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WHITE HOUSE CITES MOVES BY PREVIOUS PRESIDENTS FOR IMMIGRATION ACTION

By Byron Tau
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WASHINGTON – Presidents Gerald Ford and Jimmy Carter allowed more than 360,000 Vietnamese, Cambodians, and Laotians into the country in the 1970s. Under Ronald Reagan, as many as 200,000 Nicaraguans won protections in the 1980s.

George H.W. Bush granted relief to up to 1.5 million illegal immigrants in 1990.

The White House is citing actions by these and other presidents as ample precedent for President Barack Obama's plan to grant new protections to as many as 5 million illegal immigrants. "The actions I'm taking are not only lawful, they're the kinds of actions taken by every single Republican president and every single Democratic president for the past half century," Mr. Obama said in his Thursday night address to the nation.

But some veterans of prior administrations don't buy the comparisons. Critics say that unlike his predecessors, Mr. Obama has taken action that affects far more people and comes in a different context of relations with Congress.

John Sununu, the former governor of New Hampshire who was chief of staff in the George H.W. Bush White House, said that Mr. Bush's 1990 action was taken as part of a broader effort to work with Congress to fix the immigration system. Congress codified Mr. Bush's unilateral immigration action into law that same year.

Mr. Bush's action was aimed at resolving a problem created by the 1986 immigration reform law passed by Congress. That law gave illegal immigrants who had been in the U.S. for 5 years or more a path to legal status. But spouses, children and parents of those immigrants weren't necessarily eligible – meaning that families could be split up by U.S. immigration policy. Mr. Bush took unilateral action to fix the problem, and then Congress followed suit in fixing by law a few months later.

Mr. Sununu said that Mr. Obama's action is the opposite of Mr. Bush's – an attempt to circumvent Congress and act without the permission of Congress.

"I think all those precedents were done in concert with a strategy working with Congress and in reflection of the laws that were on the books at the time," Mr. Sununu said about Presidents Reagan and Bush's immigration efforts. "Obama was absolutely right a couple of years ago when he was saying that he did not have the authority to do this. And now he is flying in the face of his own correct perceptions."

Talking points and research memos being circulated by the White House to allies in the immigration-reform community point specifically to significant actions undertaken by presidents Reagan and Bush. Mr. Reagan's Attorney General, Edwin Meese, ordered the

Immigration and Naturalization Service in 1987 to grant immigration relief to more than 200,000 Nicaraguans.

Other unilateral immigration actions by presidents include Dwight Eisenhower paroling Hungarians and Cubans fleeing Communist conflicts in their country; Gerald Ford and Jimmy Carter allowing more than 360,000 Vietnamese, Cambodians, and Laotians into the country in the 1970s and Bill Clinton's deportation halt of Central American immigrants in response to Hurricane Mitch. The Mariel Boatlift in 1980 presented a different set of problems, with presidents Carter and Reagan eventually easing immigration requirements for most of the more than 120,000 Cuban refugees landing in Florida.

All told, reform supporters point to near 40 examples of executive action to protect immigrants from countries such as China, Lebanon, Ethiopia, the Soviet Union, Uganda and many others. Many of those actions were taken in response to natural disasters, or political repression or conflict, but others were part of bigger attempts to overhaul immigration or fix problems with laws passed by Congress.

GOP leadership on Capitol Hill greeted Mr. Obama's plans for immigration reform with scorn – emphasizing that Mr. Obama himself had repeatedly said such an action would be beyond the scope of his authority.

"I am president. I am not king. I can't do these things just by myself. We have a system of government that requires the Congress to work with the executive branch to make it happen," Mr. Obama said at a 2010 event.

House Speaker John Boehner's office has compiled a list of 22 times where Mr. Obama has said that his own action this week would be either ill-advised or against the law.

The administration is relying on the theory prosecutorial discretion to underpin its decision. It took the fairly unusual step of releasing a Justice Department legal memo justifying the decision.

"We conclude that [Department of Homeland Security's] proposed prioritization policy and its proposed deferred action program for parents of U.S. citizens and lawful permanent residents would be legally permissible," Karl Thompson, principal deputy assistant attorney general in the Justice Department's Office of Legal Counsel wrote in an opinion Wednesday.

That is something that immigration and constitutional law experts echo – that the president has some level of authority to determine what is important and necessary.

"This has to be seen within the framework of setting priorities, and every president has done that and does that – not only in the immigration field but elsewhere," said David Leopold, an immigration lawyer and past president of the American Immigration Lawyers Association. "In immigration, it's extremely important because Congress has allocated enough money only to remove a small fraction of the undocumented population."

Mr. Obama has "the same discretion that's been applied by the president and presidents for 30 years," Mr. Leopold said.

"It's hard to see what constitutional provision is violated," said Charles Fried, Harvard Law professor and Mr. Reagan's solicitor general from 1985 to 1989. He added: "A lot of what Obama is proposing now on immigration, for instance, comes to executive inaction."