing Trump can really do by executive order is start some early planning.”

A senior Democratic Senate aide scoffs, “This house of cards built from executive orders is going to collapse at some point. Not today or tomorrow, but a few months or a year from now when not a single thing has changed, his whirlwind, hard-charging first few days in office will be exposed as the fraud they are.”

As for the effort to cut off “sanctuary cities,” we have previously discussed that it is not clear what he is talking about. If a city simply prioritizes apprehension and detention for trials of say, murderers, and chooses not to expend resources on illegal immigrants who have not committed serious crimes, what would the federal government decide? Would, say, Chicago get no federal funds? Libertarian Cato Institute scholar Ilya Shapiro tells me that “a lot depends on the specific authorization in current law and in how much discretion it gives the executive. What happens under a new law/appropriation is then a separate question. But it’s absolutely constitutional for the feds to deny federal law enforcement funding to states that don’t cooperate on law enforcement.”

Yoo agrees. “On the cities, it might be possible for Trump to reduce funding to some cities. Congress has already budgeted funds that the government gives to cities for a variety of purposes, such as law enforcement assistance and joint task forces on terrorism, drugs, and so on,” he said. “Trump could place conditions on the receipt of these funds — that cities that take

funds must report to the federal government when they release an illegal alien convicted of a felony — that sanctuary cities would reject.” That, however, only covers existing appropriations. Moreover, all Trump is doing here is studying the issue.

Once again, if Congress wants to change the law and condition funds to cities in the next budget, it can try. (Watch red-state governors holler.) That, however, raises real 10th Amendment concerns.

As the Wall Street Journal reported:

Many cities and counties considered the Obama administration’s immigration enforcement overly aggressive and stopped cooperating with federal immigration authorities. Mr. Obama eventually narrowed his deportation targets to serious criminals and recent border crossers and in 2014 ended the Secure Communities program, under which local authorities were asked to hold undocumented immigrants to give federal agents a chance to pick them up for possible deportation.

Now Mr. Trump is likely to face a battle with cities, often run by Democrats who will again resist cooperation and possibly challenge the move to cut their grant funding in court.

And speaking of the Constitution, I seem to recall Republicans vowing to assert Congress’s power to appropriate and legislate. Instead, House Speaker Paul D. Ryan (R-Wis.) meekly applauds. “This is about keeping Americans safe,” he declares in a written statement. “We are committed to working with the administration to stop the influx of illegal immigration along the southern border, protect our homeland, and uphold the rule of law. I applaud President Trump for keeping his promise to make this a national priority.” Perhaps he realizes Trump did exactly nothing with his so-called order. Alternatively, he might — as with most everything else — have decided to roll over and play dead so as not to incur Trump’s wrath.

The one thing Trump could have done was reverse the Deferred Action for Childhood Arrivals policy. But then again he doesn’t seem so keen on declaring illegal the hundreds of thousands of people who stepped forward in good faith under President Barack Obama’s plan. (Sean Spicer suggested anti-immigrant advocates shouldn’t get their hopes up. “He’s a family man. He has a huge heart.”) That might have real-world consequences — and provoke a dramatic public backlash. You think his anti-immigration supporters will notice?