We are law professors and lawyers who teach, study, and practice constitutional law and related subjects. We have reviewed the executive actions taken by the President on November 20, 2014, to establish priorities for removing undocumented noncitizens from the United States and to make deferred action available to certain noncitizens. While we differ among ourselves on many issues relating to Presidential power and immigration policy, we are all of the view that these actions are lawful. They are exercises of prosecutorial discretion that are consistent with governing law and with the policies that Congress has expressed in the statutes that it has enacted.

1. Prosecutorial discretion—the power of the executive to determine when to enforce the law—is one of the most well-established traditions in American law. Prosecutorial discretion is, in particular, central to the enforcement of immigration law against removable noncitizens. As the Supreme Court has said, "the broad discretion exercised by immigration officials" is "[a] principal feature of the removal system." *Arizona v. United States*, 132 S. Ct. 2492, 2499 (2012).

Even apart from this established legal tradition, prosecutorial discretion in the enforcement of immigration law is unavoidable. According to most current estimates, there are approximately 11 million undocumented noncitizens in the United States. The resources that Congress has appropriated for immigration enforcement permit the removal of approximately 400,000 individuals each year. In these circumstances, some officials will necessarily exercise their discretion in deciding which among many potentially removable individuals is to be removed.

The effect of the November 20 executive actions is to secure greater transparency by having enforcement policies articulated explicitly by high-level officials, including the President. Immigration officials and officers in the field are provided with clear guidance while also being allowed a degree of flexibility. This kind of transparency promotes the values underlying the rule of law.

2. There are, of course, limits on the prosecutorial discretion that may be exercised by the executive branch. We would not endorse an executive action that constituted an abdication of the President's responsibility to enforce the law or that was inconsistent with the purposes underlying a statutory scheme. But these limits on the lawful exercise of prosecutorial discretion are not breached here.

Both the setting of removal priorities and the use of deferred action are well-established ways in which the executive has exercised discretion in using its removal authority. These means of exercising discretion in the immigration

context have been used many times by the executive branch under Presidents of both parties, and Congress has explicitly and implicitly endorsed their use.

The specific enforcement priorities set by the November 20 order give the highest priority to removing noncitizens who present threats to national security, public safety, or border security. These common-sense priorities are consistent with long-standing congressional policies and are reflected in Acts of Congress.

Similarly, allowing parents of citizens and permanent lawful residents to apply for deferred action will enable families to remain together in the United States for a longer period of time until they are eligible to exercise the option, already given to them by Congress, to seek to regularize the parents' status. Many provisions of the immigration laws reflect Congress's determination that, when possible, individuals entitled to live in the United States should not be separated from their families; the November 20 executive action reflects the same policy. The authority for deferred action, which is temporary and revocable, does not change the status of any noncitizen or give any noncitizen a path to citizenship.

In view of the practical and legal centrality of discretion to the removal system, Congress's decision to grant these families a means of regularizing their status, and the general congressional policy of keeping families intact, we believe that the deferred action criteria established in the November 20 executive order are comfortably within the discretion allowed to the executive branch.

As a group, we express no view on the merits of these executive actions as a matter of policy. We do believe, however, that they are within the power of the Executive Branch and that they represent a lawful exercise of the President's authority.

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November 20, 2014