

# ERNEST ISTOOK: Phantom executive order on amnesty: It's a trap!



*President Obama speaks on the phone in the Oval Office in this undated photo. (Official White House Photo by Pete Souza)*  
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By Ernest Istook - - Friday, December 5, 2014

Some people react with amazement when they learn that there is no executive order from President Obama to launch his immigration amnesty plan.

There is executive action, but there is no “executive order.”

Media, activists, pundits, talk-show hosts, Tea Partiers, liberals, elected officials and everyday people have all misdescribed how Mr. Obama’s aggressive power grab works. An “executive order” is a specific species of presidential action, but it’s only one of the tools a president can employ toward his goals. It’s actually one of the lesser ways that he abuses his authority.

Mr. Obama told us how he would bypass Congress: “I’ve got a pen and I’ve got a phone.” A pen leaves written trails. His phone calls to subordinates do not.

Some of us, a very few, have tried to warn people away from claiming that executive orders are the proof that Mr. Obama tries to act like a king. The White House has been happy with that wrongful description because it enabled them to set a trap.

The pop culture equivalent is the plot of “Star Wars Episode I: The Phantom Menace.” An illusory source of threats to the Republic was used to distract senators and the Jedi from recognizing and confronting the true threat, who then became the Emperor. Or, as Admiral Ackbar said in the original “Star Wars” film, “It’s a trap!”

In Washington, after conservatives centered their criticisms around Mr. Obama's executive orders, a real life trap was sprung. Liberals now saturate the Internet with White House talking points, typified by this from a Huffington Post column: "In fact, Obama has issued fewer executive orders than every president since 1901. While Democratic presidents have relied on executive orders more frequently than Republicans over the last 100 years, Obama's average executive orders per year in office fall nearly 3.3 points below George W. Bush, 8.4 below George H.W. Bush and roughly 14.5 points below Ronald Reagan."

The numbers are meaningless because not all executive orders are created equal. Some are major and some are minor. You can measure your cash by counting how many green pieces of paper are in your wallet but it makes a huge difference whether they are \$1 bills or \$100 bills.

More importantly, your ability to spend does not require that you use cash. You also have credit cards, debit cards, a bank account, perhaps some mutual funds, and maybe even gold or silver coins.

Executive orders are consecutively numbered official documents, published in the Federal Register and filed with the National Archives, but are merely one type of presidential order. President Obama does not act solely through these. He instead surrounds himself with sycophantic followers who will do his bidding, with or without his phone calls to them. Like any executive, Mr. Obama delegates. Politicians, mob bosses and the evil Emperor Palpatine get others to do their dirty work so they can pretend that their hands are clean.

Mr. Obama is responsible for his amnesty policy but his minions carry it out.

The immigration amnesty directives actually were issued through instructive memos from the Department of Justice and the Department of Homeland Security, carrying out Mr. Obama's wishes. The Justice Department issued a legal justification memo. It is deeply flawed but it gives the illusion of propriety. Then, Homeland Security issued a policy memo to all immigration and enforcement agencies, signed by Secretary Jeh Johnson, directing them to follow the amnesty policies rather than enforcing our laws.

These documents are the tip of the iceberg. Prior memos, guidelines, directives, interpretations, etc., were used to set things up. But none of those were "executive orders." Neither were the president's frequent political maneuvers to adjust Obamacare with things like waivers, interpretations and guidance documents that disregard the plain text of the actual law.

In like manner, Mr. Obama's assault on America's fossil fuel industries is done through rules and regulations, issued through his appointees in departments and agencies like the EPA. For his Internet control agenda, Mr. Obama uses the federal Communications Commission to act on "net neutrality." Mr. Obama's efforts to control what the public knows was done in 2009 through a legal memo to agencies. It instructed them that all information requests must go through White House clearance and filtering.

A hallmark of Mr. Obama's administration is how it evades accountability. That includes gimmicks to thwart lawsuits challenging its actions. Policies,

reports or documents are labeled temporary or provisional or still under review as one way to deny Freedom of Information Act requests. The Homeland Security secretary just told Congress he cannot testify about key details of our border security policy because the old policy was thrown out a while back and they're still working on a new one.

The White House claimed its amnesty plan could not be released before the election because it was still under review. Mr. Obama unveiled it on Nov. 20th and within two weeks had started hiring 1,000 new workers to process millions of amnesty and work permit applications. Plus, their office space is rented and ready. That swiftness proves that everything was ready to go but was kept under wraps purely to avoid campaign-season backlash. The delay was used so that Mr. Obama could prepare while others were frozen into inaction. Now Mr. Obama wants rapid action so that neither the courts or Congress have time to block him.

Fourteen governors are suing to block amnesty just the same. A key part of their lawsuit in Texas is that the policy changes are so vast that they should have followed the normal regulatory process. That avoids surprises, requiring advance notice and a chance for public review and comment before a new policy is issued. Instead, Mr. Obama disregarded laws such as the Administrative Procedures Act. This approach insults the democratic process yet it is not an "executive order."

Misuse of the executive order label has damaged the efforts to hold Mr. Obama and his administration accountable. It fell into a White House trap, part of its strategy to villainize those who disagree.

When critics claim that executive orders are the measure of Mr. Obama's power grabs, it enables the White House to misportray them as

uninformed fanatics whose actual motive is personal animosity. Their careless choice of words aids the false claim that Mr. Obama's opponents are racists who hate to see a black president succeed.

We should be informed conservatives: Mr. Obama indeed has issued bad executive orders. But most of how he enacts his agenda should be described not as "executive orders" but as "executive actions."

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