



Marco Rubio fears Obama could 'basically legalize' all undocumented immigrants 'by the sign of a pen'

By: Katie Sanders

U.S. Sen. Marco Rubio has a dire message for conservatives who oppose immigration reform: Do something to improve the status quo, or President Barack Obama could make the situation much worse.

"I've been saying now I believe that this president will be tempted, if nothing happens in Congress, he will be tempted to issue an executive order like he did for the DREAM Act kids a year ago, where he basically legalizes 11 million people by the sign of a pen," Rubio said in a recent interview with Tallahassee [talk radio host Preston Scott](#).

Rubio, an author of the immigration proposal that passed the Senate this summer, said such a move could doom GOP immigration priorities of stepped-up border security and E-Verify checks in the Senate proposal.

We cannot fact-check the future, but we thought it appropriate to examine whether Rubio's worst-case scenario could actually happen. Could Obama essentially legalize "11 million people by the sign of a pen" like the DREAM Act population?

No blanket citizenship

It's easy to interpret Rubio's statement as Obama conceivably granting all-out citizenship to millions of undocumented immigrants via an executive order.

That could not happen.

Doing so would violate the country's separation of powers. Congress determined the laws governing how a person can legally reside in the country, so Obama cannot give out green cards, paths to citizenship or permanent residency en masse, experts told us. He does not have the authority to override laws simply by proclamation.

"Executive orders have tended to be quite focused, not open-ended over time," said Kevin Johnson, University of California Davis School of Law dean. "Such an order would likely be subject to quite possibly successful legal challenge, with the claim being that legalization would be contrary to an act of Congress, namely the Immigration and Nationality Act."

But all-out citizenship is not exactly what Rubio warned against.

Rubio is very familiar with this subject, having tried to craft a proposal similar to the DREAM Act, a law that would have provided legal residency to immigrants brought to the country by their parents.

But in June 2012, amid stalled DREAM Act efforts, Obama announced a new administrative policy called [Deferred Action for Childhood Arrivals](#) that allowed undocumented immigrants who came to the country as children to apply for a renewable, temporary status that suspends deportation and allows them to work in the country. So far, U.S. Citizenship and Immigration Services has approved at least [430,000 people](#) for this form of deferred action.

An [angry](#) Rubio said Obama made it harder for any legislation to pass. To Rubio, Obama's policy "basically legalized" this group of illegal immigrants and was improper -- and he's not alone in this perspective.

Giving someone a renewable status with work authorization and other benefits without punishment is de facto legalization, said Mark Krikorian, executive director of the Center for Immigration Studies, a think tank that opposes the Senate bill and is for stricter immigration control.

Others say deferred action does not amount to legal status because the classification is temporary. The action puts an individual in legal limbo while allowing them to possibly apply for a driver's license and work without fear of immediate deportation, said Shoba Sivaprasad Wadhia, a professor at the Pennsylvania State Dickinson School of Law and director of the Center for Immigrants' Rights.

The Department of Homeland Security justified the policy by saying it was within the "[prosecutorial discretion](#)" of the executive branch.

Obama: 'I'm not a king'

We've arrived at a significant part of our fact-check: Could Obama grant deferred action to the entire population of illegal immigrants, not just Dreamers?

Obama has shot down that possibility, stressing the need for a comprehensive bill.

"I'm not a king," Obama said in January to [Telemundo](#). "You know, my job as the head of the executive branch ultimately is to carry out the law. And, you know, when it comes to enforcement of our immigration laws, we've got some discretion. We can prioritize what we do. But we can't simply ignore the law."

Still, the administration has considered the pros and cons of a broad-based legalization program that excludes people who are a security risk, according to a leaked 2010 DHS memo. The draft memo detailed many risks for such a move, including blowback from Congress and the impression the department secretary is abdicating "her charge to enforce immigration laws."

Rubio spokesman Alex Conant pointed us to a [National Journal piece](#) that examined an idea among immigration activists that involves persuading Obama "to freeze the current undocumented population in place through an administrative order, give them work permits, and hope for a better deal under the next president, with the hope that he or she is a Democrat," according to the story. They want Obama to expand the deferred action program to other immigrants here illegally, such as those who work, are caregivers, or are immigrant parents of children who are citizens.

"It's not an empty threat," Frank Sharry of America's Voice told [POLITICO](#). "If Republicans block reform with a path to citizenship, immigration reform activists will look at all their options, including broad executive action."

Deferred action for all?

Experts told us Obama indeed has broad executive power over deportations and granting temporary work permits. But it's a stretch to say he could legally offer *all* undocumented immigrants that deal.

If he wanted to order a stay of deportations across the board, he would have to provide a strong justification, such as a lack of resources to do the job, said Robert Delahunty, a University of St. Thomas School of Law professor who co-authored an [argument against](#) the constitutionality of Deferred Action for Childhood Arrivals.

"But he could do that only briefly, and only in what I'd consider pretty extreme circumstances," Delahunty said.

On the other hand, the country's immigration laws grant Obama and the Department of Homeland Security lots of wiggle room in granting temporary work permits and refusing to widely deport people, said Alex Nowrasteh, an immigration policy analyst at the libertarian Cato Institute. A widespread stay, though, would be "a crazy scenario," he said.

Even some of Obama's loudest critics on immigration policy don't think he would go that far.

"It could be done. Obama's gotten away with as much, but I don't think he'd do it," Krikorian said. "That would be a bridge too far even for the pusillanimous appeasers among Republicans in Congress."

Experts thought it more conceivable that Obama would chip away at the undocumented immigrant population little by little by building on the deferred action policy for children who came to the country as minors. An expansion would have to come with caveats, such as cut-off dates and clean criminal histories.

"It would be the mother of all political battles," said Carl Hampe, a private immigration lawyer who was counsel for the Senate subcommittee on immigration from 1983 to 1991 and worked for the Department of Justice under President George H.W. Bush. "As a purely theoretical legal question, is there a plausible argument that the president has that legal authority? Some would argue yes."

There's also an argument that halting deportations alone would do little to offer relief to the country's millions of unauthorized immigrants. They would still be in a legal limbo because most of the 400,000 or so people currently being deported are those who've committed crimes, said Lynden Melmed, who served as former chief counsel of the Department of Homeland Security's U.S. Citizenship and Immigration Services during the George W. Bush administration.

Our ruling

Rubio said that absent immigration reform from Congress, Obama "will be tempted to issue an executive order like he did for the DREAM Act kids a year ago, where he basically legalizes 11 million people by the sign of a pen."

Could Obama offer deferred action for the entire population of undocumented immigrants? His executive powers over deportations are strong, but most experts say that's an extreme scenario and susceptible to legal challenges, not to mention political fallout. More likely is that Obama could extend deferred action to more subsets of the undocumented population, pushing them lower on the priority list and into a deal-with-you-later category. That might be relief for them, but it's also a legal limbo that falls short of legalization.

We rate the statement Mostly False.