

Obama he stands

President's abuse of power likely to hold up in the courts, but not to provide promised immigration reforms

By [J.C. Derrick](#)

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WASHINGTON—Hours before President Barack Obama announced his executive power grab on immigration, House Minority Leader [Nancy Pelosi made an ominous comparison](#): “Does the public know the Emancipation Proclamation was an executive order?”

Pelosi was aiming to excuse the president’s action as a moral imperative, but she was also comparing it to an issue that helped further ignite a civil war. Undoubtedly, some are ready to take up arms over immigration: “Obama’s policy by executive order is tearing at the fabric of national consent,” [The Wall Street Journal editorial board wrote](#) a day after the president on Nov. 20 said he would shield up to 5 million illegal immigrants from deportation.

Obama’s move easily surpasses in size and scope what past presidents have done unilaterally to defer deportations, but [most legal scholars said](#) Obama’s plan, which does not issue permanent residency or green cards, is constitutional and would survive possible court challenges.

“Violating the law is not the same as not enforcing it,” said Ilya Somin, a George Mason University law professor who also writes for the Volokh Conspiracy, a legal blog that has been critical of Obama’s unilateral changes to the Affordable Care Act. “We have so many federal laws, it’s virtually impossible for any president to go after more than a small fraction of the laws. ... The Supreme Court has said the executive has tremendously broad discretion [on immigration].”

The president’s decision follows months of executive promises to act on immigration after Obama spent years saying he didn’t have the power to do so without Congress. In the protracted process, Obama has managed to upset just about everyone: Republicans because he is doing it at all, Democrats for talking about it during campaign season, and Hispanics and activist groups for delaying and narrowing the scope of his action.

Obama’s directive doesn’t apply to anyone who entered the country in the last five years and does not grant citizenship, the benefits of citizenship, or the right to stay permanently. “All we’re saying is we’re not going to deport you,” the president said in his 15-minute prime-time speech—a move aimed at keeping intact families with U.S. citizens, particularly parents of children who were born here and those who were brought to the country illegally as children.

The best argument against Obama is not that he's pushing the limits of legality, tough to prove in court, but that his sweeping action leaves gaping holes: It doesn't touch the overflowing detention system, doesn't relieve the immigration court backlog, and doesn't correct the myriad structural problems. "This does nothing to address the fundamental flaws of our immigration system," said Alex Nowrasteh, a Cato Institute immigration analyst. He noted there remains no visa available for a low-skilled worker who wants to come into the United States legally, paving the way for future economic migrants to hunt for illegal avenues.

Somin said the odds that Obama's action would be overturned in court are small, and no clear legislative response emerged in the days after the announcement, though House Speaker John Boehner—and most every other Republican in Washington—has [vowed to take action](#) to stop Obama's executive order.

Something on which everyone agrees: Among many other legislative remedies, Congress has the power to block the work permits the administration is set to issue in 2015. It could also pass the needed permanent reforms to render Obama's action moot—and challenge him to veto them.