

The 'Plan B' alternative: If immigration reform fails, what's next?

[Leslie Berestein Rojas](#) | September 6th, 2013, 12:41pm

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Hopeful applicants for Deferred Action for Childhood Arrivals line up outside the offices of the Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA) on Aug. 15, 2012,. Some immigrant advocates hope the Obama administration will extend the temporary legal status offered under deferred action to a larger group of immigrants if Congress fails to pass immigration reform.

When Congress left for August recess, immigration reform was still a front-burner issue. The Senate had approved a sweeping bill with a path to citizenship for immigrants living in the U.S. illegally, and while the House was still deliberating, proponents of an immigration overhaul were optimistic that a bill would come up for a vote this year.

A month later, as Congress prepares to return to session on Monday, things are quite different: The U.S. is poised to begin military intervention in Syria, the federal budget must be contended with, and immigration is no longer at the top of the agenda. Not to mention that save for a few stand-alone bills, the House has yet to come up with its own immigration strategy.

Some immigration reform proponents are still hoping for a legislative win and have kept pressure up on lawmakers, as has the White House. But many immigration-watchers [are now looking ahead](#) to 2014, 2015, even [as far off as 2017](#), when the timing for a comprehensive immigration overhaul might be better.

So what next if immigration reform fails? Call it [Plan B](#), as the idea has now been semi-formally dubbed. It involves immigrant advocates pressuring the White House to extend administrative relief – essentially offering the federal [deferred action program](#) to a larger number of immigrants. Currently it targets young immigrants under 30. Deferred action wouldn't legalize their status per se, but it would let them temporarily live and work in the U.S. legally with protection from deportation.

"Just as (the president) had the discretion to provide Deferred Action for Childhood Arrivals, he also has the discretion to offer that to a wider array of people," said Chris Newman of the [National Day Laborer Organizing Network](#), a Los Angeles-based advocacy group. "And we expect that he will do that regardless of the outcome, which is uncertain in Congress."

In fact, the Obama administration has dropped no hint that this could be an option. But the buzz over "Plan B" picked up recently, after Sen. Marco Rubio of Florida [brought up the idea of executive action](#) in an interview with a Florida radio station:

"I believe that this president will be tempted, if nothing happens in Congress, he will be tempted to issue an executive order like he did for the DREAM Act kids a year ago, where he basically legalizes 11 million people by the sign of a pen,"

The comment from Rubio, one of eight lawmakers who drafted the Senate reform bill, angered fellow conservatives who perceived it [as a threat](#) to garner support for the plan before them, or face the unpalatable consequences. So far, House Republican leadership has made clear it [does not support](#) the Senate plan.

Along with the buzz comes the question: Would such action be legal? Yes, legal experts say, in [the same way that deferred action is](#). The president has the discretionary power to offer administrative relief to select groups of people, such as the group now covered by deferred action: Under-30 immigrants who arrived before age 16. But there are limits.

Just as the administration drew up guidelines for deferred action, these could be redrawn to apply to other specific groups, says UCLA law professor Hiroshi Motomura. For example, immigrants who are a low priority for deportation who have immediate U.S. citizen family members, for example, or those who have specific medical needs.

"In that sense, if (Obama) expands DACA it makes total sense," said Motomura, who has written about the legal rationale for deferred action. "He is basically regularizing and creating a system for discretion. I think when you get to a point where every single person who is in the United States without papers gets the benefit, then it gets way from this notion of exercising discretion. Then it becomes legally less plausible."

This wouldn't be the first time a "Plan B" of sorts has grown out of a failed immigration reform bid. After the last big effort fell apart in 2007, immigration activists began focusing their energy on smaller pieces of legislation, particularly the so-called Development, Relief and Education for Alien Minors ([DREAM Act](#)), which proposed legal status for young people who arrived in the U.S. as minors if they went to college or joined the military.

That bill also failed to become law, but the momentum behind it, as more young people raised in the U.S. without legal status began to [go public with their stories](#), eventually paved the way for deferred action. Since the program kicked off in August 2012, more than 430,000 young immigrants have been approved for a two-year reprieve from deportation.

Deferred action can be renewed after two years, but it provides no path to permanent legal status. That's one reason some reform proponents are less supportive of an administrative alternative - at least for now. Frank Sharry of the Washington, D.C.-based advocacy group [America's Voice](#) says he'll back a Plan B if it comes to that, but he'd rather see what he calls "Plan A."

"If we pass legislation that confers permanent legal status and an option to become a citizen in the future to most of the 11 million people (in the U.S. without legal status), that is going to be a real breakthrough," Sharry said. "It's going to make people's lives a lot better than even a temporary solution that the president might be forced, or pressured, to offer up should reform falter."

Sharry believes the immigration debate could pick up again in October, provided Congress manages to clear front-burner decisions like the military strategy for Syria.

<http://www.scpr.org/blogs/multiamerican/2013/09/06/14670/the-plan-b-alternative-if-immigration-reform-fails/>