

MEMORANDUM

REAGAN V. OBAMA IMMIGRATION ACTIONS

Overview

President Reagan's Administration issued immigration regulations that were explicitly authorized by a federal statute passed by Congress.

Obama's unilateral action on immigration is contrary to federal law—so much so that it requires him to say that certain groups of people are exempt from the law of the land.

Immigration Reform and Control Act of 1986

In November 1986, President Reagan signed the Immigration Reform and Control Act of 1986. The bill was passed by bipartisan majorities in the House (238-173) and Senate (63-24).

The 1986 act required the executive branch to adjust the status of certain illegal immigrants to the category of "alien lawfully admitted for temporary residence":

SEC. 201. LEGALIZATION OF STATUS.

(a) PROVIDING FOR LEGALIZATION PROGRAM. —
(1) Chapter 5 of title II is amended by inserting after section 245 (8 U.S.C. 1255) the following new section:

SEC. 245A. "8 USC 1255a" (a) TEMPORARY RESIDENT STATUS. — The Attorney General **shall** adjust the status of an alien to that of an alien lawfully admitted for temporary residence if the alien meets the following requirements. . .ⁱ

The 1986 Act explicitly authorized the Attorney General to allow other illegal immigrants, who did not qualify for amnesty under the 1986 Act, to remain in the U.S. if needed "to assure family unity":

"(B) WAIVER OF OTHER GROUNDS. —

"(i) IN GENERAL. — Except as provided in clause (ii), the Attorney General may waive any other provision of section 212(a) in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest."ⁱⁱ

Reagan's Regulations

On May 1, 1987, Reagan's Justice Department issued regulations that, among other things, interpreted "family unity," as Congress instructed it to do.ⁱⁱⁱ

The Reagan Administration's rule stated:

The term "family unity" as used in section 245(d)(2)(B)(i) of the Act means maintaining the family group without deviation or change. The family group shall include the spouse, unmarried minor children under 18 years of age who are not members of some other household, and parents who reside regularly in the household of the family group.^{iv}

The Administration, citing legislative history from the 1986 Act, excluded certain spouses and certain minor children.^v

The Reagan Administration did not cite prosecutorial discretion or a generalized right to suspend immigration laws it dislikes. To the contrary, the Administration made it clear that it was carrying out Congress's instructions, and provided the statutory citation.

The Reagan Administration adhered closely to the statute and to the Senate Judiciary Committee's Report,^{vi} so much so that House Democrats, including one of the authors of the 1986 Act, criticized the Administration for interpreting its executive authority too narrowly.^{vii}

One House Democrat complained that "in a family in which one member has received amnesty but a spouse has not, the spouse would . . . be subject to deportation," and "children would be subject to deportation if either parent in a two-parent household failed to qualify."^{viii}

Bush I

In January 1990, the General Counsel of INS issued a memorandum expanding its interpretation of the 1986 Act to encompass all spouses and children.^{ix} Again, the Administration was interpreting a provision of the 1986 Act—a provision that Congress explicitly assigned to the Executive branch to interpret and define.

Later that year, the Senate passed a bill that made the Bush Administration's interpretation permanent.^x

ⁱ Immigration Reform and Control Act of 1986, Pub. L. 99-603, § 201.

ⁱⁱ Immigration Reform and Control Act of 1986, Pub. L. 99-603, § 201.

ⁱⁱⁱ 8 CFR § 245a.1

^{iv} 8 CFR § 245a.1(m)

^v Continuing Oversight of the Immigration Reform and Control Act of 1986, Hearing Before the Subcommittee on Immigration, Refugees, and International Law of the House Judiciary Committee, pp. 30-33, 114, 119 (Oct. 21, 1987).

^{vi} Continuing Oversight of the Immigration Reform and Control Act of 1986, Hearing Before the Subcommittee on Immigration, Refugees, and International Law of the House Judiciary Committee, pp. 30-33, 114, 119 (Oct. 21, 1987).

^{vii} Josh Getlin, [*Ineligible Children Face Deportation, INS Says: Such Offspring Can Remain Only if Both Parents Qualify for Amnesty; Spouses May Also Be Ejected*](#), L.A. TIMES (Oct. 22, 1987); *see also* Continuing Oversight of the Immigration Reform and Control Act of 1986, Hearing Before the Subcommittee on Immigration, Refugees, and International Law of the House Judiciary Committee, pp. 113-120 (Oct. 21, 1987).

^{viii} Josh Getlin, [*Ineligible Children Face Deportation, INS Says: Such Offspring Can Remain Only if Both Parents Qualify for Amnesty; Spouses May Also Be Ejected*](#), L.A. TIMES (Oct. 22, 1987).

^{ix} Legal Opinion, Cook, General Counsel of INS (Jan. 12, 1990), reprinted in 67 No. 6 Interpreter Releases 159, 166-68 (Feb. 5, 1990).

^x Immigration Act of 1990 (S.358).