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Saying the law is the law isn't enough

By: Alex Nowrasteh - November 18, 2012

In the aftermath of Mitt Romney's defeat, several conservatives are rethinking their opposition to immigration reform. Sean Hannity said he had "evolved" on the issue, and House Speaker John Boehner (R., Ohio) wants to resolve it legislatively in 2013. But they will still have to overcome a plethora of bad arguments against immigration reform.

One particularly bad argument common in conservative circles, from Mississippi Gov. Phil Bryant to columnist and intellectual Thomas Sowell, focuses on how immigration reform violates the rule of law.

Their argument usually goes something like this: "The rule of law is one of the most important principles upon which the United States was founded. When immigrants and Americans break our immigration laws, that breaks down the rule of law and disturbs the foundations of our society. Therefore those laws should be enforced."

The argument fails on many levels.

The rule of law has little to do with government enforcement of immigration laws. The rule of law means that lawmakers, judges, and individuals are all subject to the same laws. Intertwined with this, and highlighted by political philosophers like F.A. Hayek, is that laws and enforcement should be predictable so people can plan their lives within a stable legal regime. The laws must be nonarbitrary, consistent with our traditions as a free society, and as free as possible from government ad hoc actions.

Immigration laws abjectly fall far short of these standards. Our immigration laws are complex and give the government bureaucrats administering them arbitrary power. The laws themselves undermine the rule of law.

Most businesses applying for a worker visa have to deal with arbitrary and changing application standards. For instance, government regulatory changes to streamline work visas were adopted in the closing days of the Bush administration. The Obama administration, after taking office, changed portions of those regulations to satisfy union demands. Who knows what regulations will change next year or the year after?

If the rule of law requires predictability so people can plan their lives accordingly, the immigration system fails. Adhering to this complex and ever-changing system does not enhance the rule of law.