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THE MISSING IMMIGRATION MEMO

By The Editorial Board
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If the White House press corps wants to keep government honest, here's a question to ask as President Obama prepares to legalize millions of undocumented immigrants by executive order: Has he sought, and does he have, any written legal justification from the Attorney General and the Justice Department's Office of Legal Counsel (OLC) for his actions?

This would be standard operating procedure in any normal Presidency. Attorney General Eric Holder is the executive branch's chief legal officer, and Administrations of both parties typically ask OLC for advice on the parameters of presidential legal authority.

The Obama Administration has asked OLC for its legal opinions on such controversial national security questions as drone strikes and targeting U.S. citizens abroad. It was right to do so even though the Constitution gives Presidents enormous authority on war powers and foreign policy.

But a Justice-OLC opinion is all the more necessary on domestic issues because the President's authority is far more limited. He is obliged to execute the laws that Congress writes. A President should always seek legal justification for controversial actions to ensure that he is on solid constitutional ground as well as to inspire public confidence in government.

Yet as far as we have seen, Mr. Obama sought no such legal justification in 2012 when he legalized hundreds of thousands of immigrants who were brought to the U.S. illegally as children. The only document we've found in justification is a letter from the Secretary of Homeland Security at the time, Janet Napolitano, to law enforcement agencies citing "the exercise of our prosecutorial discretion." Judging by recent White House leaks, that same flimsy argument will be the basis for legalizing millions more adults.

It's possible Messrs. Obama and Holder haven't sought an immigration opinion because they suspect there's little chance that even a pliant Office of Legal Counsel could find a legal justification. Prosecutorial discretion is a vital legal concept, but it is supposed to be exercised in individual cases, not to justify a refusal to follow the law against entire classes of people.

White House leakers are also whispering as a legal excuse that Congress has provided money to deport only 400,000 illegal migrants a year. But a President cannot use lack of funds to justify a wholesale refusal to enforce a statute. There is never enough money to enforce every federal law at any given time, and lack of funds could be used in the future by any President to refuse to enforce any statute. Imagine a Republican President who decided not to enforce the Clean Air Act.

We support more liberal immigration but not Mr. Obama's means of doing it on his own whim because he's tired of working with Congress. His first obligation is to follow the law, which begins by asking the opinion of the government's own lawyers.