



Written by [Warren Mass](#) on December 5, 2014

House Passes “Executive Amnesty Prevention Act of 2014”

On a 219-197 vote that was mostly along party lines, the House of Representatives passed the Executive Amnesty Prevention Act of 2014 (H.R. 5759) on December 4. The largely symbolic measure was passed in response to President Obama’s November 20 announcement that he would use executive action to remove the “fear of deportation” and provide three-year work permits for up to five million illegal aliens currently living in the United States.



Seven Republicans voted against the measure, however: Representatives Mike Coffman (Colo.), Jeff Denham (Calif.), Mario Diaz-Balart (Fla.), Louie Gohmert (Texas), Ileana Ros-Lehtinen (Fla.), Marlin Stutzman (Ind.), and David Valadao (Calif.).

Since the bill almost certainly will not be brought to the floor of the Democratic-controlled Senate in this Congress, the passage of H.R. 5759 is seen as largely a symbolic protest against the president’s announced actions.

In his announcement of his intended executive actions, Obama anticipated that opponents of his action would call it what it was — amnesty — and said: “I know some of the critics of this action call it amnesty. Well, it’s not.”

But 219 House members, including three Democrats — John Barrow (Ga.), Mike McIntyre (N.C.), and Collin Peterson (Minn.) — agreed that the presidential action (when it is carried out) amounts to amnesty. However, thus far, there has been no executive action filed by the president to accomplish his goals stated in his November 20 speech. Instead, his plan is being put into effect mainly through a memorandum signed by Department of Homeland Security (DHS) Secretary Jeh Johnson entitled: “Exercising Prosecutorial Discretion With Respect to Individuals Who Came to the United States as Children With Respect to Certain individuals Who Are the Parents of U.S. Citizens or Permanent Residents.”

The Executive Amnesty Prevention Act made reference to Johnson’s memorandum, as we will quote further along in this report.

Members of Congress have taken Obama to task for his announced action however it is accomplished. “Two weeks ago, President Obama declared war against the Constitution by changing our immigration laws on his own, and Congress today began its fight against this unprecedented power grab,” said House Judiciary Committee chairman Bob Goodlatte.

House Speaker John Boehner told reporters upon passage of the bill:

We think this is the most practical way to fight the president’s action, and frankly we listen to our members, and we listen to some members who are frankly griping the most. This was their idea of how to proceed.

The Executive Amnesty Prevention Act made the Constitution its prime point of contention in



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condemning Obama's amnesty executive action, citing article I, section 8, of the Constitution, which states that the Congress has the power to "establish a uniform Rule of Naturalization."

The bill juxtaposed that phrase with a citation from the Supreme Court's decision in *Galvan v. Press*: "that the formulation of ... policies [pertaining to the entry of aliens and their right to remain here] is entrusted exclusively to Congress has become about as firmly imbedded in the legislative and judicial tissues of our body politic as any aspect of our government."

The bill next cited article II, section 3, of the Constitution, stating that the President is required to "take Care that the Laws be faithfully executed."

The legislation then charged that Obama was misusing the concept of "prosecutorial discretion," which historically has been used by presidents,

through their constitutional power over foreign affairs to permit individuals or narrow groups of noncitizens to remain in the United States temporarily due to extraordinary circumstances in their country of origin that pose an imminent threat to the individuals' life or physical safety.

Prosecutorial discretion generally ought to be applied on a case-by-case basis and not to whole categories of persons.

The bill noted that Obama "has stated at least 22 times in the past that he can't ignore existing immigration law or create his own immigration law." We mentioned two of those occasions in our November 21 article, "Immigration Speech: Does Obama See Himself as an Elected Dictator?" — his Univision Town Hall held on March 28, 2011 at Bell Multicultural High School in Washington, D.C. and his 2008 campaign speech at a Town Hall meeting in Lancaster, Pennsylvania.

The legislation summed up its argument nicely, referring to Secretary John's memorandum, as we noted previously:

President Obama's grant of deferred action to more than 4,000,000 unlawfully present aliens, as directed in a November 20, 2014, memorandum issued by Secretary of Homeland Security Jeh Charles Johnson, is without any constitutional or statutory basis.

It then goes on to prohibit the executive branch from deferring the deportation, "by Executive order, regulation, or any other means," entire categories of illegal aliens present in the United States.

With just a month before the 113th Congress ends on January 3, the chances of H.R. 5759 doing anything other than die of neglect in this Democrat-controlled Senate are unimaginable. Since this legislative victory is largely symbolic, some amnesty opponents dismissed it as inconsequential. Senator Ted Cruz (R-Texas) called the bill's passage a "show vote."

"Congress should stand up and use the power of the purse to say: we will fund the government, we will fund the operation of the federal government, but we will not allocate taxpayer dollars to lawless and illegal amnesty," Cruz told *The Blaze*, a conservative website. "Do what you promised," he added. "And doing what you promised doesn't mean, as it so often does in Washington, sending a really stern letter, and having a meaningless show vote."

Opponents of amnesty for illegal immigrants will have an opportunity to see what Cruz and others who share his views (such as Jeff Sessions of Alabama and Rand Paul of Kentucky) can accomplish in the 114th Congress, when Republicans control the Senate.

If the Executive Amnesty Prevention Act of 2014 did nothing else, however, it did present an excellent



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constitutional argument and provide some good talking points for legislators who want to move on to the next step.

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