

White House Debates How Far to Go in Easing Deportations

By Michael D. Shear and Ashley Parker

May 16, 2014

WASHINGTON — At a recent White House meeting with immigration activists, President Obama told the group his hands were tied. Even if he wanted to halt the deportations of millions of illegal immigrants, the president told the group, he could not do so without congressional approval.

But Mr. Obama has more latitude than he lets on, legal experts say, and he may soon reveal how he intends to use it. Under increasing pressure to slow the pace of deportations from Hispanic supporters who helped get him re-elected in 2012, the president has ordered his Homeland Security secretary to make immigration enforcement more humane.

Protesters at the White House on Monday demanded that President Obama stop deportations and work toward an immigration overhaul.

That directive has led to an intense debate about how far the president should go in protecting large groups of illegal immigrants from deportation. Despite the president's repeated insistence that he is "not a king," administration officials are considering a range of options to further shift enforcement to focus on criminals and recent border crossers, and away from people with clean records.

At a minimum, officials said the Department of Homeland Security was likely to issue new guidelines for law enforcement agents to make it clear that immigrants who are part of a family settled in this country should not be priorities for deportation, especially if their family includes American citizens. Officials are also considering changes that would shield some people who have returned to the country illegally after being deported. Right now, those people are charged with a felony and ordered out of the country.

Such changes could affect tens of thousands of people, but they would fall far short of the demands from most immigration activists to address the concerns of the 11 million illegal immigrants in the country. Legal scholars say the White House could also carry out proposals that would remove the fear of deportation and provide work permits for as many as five million illegal immigrants.

"Presidents have pretty much complete discretion when it comes to enforcing criminal and other statutory regimes," said Peter J. Spiro, who teaches immigration law at Temple University. "President Obama can't start handing out green cards. Short of that, from a legal perspective, there are no serious constitutional or other legal constraints that apply here."

Instead, the constraints on Mr. Obama are mainly political. Senior White House officials and Democrats on Capitol Hill fear that any move to halt deportations for millions of people would all but end any hope of negotiating an immigration deal with Republicans that would be more

permanent than any unilateral action he could take. A bill that passed the Senate last year has stalled in the House.

And even if the White House were to give up on an immigration overhaul — something officials said had not yet happened — unilateral action by Mr. Obama to waive deportations for large groups of people would be politically explosive. Some White House officials believe it could even lead Republicans to start impeachment proceedings against the president.

Senator Charles E. Schumer, Democrat of New York, has warned the White House that even moderate efforts to reduce deportations could scuttle legislative negotiations without satisfying immigration activists, and has said House Republicans should be given through the summer to pass their own legislation.

But with no obvious movement on legislation, pressure is mounting for Mr. Obama to do something. “It’s really about the administration’s political will, and how bold he wants to be in the final years of his administration,” said Marielena Hincapié, the executive director of the National Immigration Law Center.

In remarks to law enforcement officials at the White House on Tuesday, the president hinted that he intended to take unilateral action to ease the threat of deportation for some illegal immigrants. He gave little indication, however, of how broadly he wanted to change the rules.

“You know, these are folks who are woven into the fabrics of our communities. Their kids are going to school with our kids. Most of them are not making trouble,” Mr. Obama said, lamenting the aggressive enforcement of deportation laws against them. “That’s just not a good use of our resources. It’s not smart. It doesn’t make sense.”

Republicans argue that the president long ago overstepped his constitutional authority in many areas, citing the repeated changes he has made to his signature health care law, and his promise in his State of the Union address to use executive action to circumvent Congress. Deploring an “imperial presidency” has become a rallying cry for the conservative base.

But it is far from clear that Republicans or their allies can prevail in a legal challenge to Mr. Obama’s executive authority on deportations.

Courts have consistently given presidents wide discretion to prioritize limited resources for various kinds of law enforcement, legal scholars said. In a ruling last year on a lawsuit by immigration agents, a federal judge dismissed the suit, saying that while an administration program that halted deportations of young unauthorized immigrants was illegal, the federal court did not have jurisdiction to hear the case.

Conservatives are bracing for the fight anyway. In a speech on the Senate floor late last month, Senator Orrin G. Hatch of Utah accused the president of being willing to bend the nation’s laws “past their breaking point,” and said he feared that Mr. Obama was preparing to ignore congressional mandates that require the deportation of illegal immigrants.

Dan Holler, the communications director of Heritage Action for America, a conservative advocacy group, said that “broadly speaking, there is a difference between sort of enforcing the law and making do with the resources that you have, versus what you’ve seen from this administration, which is drawing these lines that reinterpreted what discretion is.”

Under Mr. Obama, immigration officials have expanded the use of programs that empower local law enforcement agencies to enforce immigration laws. In 2011, the federal government made some changes to guidelines to focus on immigrants who were criminals or a threat to the community.

In the coming days, the Homeland Security secretary, Jeh Johnson, is expected to unveil his short-term proposal for responding to the president’s directive to go further. Mr. Johnson has been consulting broadly with advocates, immigration agents and legal scholars, among others. So far, most people involved in the debate expect the administration to pursue the most modest option, altering the existing guidelines so that illegal immigrants who are settled in families here are no longer a priority for deportation.

“Every big-city police chief says we’re going to go after muggers, not jaywalkers, and it’s just as reasonable for Obama and Jeh Johnson to say we’re going to go after criminals, not housekeepers who are moms,” said Frank Sharry, the executive director of America’s Voice, a pro-immigration group.

Some immigration lawyers are urging Mr. Obama to go further by making it easier for about 1.5 million illegal immigrants to apply for permanent green cards, in some cases within months. That group includes people who would qualify for permanent legal status because of an immediate family tie to an American citizen, but would typically have to leave the United States for several years before returning to get a green card. Even advocates say that would be seen by many critics as a grant of amnesty.

A third option — the one preferred by many immigration activists — would involve expanding Mr. Obama’s 2012 program, known as Deferred Action for Childhood Arrivals, that halted deportations and made temporary work permits available to more than 800,000 young adults who were brought illegally to the United States as children. If the White House expanded the program to include the undocumented parents of these young adults and of American citizens, it would potentially allow about four million to five million undocumented adults to remain in the country without the threat of immediate deportation.

In 2012, current and former officials said White House lawyers were worried about the program for young adults, concerned that it might be illegal because it granted temporary work permits without congressional authorization.

“There was a lot of consternation in the White House counsel’s office about the legality of that,” one former senior administration official said. Kathryn Ruemmler, the White House counsel, declined to comment.

Officials said White House and Department of Homeland Security lawyers eventually concluded that the program was legal, in part because, technically, the president did not immediately grant legal status to a whole class of people. Instead, he set up a process by which people could apply for it, though, of course, nearly everyone who did so was granted it.

The same legal principle would apply if the president expanded the program to include parents, said Stephen H. Legomsky, who helped shape the program as the chief counsel for Citizenship and Immigration Services.

“It’s well-entrenched doctrine,” he said. “When it comes to enforcement, it’s the president’s call.”

<http://www.nytimes.com/2014/05/17/us/politics/white-house-debates-how-far-to-go-in-easing-deportations.html>