

The Alpha and the Obama: The legal memo backing his immigration order is a political rush job.

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ABC's George Stephanopoulos asked President Obama on Sunday to respond to his own critique of his unilateral immigration order, playing back a 2013 clip in which he declared that "I'm not the emperor of the United States. My job is to execute laws that are passed." He simply talked past the question.

Perhaps Mr. Obama didn't cite the official legal justification for his U-turn because it's too embarrassing. Now that we've studied the legal memo his government issued to support his order, his abuse of power looks even worse. Rather than honest analysis, his attorneys have conjured an opinion more political than legal that lets him pretend that creating de facto legal status and work permits for millions of undocumented immigrants is legitimate "prosecutorial discretion."

The executive branch inevitably makes case-by-case judgments about how and which laws to enforce, or life would be intolerable in so legalistic a society. Resources are also limited, so everyone who crosses the border illegally or overstays a visa can't be deported.

The problem, as the Justice Department's Office of Legal Counsel (OLC) concedes in the 33-page document, is that "the Executive cannot, under the guise of exercising enforcement discretion, attempt to effectively rewrite laws to match its policy preferences" or apply "set formulas or bright-line rules." Yet Mr. Obama is making precisely such a rewrite, by exempting whole categories of people and extending federal benefits that they aren't entitled to by statute.

By recognizing that there is no categorical exemption, the OLC is implicitly admitting that Mr. Obama is stretching prosecutorial discretion beyond legal norms. Its evidence for saying the policy is proper is that immigration officials will still be able to deport someone if they want to, and Mr. Obama's formulas are really "open-ended" to merely inform their decision-making. As a practical matter, which low-level immigration officials will defy the White House? Great career move.

Nor does the White House offer any criteria for rejecting a deferral application. The truth is that declining to deport individuals is not the same as a blanket suspension of all enforcement to effectively decriminalize—a policy choice that belongs to Congress through normal legislation.

David Rivkin and Elizabeth Foley describe other OLC contradictions nearby, but other details suggest the opinion's political nature. The OLC, for example, gestures toward

immigration laws but quotes no specific statutory language. The opinion also fails to cite an OLC precedent.

This is highly unusual because OLC is historically incrementalist, building on its jurisprudence across Administrations of both parties. The office is charged with interpreting the law for the executive branch and often explores the outer boundaries of presidential power. In this case OLC simply blesses Mr. Obama's general nonenforcement policy as "not per se impermissible."

The OLC also observes that enforcement discretion, like a prosecutor's decision not to indict, "is presumptively immune from judicial review" under Supreme Court precedents. The memo notes that because the deportation-waiver review is funded through user fees, Congress can't stop it through the power of the purse. Both claims are false, but they are also irrelevant to the legal merits. The OLC is simply informing Mr. Obama that no one can stop him, as in an advocacy brief. We'll see.

These are the kind of errors that normally scrupulous lawyers make under deadlines or political pressure. The OLC memo reveals that the White House did not submit formal legal questions until Wednesday, Nov. 19, and the OLC drafted the opinion the same day. The details of the new program weren't complete and submitted to the Justice Department until Monday. The OLC published the memo on Thursday, Nov. 20.

We wouldn't be surprised if some West Wing minion read our editorial last Monday "The Missing Immigration Memo," panicked, and rushed one out. Mr. Obama's political calculation—in keeping with his lawlessness on health care, drug policy and the rest—seems to be that he'll dispense with laws or parts of laws that displease him and dare Congress to challenge him. Republicans can and should take the dare.

Meantime, where are the Imperial Presidency scolds of the George W. Bush era hiding? Mr. Obama's conception of executive power borrows the famous adage of the gilded-age railroad baron: "Whatever is not nailed down is mine. What I can pry loose is not nailed down." This President's damage to democratic order and the rule of law will take a long time to repair.