



Legislative Bulletin.....December 4, 2014

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H.R. 5759 — Preventing Executive Overreach on Immigration Act (Yoho, R-FL)

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Order of Business: H.R. 5759 is expected to be considered on December 4, 2014, under a closed [rule](#).

The rule self-executes a manager’s amendment in the nature of a substitute, meaning that the House will consider the amended bill. This Legislative Bulletin reflects the text of the [manager’s substitute amendment](#).

The rule further provides for consideration of the Senate amendment to H.R. 3979 (the Carl Levin and Howard P. ‘Buck’ McKeon National Defense Authorization Act for Fiscal Year 2015) and H.R. 5781 (California Emergency Drought Relief Act of 2014).

Summary: H.R. 5759 would prohibit the executive branch from exempting or deferring the removal of categories of unlawful aliens, with limited exceptions.

Findings: H.R. 5759 includes several findings:

- (1) “Under article I, section 8, of the Constitution, the Congress has the power to “establish an uniform Rule of Naturalization”. As the Supreme Court found 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”.
- (2) Under article II, section 3, of the Constitution, the President is required to “take Care that the Laws be faithfully executed”.
- (3) Historically, executive branch officials have legitimately exercised their prosecutorial discretion 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.

- (4) Prosecutorial discretion generally ought to be applied on a case-by-case basis and not to whole categories of persons.
- (5) President Obama himself has stated at least 22 times in the past that he can't ignore existing immigration law or create his own immigration law.
- (6) 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."

Rule of Construction: H.R. 5759 prohibits the executive branch from:

- (1) Exempting or deferring the removal of categories of aliens that are unlawfully present in the United States by Executive order, regulation, or any means.
- (2) Treating unlawfully present aliens as if they were lawfully present or had a lawful immigration status.
- (3) Treating unlawfully present aliens as anything other than unauthorized aliens.

The bill states that "Any action by the executive branch with the purpose of circumventing the objectives of this section shall be null and void and without legal effect."

Exceptions: H.R. 5759 states that the above prohibitions do not apply:

- (1) To the extent prohibited by the Constitution.
- (2) Upon the request of federal, state, or local law enforcement, for the purposes of keeping aliens in the United States to be tried for crimes or to be witnesses at trials.
- (3) For humanitarian purposes where the aliens are at imminent risk of serious bodily harm or death.

Effective Date: This legislation shall take effect as if enacted on November 20, 2014, and shall apply to requests on or after such date for work authorizations as well as removal exemptions and deferrals.

Additional Background:

The President's Actions

On November 20, 2014, President Obama [announced](#) a [series of executive actions](#) regarding the nation's immigration system. The executive actions will primarily be carried out by the [Department of Homeland Security](#) through several memorandums. Links to the different memorandums can be found below:

- [Strengthen Border Security](#)
- [Revise Removal Priorities](#)
- [End Secure Communities and Replace it with New Priority Enforcement Program](#)
- [Personnel Reform for ICE Officers](#)
- [Expand Deferred Action for Childhood Arrivals \(DACA\) Program](#)

- [Extend Deferred Action to Parents of U.S. Citizens and Lawful Permanent Residents](#)
- [Expand Provisional Waivers to Spouses and Children of Lawful Permanent Residents](#)
- Revise Parole Rules
 - [Entrepreneurs](#)
 - [Parole-in-Place and Deferred Action](#)
 - [Advance Parole](#)
- [Promote the Naturalization Process](#)
- [Support High-skilled Business and Workers](#)

The Department of Justice Office of Legal Counsel released a [legal opinion](#) justifying the Department of Homeland Security's authority to prioritize removal of certain aliens unlawfully present in the United States and to defer removal of others.

The Speaker's office has documented [22 Times President Obama Said He Couldn't Ignore or Create His Own Immigration Law](#).

CRS has a report available titled [Executive Discretion as to Immigration: Legal Overview](#).

House Vote to Prohibit Federal Funding for Deferred Action for any Class of Alien Not Lawfully Present

On August 1, 2014, the House passed legislation ([H.R.5272](#)) to prohibit the use of Federal funds or resources to authorize deferred action for any class of alien not lawfully present in the United States or to authorize any alien to work in the United States that not in lawful legal status by a [216 – 192](#) vote.

Committee Action: H.R. 5759 was introduced on November 20, 2014 and referred to the House Judiciary Committee. The Committee took no further action on the legislation.

On December 2, 2014, the House Homeland Security Committee held a hearing titled "[Open Borders: The Impact of Presidential Amnesty on Border Security](#)," featuring DHS Secretary Jeh Johnson.

Cost to Taxpayers: "[CBO and JCT](#) expect that enacting the proposed amendment in the nature of a substitute for H.R. 5759 would reduce both revenues and outlays for direct spending programs. However, because of the short time available since the President announced his action, CBO and JCT cannot provide a specific estimate of those effects at this time."

According to CBO, "participation in several programs would decline because some people would no longer be eligible to participate or because they would choose not to participate for fear of revealing their unlawful presence." These programs include the Earned Income Tax Credit (EITC), the Additional Child Tax Credit (ACTC), Social Security, Medicare, and other federal programs for children.

“JCT expects that enacting the legislation would reduce tax revenues” because the “decrease in reported wages would cause decreases in receipts from both individual income taxes and payroll taxes.”

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Does the Bill Contain Any Federal Encroachment into State or Local Authority in Potential Violation of the 10th Amendment?: No.

Does the Bill Delegate Any Legislative Authority to the Executive Branch?: No, the bill would restrict executive overreach.

Does the Bill Contain Any Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: No.

Constitutional Authority: A Constitutional authority statement is not available at this time.

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