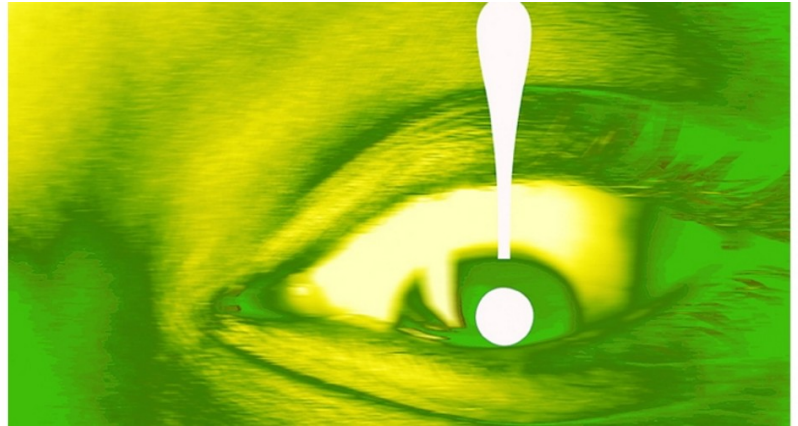




Obama Amnesty Order Called Unprecedented and Unconstitutional

As Republicans try to figure out the best response to President Obama's November 20 announcement that he would use executive action to grant protection from deportation to millions of illegal immigrants, editorial writers have called the president's plan unprecedented and even unconstitutional.



A December 3 editorial in the *Washington Post* (long regarded by conservatives as a liberal-leaning newspaper, but described in 2007 by political commentator Chris Matthews as "a neocon newspaper") read:

The White House has defended President Obama's unilateral decision to legalize the presence of nearly 4 million undocumented immigrants as consistent, even in scope, with the executive actions of previous presidents. In fact, it is increasingly clear that the sweeping magnitude of Mr. Obama's order is unprecedented.

Another editorial on December 3 by CBN (Christian Broadcasting Network) News Chief Political Correspondent David Brody cited several sources — including Representative Bob Goodlatte (R-Va.), Jay Sekulow of the American Center for Law and Justice, and Professor Ronald Rotunda, with Chapman University's Fowler School of Law — who maintain that the presidential executive order is unconstitutional, or at least illegal. CBN quoted from Goodlatte's statement made during a House Judiciary Committee hearing:

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President Obama has just announced one of the biggest constitutional power grabs ever by a president. He has declared unilaterally that — by his own estimation — almost 5 million unlawful immigrants will be free from the legal consequences of their lawless actions.

CBN also quoted a statement from Sekulow:

He changed the law. Presidents cannot change the law. You can't do so constitutionally, you cannot do so under Supreme Court precedent, and you can't change the law to comport with his preferred public policy.

The *Post* editorial disputed figures cited by the Obama administration that the percentage of illegal immigrants granted protection from deportation by the executive action is roughly equivalent to the percentage covered by a similar action by President George H.W. Bush in 1990. The Obama action will pardon about four million illegal aliens, out of a number estimated around 11 million, or 36 percent of the total number of illegals.

Using figures that there were about 3.5 million illegal immigrants in the country in 1990, administration officials have asserted that about 1.5 million of them (which included the spouses and children of aliens



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previously granted amnesty) benefited from the Bush action. A report compiled by Karl Thompson, principal deputy assistant attorney general at the Obama administration's Office of Legal Counsel, stated: "And although we are aware of no prior exercises of deferred action of the size contemplated here, INS's 1990 Family Fairness policy, which Congress later implicitly approved, made a comparable fraction of undocumented aliens — approximately four in ten — potentially eligible for discretionary extended voluntary departure relief."

The *Post* editorial challenged these figures, however, referring back to a November 24 article in the newspaper by Glenn Kessler, who observed that even the *Post* had repeated without question the 1.5 million figure used by the Obama administration in recent weeks. But Kessler referred back to an article in the *Post* immediately following the Bush announcement of the deferral program in February 1990. That article read:

The Immigration and Naturalization Service yesterday reversed a stance that had drawn strong protests from Hispanic and human-rights groups by announcing a new policy to prevent the deportation of as many as *100,000 illegal aliens* who are the children and spouses of newly legalized immigrants. (Emphasis added.)

The key in the article was the number 100,000. Kessler noted that that figure was widely cited in practically every article that appeared on the day after the announcement. For example, the *San Francisco Chronicle* reported: "The new policy is likely to benefit more than 100,000 people, INS officials and immigration lawyers said."

Somehow, after INS spokesman Duke Austin was quoted in the *Philadelphia Inquirer* as stating "There's no way to count [the amnestied aliens]. It may run to a million," the higher figure was repeated, and kept growing.

A *Los Angeles Times* article on February 15, 1990 stated: "Although there are no firm figures, the immigration service estimates as many as 1 million aliens could be affected by the new policy."

On March 5, 1990, notes Kessler, the *Times* reported: "The Federal Immigration Commissioner, Gene McNary, said recently that as many as 1.5 million illegal aliens could be affected by the new policy, called 'family fairness,' and intended to allow close family members of legalized immigrants to remain in the country under certain conditions."

Kessler said that McNary told the *Post* column "The Fact Checker" that years later, he was puzzled by the quote. "I can't remember saying 1.5 million. I don't even remember testifying on the subject," he said. "The 1.5 million does not fit with the other facts," including the INS estimate of 100,000 at the time of the announcement. McNary suspects the exchange was based on a misunderstanding with his questioner, then-Representative Bruce Morrison (D-Conn.): "Morrison was trying to get a figure out of me, and I guess I gave him one."

Unfortunately, the statement that McNary inadvertently gave to Morrison is now being used by the Obama administration as gospel truth to justify the president's executive actions.

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