Bad Laws Lead to Bad Executive Orders

By Alex Nowrasteh
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Governing by executive order is no way to run an immigration policy, let alone an entire government. But the resort to unilateral action does not happen in a vacuum; it is borne out of poorly written, arbitrary and confusing laws. The GOP-controlled Congress should respond to Obama's executive order by passing a bill that simplifies the immigration system.

Our immigration laws are "second only to the Internal Revenue Code in complexity," according to California Associate Justice Harry E. Hull Jr. Like the income tax code, our immigration laws contain numerous provisions for the president to exercise arbitrary power, inflict cruel punishments for minor offenses and limit legal immigration with quota numbers seemingly picked by a random number generator.

Rampant unlawful immigration is the result of this legal mess.

Any set of laws this muddled and confused begs for one of two resolutions. The first is for the president to issue an executive order on dubious constitutional grounds to provide temporary relief for problems caused by a fundamentally broken system. The second resolution is for Congress to change those terrible laws and make them work so they don't attract executive orders like honey attracts flies.

If Congress simply passed constructive and conservative immigration reform, it could effectively nullify the president's executive action, guarantee that immigration reform will adhere to free-market principles and remove the future possibilities for executive overreaches on immigration. Only a simplification and liberalization of these laws will eliminate the unauthorized immigration mess that is prompting Obama's executive order.

Immigration reform should reduce unlawful immigration by creating a functional guest worker visa program so workers can enter the country lawfully rather than having to sneak in as they currently do. A guest worker visa program in the 1950s decreased illegal immigration by 90 percent and it can do so again. Allowing more lawful immigration would allow the government to actually regulate who can and cannot enter.

Reform should also remove the arbitrary penalties that prevent some immigrants from earning green cards. All immigrants who are not security or health threats but who are closely related or married to Americans should be able to earn green cards through the current legal system regardless of whether they were here unlawfully. This would allow millions of current unlawful immigrants to use the legal system – an option currently closed to them – rather than creating a special pathway.

Further reforms should build a high wall around the welfare state, limiting all means-tested welfare and the earned income tax credit to American citizens only.

A Republican-led Congress should also legalize as many unlawful immigrants as possible. They can create two avenues toward legal status. The first should be very cheap and easy, but it will only lead to a permanent green card without the chance of becoming a citizen. The second should be expensive and difficult but lead to eventual citizenship. Most of them will choose the former path.

Last, but not least, the Republican Congress should pass the Dream Act, allowing unlawful immigrants who were brought here as children to earn a green card and eventually naturalize. This bill is not only good policy but it also makes the rest of the conservative reform ideas veto-proof if they are combined into a single bill. Obama is pursuing his immigration executive orders to legalize as many Dreamers as possible – he can't veto anything containing the Dream Act. A Republican reform bill might be too conservative or not comprehensive enough for the president, so he might veto a simple increase in legal immigration. Incorporating the Dream Act guarantees that won't happen.

To create respect for the law, the laws themselves must be respectable. Removing the demand for executive action by fundamentally reforming the immigration system is the only way forward. Rather than charging directly at Obama's executive order, Republicans should circle behind him and offer their own reform package that will transform our immigration laws from a confused mess into a coherent and functional system whose victims don't demand executive actions to save them from it.

[Alex Nowrasteh](#) is the immigration policy analyst at the Cato Institute's Center for Global Liberty and Prosperity.