

Executive order: Dream Act or nightmare?

By Eli Kantor

On June 15, President Barack Obama issued an executive order, effective immediately, that certain undocumented immigrants who were brought to the U.S. as young children, that do not pose a risk to national security or public safety, and meet certain criteria will not be deported from the U.S. for a period of two years, and will be able to apply for employment authorization.

This executive order is an attempt to accomplish the goals of the so-called "Dream Act," which both Democratic and Republican administrations have been trying to persuade Congress to pass for almost 10 years. Some say that this is just a cynical move to capture the Latino vote in the upcoming election. Others assert that this is a usurpation of Congressional power. Hispanic groups have enthusiastically welcomed the move, with the assumption that this is merely a temporary solution until the Dream Act is passed.

In order to qualify, individuals are required to show that: They came to the U.S. under the age of 16; they have continuously resided in the U.S. for at least five years preceding June 15 and were physically present in the U.S. on June 15; they are either currently in school, have graduated from high school, have obtained a general-education development certificate, or are honorably discharged veterans of the Coast Guard or Armed Forces of the U.S.; they have neither been convicted of a felony offense, a significant misdemeanor offense, multiple misdemeanor offenses, nor in any other ways constitute a threat to national security or public safety; and that they are not above the age of 30.

The unintended consequence of this executive order may be that hundreds of thousands of undocumented young people will voluntarily turn themselves into ICE, in the hopes of legalizing their status, only to find themselves in the nightmare of deportation.

While at first blush, this temporary solution for young so-called "dreamers" appears to be an answer to their prayers, a closer examination reveals that it may turn out to be a nightmare. Significantly, this is not the Dream Act. Rather, applicants will voluntarily "turn themselves in to Immigration." But instead of being immediately deported, they will be placed into "deferred action," which means delayed or postponed action of their removal for a period of two years, subject to renewal, assuming that the program is still in effect in 2014. It should be noted that being granted "deferred action" neither changes the status of undocumented immigrants, nor confers an immigration status

upon them. It does not create a path to citizenship or permanent residency. They will not receive a green card. Rather, they will only be eligible to apply for temporary employment authorization for two years.

Moreover, there is no guarantee that deferred action will be granted in every case. There is no right of appeal from a denial of an application for deferred action. Significantly, applicants whose applications are denied and have a criminal conviction or may have committed fraud and misrepresentation during the application process may be referred to Immigration and Customs Enforcement for deportation. It should be noted that driving under the influence of alcohol is considered to be a "significant misdemeanor" and can lead to deportation.

At this point it is unclear what level of documentation the applicant will need to persuade ICE that they have been in the U.S. for the last five years. ICE is requesting financial records, medical records, school records and employment records. But if they were living in the shadows, they may not be able to obtain sufficient documentation. If their case is denied due to inadequate documentation, will they be referred to ICE for deportation?

More importantly, what will happen to this program if Mitt Romney is elected president? He has gone on record stating that he would veto the Dream Act. Would he rescind the executive order as well? Would his rescission be retroactive? Will he refuse to renew the Executive Order in 2014? If so, what will happen to all of the applicants who will be in the system? ICE will have their names and addresses in the system. Will they then be subject to deportation, once the "deferred action" has ended? Will it all turn out to be an elaborate "sting operation"?

The unintended consequence of this executive order may be that hundreds of thousands of undocumented young people will voluntarily turn themselves into ICE, in the hopes of legalizing their status, only to find themselves in the nightmare of deportation. Accordingly, the best course of action may be to wait until after the presidential election in November to decide whether or not to apply.



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