

Obama's immigration executive order: Here are the details

Under President Barack Obama's immigration executive order, announced on Thursday, November 20, 2014, illegal immigrants who have minor run-ins with law enforcement will not have to worry about the incident triggering deportation.

Obama is ordering a series of administrative changes in rules and refocusing enforcement priorities and prosecutorial discretion. Combined, these actions, are in line with past presidential precedents and therefore can survive a legal challenge.

Here are some of the changes that will allow about 5 million illegal immigrants to remain in the U.S. *A full copy of the White House fact sheet is at the end of this post.*

ENFORCEMENT

The Department of Homeland Security, which enforces immigration laws through a branch nicknamed "ICE" – Immigration and Customs Enforcement – will be shifting priorities.

DHS Secretary Jeh Johnson will be issuing a memo ordering law enforcement officials to focus on illegal immigrants with criminal convictions and recent illegal arrivals – especially those who pose threats, such as gang members and terrorists or other criminals. They will be at "the top of the deportation priority list."

"This is very basic prosecutorial discretion, " a White House

official said. “. . . the same sort of choice prosecutors use every day.”

Immigration officials have enormous “latitude to pick and chose who they go after.”

EXPANDING DEFERRED ACTIONS

For parents of citizens or permanent residents...

Some four million illegal immigrants may be impacted in a new program intended to help the parents of U.S. citizens or permanent residents. They will be allowed to stay if they have lived in the U.S. for five years or longer, register, pass a criminal background check and pay taxes.

From a White House fact sheet: “Individuals will have the opportunity to request temporary relief from deportation and work authorization for three years at a time if they come forward and register, submit biometric data, pass background checks, pay fees, and show that their child was born before the date of this announcement. By providing individuals with an opportunity to come out of the shadows and work legally, we will also help crack down on companies who hired undocumented workers, which undermines the wages of all workers, and ensure that individuals are playing by the rules and paying their fair share of taxes.”

DACA provisions...

Under a program known as “DACA” – Deferred Action for Childhood Arrivals – created under an Obama June 15, 2012 order, youths known as “DREAMers,” illegally in the U.S. through no fault of their own, were eligible to be granted a low priority enforcement status allowing them to stay in the U.S. and not worry about deportation.

Obama’s order eliminates the age cap and expands the universe of people who can stay. Immigration officials, using

prosecutorial discretion, will put a low priority enforcement of low risk law abiding illegal immigrants.

As in the 2012 DACA, this is not a pathway to citizenship and it does not grant a legal status. For three years, law enforcement officials will not go after DREAMers who pass a criminal background check and other criteria. This will allow them to work legally and and pay taxes. **It is temporary and it is revocable.**

From a White House fact sheet: "Under the initial DACA program, young people who had been in the U.S. for at least five years, came as children, and met specific education and public safety criteria were eligible for temporary relief from deportation so long as they were born after 1981 and entered the country before June 15, 2007. DHS is expanding DACA so that individuals who were brought to this country as children can apply if they entered before January 1, 2010, regardless of how old they are today. Going forward, DACA relief will also be granted for three years."

Nothing in the executive order covers the parents of DREAMers.

OTHER CHANGES TO THE CURRENT IMMIGRATION SYSTEM

Foreign students studying in the science and technology fields in the U.S. will find it easier to obtain a visa to allow them to stay.

A new program will be created to let entrepreneurs come to the U.S. if they can demonstrate they have investors and will create jobs in the U.S.

TIMETABLE

The range of actions Obama is announcing on Thursday have different timelines for implementation. The deferred action programs could be up and running by the spring. The DACA expansions may kick in next spring. The tech and entrepreneur

visa waivers have to go through a rule making process which could take a year or 18 months.

BELOW, FROM THE WHITE HOUSE

THE WHITE HOUSE

Office of the Press Secretary

FOR IMMEDIATE RELEASE

November 20, 2014

FACT SHEET: Immigration Accountability Executive Action

The President's Immigration Accountability Executive Actions will help secure the border, hold nearly 5 million undocumented immigrants accountable, and ensure that everyone plays by the same rules. Acting within his legal authority, the President is taking an important step to fix our broken immigration system.

These executive actions crack down on illegal immigration at the border, prioritize deporting felons not families, and require certain undocumented immigrants to pass a criminal background check and pay their fair share of taxes as they register to temporarily stay in the U.S. without fear of deportation.

These are common sense steps, but only Congress can finish the job. As the President acts, he'll continue to work with

Congress on a comprehensive, bipartisan bill—like the one passed by the Senate more than a year ago—that can replace these actions and fix the whole system.

Three critical elements of the President's executive actions are:

- *Cracking Down on Illegal Immigration at the Border:* The President's actions increase the chances that anyone attempting to cross the border illegally will be caught and sent back. Continuing the surge of resources that effectively reduced the number of unaccompanied children crossing the border illegally this summer, the President's actions will also centralize border security command-and-control to continue to crack down on illegal immigration.

- *Deporting Felons, Not Families:* The President's actions focus on the deportation of people who threaten national security and public safety. He has directed immigration enforcement to place anyone suspected of terrorism, violent criminals, gang members, and recent border crossers at the top of the deportation priority list.

- *Accountability – Criminal Background Checks and Taxes:* The President is also acting to hold accountable those undocumented immigrants who have lived in the US for more than five years and are parents of U.S. citizens or Lawful Permanent Residents. By registering and passing criminal and national security background checks, millions of undocumented immigrants will start paying their fair share of taxes and temporarily stay in the U.S. without fear of deportation for three years at a time.

The President's actions will also streamline legal immigration to boost our economy and will promote naturalization for those who qualify.

For more than a half century, every president—Democratic or Republican—has used his legal authority to act on immigration. President Obama is now taking another commonsense step. As the Administration implements these executive actions, Congress should finish the job by passing a bill like the bipartisan Senate bill that: continues to strengthen border security by adding 20,000 more Border Patrol agents; cracks down on companies who hire undocumented workers; creates an earned path to citizenship for undocumented immigrants who pay a fine and taxes, pass a background check, learn English and go to the back of the line; and boosts our economy and keeps families together by cutting red tape to simplify our legal immigration process.

CRACKING DOWN ON ILLEGAL IMMIGRATION AT THE BORDER

Under the Obama Administration, the resources that the Department of Homeland Security (DHS) dedicates to security at the Southwest border are at an all-time high. Today, there are 3,000 additional Border Patrol agents along the Southwest Border and our border fencing, unmanned aircraft surveillance systems, and ground surveillance systems have more than doubled since 2008. Taken as a whole, the additional boots on the ground, technology, and resources provided in the last six years represent the most serious and sustained effort to secure our border in our Nation's history, cutting illegal border crossings by more than half.

And this effort is producing results. From 1990 to 2007, the population of undocumented individuals in the United States grew from 3.5 million to 11 million people. Since then, the

size of the undocumented population has stopped growing for the first time in decades. Border apprehensions—a key indicator of border security—are at their lowest level since the 1970s. This past summer, the President and the entire Administration responded to the influx of unaccompanied children with an aggressive, coordinated Federal response focused on heightened deterrence, enhanced enforcement, stronger foreign cooperation, and greater capacity for Federal agencies to ensure that our border remains secure. As a result, the number of unaccompanied children attempting to cross the Southwest border has declined precipitously, and the Administration continues to focus its resources to prevent a similar situation from developing in the future.

To build on these efforts and to ensure that our limited enforcement resources are used effectively, the President has announced the following actions:

- Shifting resources to the border and recent border crossers. Over the summer, DHS sent hundreds of Border Patrol agents and U.S. Immigration and Customs Enforcement (ICE) personnel to the Southwest border, and the Department of Justice (DOJ) reordered dockets in immigration courts to prioritize removal cases of recent border crossers. This continued focus will help keep our borders safe and secure. In addition, Secretary Johnson is announcing a new Southern Border and Approaches Campaign Plan which will strengthen the efforts of the agencies who work to keep our border secure. And by establishing clearer priorities for interior enforcement, DHS is increasing the likelihood that people attempting to cross the border illegally will be apprehended and sent back.

- Streamlining the immigration court process. DOJ is announcing a package of immigration court reforms that will address the backlog of pending cases by working with DHS to

more quickly adjudicate cases of individuals who meet new DHS-wide enforcement priorities and close cases of individuals who are low priorities. DOJ will also pursue regulations that adopt best practices for court systems to use limited court hearing time as efficiently as possible.

- Protecting victims of crime and human trafficking as well as workers. The Department of Labor (DOL) is expanding and strengthening immigration options for victims of crimes (U visas) and trafficking (T visas) who cooperate in government investigations. An interagency working group will also explore ways to ensure that workers can avail themselves of their labor and employment rights without fear of retaliation.

DEPORTING FELONS, NOT FAMILIES

By setting priorities and focusing its enforcement resources, the Obama Administration has already increased the removal of criminals by more than 80%. These actions build on that strong record by:

- Focusing on the removal of national security, border security, and public safety threats. To better focus on the priorities that matter, Secretary Johnson is issuing a new DHS-wide memorandum that makes clear that the government's enforcement activity should be focused on national security threats, serious criminals, and recent border crossers. DHS will direct all of its enforcement resources at pursuing these highest priorities for removal.

- Implementing a new Priority Enforcement Program. Effectively identifying and removing criminals in state and local jails is a critical goal but it must be done in a way that sustains the community's trust. To address concerns from Governors, Mayors, law enforcement and community

leaders which have undermined cooperation with DHS, Secretary Johnson is replacing the existing Secure Communities program with a new Priority Enforcement Program (PEP) to remove those convicted of criminal offenses. DHS will continue to rely on biometric data to verify individuals who are enforcement priorities, and they will also work with DOJ's Bureau of Prisons to identify and remove federal criminals serving time as soon as possible.

ACCOUNTABILITY – CRIMINAL BACKGROUND CHECKS AND TAXES

Every Democratic and Republican president since Dwight Eisenhower has taken executive action on immigration. Consistent with this long history, DHS will expand the existing Deferred Action for Childhood Arrivals (DACA) program to include more immigrants who came to the U.S. as children. DHS will also create a new deferred action program for people who are parents of U.S. Citizens or Lawful Permanent Residents (LPRs) and have lived in the United States for five years or longer if they register, pass a background check and pay taxes.

The President is taking the following actions to hold accountable certain undocumented immigrants:

- Creating a mechanism that requires certain undocumented immigrants to pass a background check to make sure that they start paying their fair share in taxes. In order to promote public safety, DHS is establishing a new deferred action program for parents of U.S. Citizens or LPRs who are not enforcement priorities and have been in the country for more than 5 years. Individuals will have the opportunity to request temporary relief from deportation and work authorization for three years at a time if they come forward and register, submit biometric data, pass background checks, pay fees, and show that their child was born before

the date of this announcement. By providing individuals with an opportunity to come out of the shadows and work legally, we will also help crack down on companies who hired undocumented workers, which undermines the wages of all workers, and ensure that individuals are playing by the rules and paying their fair share of taxes.

- Expanding DACA to cover additional DREAMers. Under the initial DACA program, young people who had been in the U.S. for at least five years, came as children, and met specific education and public safety criteria were eligible for temporary relief from deportation so long as they were born after 1981 and entered the country before June 15, 2007. DHS is expanding DACA so that individuals who were brought to this country as children can apply if they entered before January 1, 2010, regardless of how old they are today. Going forward, DACA relief will also be granted for three years.

The President's actions will also streamline legal immigration to boost our economy and promote naturalization by:

- Providing portable work authorization for high-skilled workers awaiting LPR status and their spouses. Under the current system, employees with approved LPR applications often wait many years for their visa to become available. DHS will make regulatory changes to allow these workers to move or change jobs more easily. DHS is finalizing new rules to give certain H-1B spouses employment authorization as long as the H-1B spouse has an approved LPR application.

- Enhancing options for foreign entrepreneurs. DHS will expand immigration options for foreign entrepreneurs who meet certain criteria for creating jobs, attracting investment, and generating revenue in the U.S., to ensure that our system encourages them to grow our economy. The criteria will include income thresholds so that these individuals are not eligible for certain public benefits like welfare or tax credits under the Affordable Care Act.

- Strengthening and extending on-the-job training for STEM graduates of U.S universities. In order to strengthen educational experiences of foreign students studying science, technology, engineering, and mathematics (STEM) at U.S. universities, DHS will propose changes to expand and extend the use of the existing Optional Practical Training (OPT) program and require stronger ties between OPT students and their colleges and universities following graduation.

- Streamlining the process for foreign workers and their employers, while protecting American workers. DHS will clarify its guidance on temporary L-1 visas for foreign workers who transfer from a company's foreign office to its U.S. office. DOL will take regulatory action to modernize the labor market test that is required of employers that sponsor foreign workers for immigrant visas while ensuring that American workers are protected.

- Reducing family separation for those waiting to obtain LPR status. Due to barriers in our system, U.S. citizens and LPRs are often separated for years from their immediate relatives, while they wait to obtain their LPR status. To reduce the time these individuals are separated, DHS will expand an existing program that allows certain individuals to apply for a provisional waiver for certain violations before departing the United States to attend visa interviews.

- Ensuring that individuals with lawful status can travel to their countries of origin. DHS will clarify its guidance to provide greater assurance to individuals with a pending LPR application or certain temporary status permission to travel abroad with advance permission ("parole").

- Issuing a Presidential Memorandum on visa modernization. There are many ways in which our legal immigration system can be modernized to reduce government costs, eliminate redundant systems, reduce burdens on

employers and families, and eliminate fraud. The President is issuing a Memorandum directing an interagency group to recommend areas for improvement.

- Creating a White House Task Force on New Americans. The President is creating a White House Task Force on New Americans to create a federal strategy on immigrant integration.

- Promoting Citizenship Public Awareness: DHS will launch a comprehensive citizenship awareness media campaign in the 10 states that are home to 75 percent of the overall LPR population. USCIS will also expand options for paying naturalization fees and explore additional measures to expand accessibility, including studying potential partial fee waiver for qualified individuals.

- Ensuring U.S. Citizens Can Serve: To further our military's needs and support recruitment efforts, DHS will expand an existing policy to provide relief to spouses and children of U.S. citizens seeking to enlist in the military, consistent with a request made by the Department of Defense.

Comments or questions are welcome.

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The mass media is lying about Obama's immigration plan

"Obama's Plan Legalizes Millions!"... "Obama's Executive Action will Legalize up to 5 Million," "Obama's Plan to Legalize Millions is Unconstitutional"...

As an immigration consultant, these headlines (and the debate that follows) makes my blood boil. Why? Because the headlines are wrong, they are lies. The rightwing conservatives (Republicans) are lying as usual to the people in the United States.

These headlines, these sound bites, printed and repeated across the media spectrum (TV and radio) over the last few days are not only plain wrong, they are a distortion of the truth (something what the Republicans do on a regular basis); they misinform and bring false hope to the population that the plan will actually benefit.

As with the 2012 Deferred Action for Childhood Arrivals (DACA) program before it, I will spend hours talking with clients and trying to re-inform and re-educate about what the President's new plan actually is, what benefits the plan actually provides, and most importantly, what it is not.

This will be my spiel – "I know that you have probably heard that this plan makes you legal in the United States. But that is not correct, it is plain and simple not true. This program does not give you a green card (lawful permanent residence), it does not give you U.S. citizenship, it does not give you a path or way to receive a green card or U.S. citizenship. **In**

fact, this program does not provide any legal 'status' at all."

"What this benefit is, is an agreement between you and the U.S. government. You agree to come forward and let the government know you are here, and, if you are eligible for the program, the government agrees not to take any action to deport you for a period of three years. During this three-year period, you will have permission to work in the United States."

"You cannot travel outside of the United States on this program and then return to this country. You cannot file a separate petition for your spouse or your parents using this benefit. You must pass a criminal background check to be eligible for this benefit. If you have any serious crimes on your record – a DUI, a serious drug offense, a domestic violence offense, theft, and many other crimes, you will be ineligible for any relief under this plan."

"Can this benefit be taken away, you ask? Yes, yes it can. It could be taken away at any time."

This plan provides a very significant benefit to the parents of U.S. citizens and lawful permanent residents, it grants them a reprieve from the threat of deportation for three years, permission to work during this reprieve, and in most states will render them eligible for a driver's license so that they can drive without fear of being pulled over and potentially placed in deportation proceedings. This is most certainly a significant change for this population, and a very positive one at that.

But it is not legalization. Not even close.

The way the immigration laws have developed over the past 50 years has left us with an unworkable morass of laws that interact with each other in extremely complicated ways. We all

understand that the immigration system is broken. The complexity of these laws does not obviate the media's responsibility to get it right and characterize these benefits accurately.

Obama's plan does not legalize millions. Deferred Action for Parental Accountability (DAPA) does not legalize a single individual. It will give a temporary, and potentially fleeting benefit to a group of people that have lived in our country, worked in our country, contributed to our economy, and parented our citizen and resident children.

Conclusion

Obama's time in office is limited. What happens to Obama's Executive Orders when he is not anymore in office? A new president can rescind Obama's Executive Actions at any time. Should a republican president be voted into office it is nearly guaranteed that this president will rescind Obama's Executive Orders. What happens to the people who have benefitted from Obama's Executive Orders? One very believable scenario is, that now that all these people are registered with the government, the government knows where they live and work, that these people are picked up and deported. The Republicans and those morons from the Tea Party cannot wait to kick all these people out of the country. It is really not that far fetched.

A few years ago something similar happened. Indonesia is a country where the Islam is the predominant religion. Protestantism and Catholicism is the minority. Because the Muslims put pressure on the Christians (you could say the Christians are persecuted by the Muslims) a lot of Christians from Indonesia came to the United States looking for a safe place to live. The problem is that most of them stayed "illegally" in the United States. Sometimes after 9/11 the U.S. government devised an evil-genius plan to get rid of

these people. The plan was actually simple. Most of these illegals from Indonesia were devout Christians, which means they are very simple minded and uneducated morons. With the help of a catholic priest the U.S. government spread the word that in order to avoid to be labeled as a Muslim terrorist all "good" Christian Indonesians should register with the U.S. government in order to avoid prosecution as a Muslim terrorist. Don't forget it is the time right after 9/11. And guess what. Those stupid Christian imbeciles (= people with moderate to severe intellectual disability) followed the call of this priest and registered with the U.S. government. Now they all felt better, being recognized as "good" Christians, having nothing to do with the Muslims. Not long after that the U.S. government started to pick up these idiots and deported them to Indonesia.

What should someone do who could benefit from Obama's Executive Orders? This question is nearly impossible to answer when looking at the whole picture. My advice: Be smart about it. Apply for these Executive Orders. Reap in their benefits, but don't trust the United States government. **These benefits can be taken away at any time.** While you have these benefits like a Social Security Number, a driver's license and a work permit, work on a plan "B". This plan "B" can be anything. Find the love of your life, marry him or her. When he or she is a United States citizen that puts you in a much better position not to be deported after Obama's Executive Orders are rescinded. You still cannot get a green card in a marriage to a USC when you entered this country illegally, without inspection but maybe you can file for a waiver of inadmissibility. Another form of plan "B" can be that you go to college in the United States. Get a good education while you are here. In case of a deportation you will have excellent job opportunities in the country where you were born. Depending on your personal situation there might be so many other plan "B's". Just don't stop with applying for those

benefits from Obama's Executive Orders. Don't be lazy. Don't hope that everything will turn out good. Don't just sit on your couch. You have to take action. Do something. When Obama's Executive Orders are rescinded you might not get deported [immediately]. But your work permit and your driver's license will expire. You will be back where you started. An illegal without any papers. No job and no future. Organize yourself with other people in the same situation. Demonstrate in the streets. Point your situation out to people who can vote. Ask them to support politicians who are in favor of immigrants. I know that all sounds pretty lame. I don't have all the answers. When you depend on Obama's Executive Orders you are pretty much fucked. So, do something, anything.

Comments or questions are welcome.

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[Thankfulness ...](#)

As I sit here in my apartment in Montrose, California on my first Thanksgiving together with my wife Rosa here in

Montrose, I am struck by how truly lucky I am. I have a job that provides me with everything to have a comfortable life. My job challenges me and grows my skill-set daily – and I work with some truly brilliant people who help me strive to become even better. I am working for a company with a lot of passion and soul – a company dwarfed in size by our competitors. I am very lucky to have a strong, wonderful wife that understands and appreciates the work I do, and is incredibly supportive.

After years of fighting, I am still involved in a legal battle with the United States government about my status in the United States. It is going very well. The government was not able to break me. I have won every battle with the United States government and I can see the light at the end of the tunnel. Since one year the government is dragging its feet, delaying my case after I beat them at the [United States Court of Appeals for the Ninth Circuit](#). I will file in 2015 a “Writ of [Mandamus](#)” to force the government to proceed in my case and render a judgment in my favor.

All considered I am doing well and I expect to do even better in 2015.

I am humbled to have been given all these things, and for them, and so much more, I am thankful.

What are you thankful for?

[Why you should turn off your](#)

iPhone if the police stop you.

CAN THE POLICE COMPEL YOU TO UNLOCK YOUR PHONE? Why you should turn off your iPhone if the police stop you.

Recent advances in cryptographic technology and the widespread use of free, open-source cryptography have made encrypted information pervasive in our everyday lives. Apple and Google have both announced that their latest mobile operating systems will be encrypted and the manufacturers will be unable to decrypt the phones even if ordered to do so. Additionally, all Apple iPhones since the iPhone 3GS have used built-in [encryption](#). This article provides a primer to encryption, and whether police officers can compel you to provide your password.

Officers can compel individuals to provide their fingerprint to unlock a phone. The iPhone 5S, 6, 6 Plus, iPad Air 2, and iPad mini 3 are all equipped with "[TouchID](#)." Users of these devices are allowed to unlock their devices using only their fingerprints. The easiest way for users of these devices to avoid being compelled to provide their fingerprint to unlock their device is to restart the phone. Once the device is turned off, it will require a passcode on restart before TouchID will be active again.

I. A Primer to Encryption

Encryption is the process by which information is converted from a form that can be understood by anyone ("plain text") into a form ("ciphertext") that only be read by someone who

has the "encryption key." In modern times, where information is commonly stored electronically, the key takes the form of a complex algorithm that converts plaintext into ciphertext. The term cryptography, which is the science of encryption and decryption, comes from the Greek words "kryptos" and "graphos," which together mean "hidden writing."

Encryption, in its many forms, has played an important role in keeping communications secret since humans first started sending messages to each other. Encrypted messages have been sent by means of hieroglyphics and smoke signals. Early Americans relied on encryption to keep their communications secret during the time of the American Revolution. After the Revolution, prominent figures like Benjamin Franklin and the first Chief Justice of the United States Supreme Court continued to be known for their use of encrypted documents. Benjamin Franklin invented ciphers that were used by the Continental Congress. He even went as far as printing a book on the use of ciphers. John Jay, the first Chief Justice of the Supreme Court used ciphers for all diplomatic correspondence made while he was outside of the country.

In recent years, the level of encryption available to the general public has far outpaced the government's technological capabilities to decrypt the information. A brute force attack is an attempt to decrypt information by trying every possible key combination until the right key is found. The number of possible keys depends on the level of encryption, which is commonly measured in terms of bits. The most common level of encryption used today is 128-bit encryption. After years of studying encryption and the rate at which computers have improved, the European Network of Excellence in Technology reported last year that it would take at least thirty years before 128-bit encryption could be defeated in a timely manner. The report was the culmination of over four years of research into encryption, brute force attacks, and increases in computational power over time. Even taking into

consideration significant future projected increases in computational power, such as the advent of quantum computing, the organization expects 256-bit encryption will remain a highly recommended level of encryption for the foreseeable future.

Despite the difficulty in decrypting even 128-bit encryption, commonly available software now allows users to encrypt their data using much stronger levels of encryption. As a result of the advances in encryption technology, law enforcement agents and the intelligence community looked to the courts to compel encryption keys through court orders and grand jury subpoenas.

II. The Fifth Amendment Implications of Compelling Password Production

The Fifth Amendment protects individuals from being compelled to be witnesses against themselves. For the Fifth Amendment protection to apply, a statement must be (i) compelled, (ii) testimonial, and (iii) incriminating.

In re Boucher, the first case in federal court to deal with the compulsion of cryptographic keys, was decided in 2007. Sebastian Boucher was crossing the Canadian border into the United States when his vehicle was stopped for a routine border inspection. Officers found a laptop on the backseat of the vehicle and proceeded to access the files on the computer. The investigating officer was able to inspect the contents of the laptop without being prompted to enter a password. The officer noticed a number of files with names suggesting the files might be child pornography. He then asked a special agent trained in recognizing child pornography to assist with the investigation. The special agent viewed the files and determined they were images and videos of child pornography. After placing Boucher under arrest, they seized

his laptop computer and powered it down.

When law enforcement agents later tried to access the files on the laptop, they discovered the hard drive was encrypted and a password was required to access the hard drive when the computer was powered on. A special agent trained in computer forensics testified before a grand jury that there were no known backdoors to the encryption software Boucher had used by which law enforcement might defeat the encryption. The special agent also testified it would be virtually impossible to guess the password in any reasonable amount of time because it could take years for an automated program to try every possible encryption key combination. Based on the special agent's testimony, the grand jury subpoenaed Boucher to divulge the encryption key. Boucher refused and moved to quash the subpoena. At trial, United State Magistrate Jerome Neidermeier held that compelling Boucher to reveal his key would violate the Fifth Amendment.

On appeal, the state changed its strategy and instead of requesting production of the cryptographic key itself, the state requested that Boucher enter his cryptographic key to unlock the hard drive, thereby granting investigators access to the drive without forcing Boucher to divulge the key. The United States District Court ordered Boucher to enter his cryptographic key as requested. The court held that the Boucher had no act-of-production privilege that would protect him from providing the grand jury with an unencrypted version of the disk. The court, relying on Second Circuit precedent, ruled that although the entire contents of the hard drive was not known, it was a foregone conclusion that the disk contained evidence of child pornography since the government could show "with reasonable particularity that it kn[ew] of the existence and location of the subpoenaed documents."

While Boucher was required to turn over his password, the court reached its decision because the state already knew what was on the hard drive. Essentially there is a "foregone

conclusion" to the Fifth Amendment privilege against self-incrimination

In 2012, the Eleventh Circuit determined that individuals cannot be compelled to decrypt hard drive contents when the defendant had not provided law enforcement information as to what is contained on the encrypted drive. *United States v. Doe (In re Grand Jury Subpoena Duces Tecum Dated March 25, 2011)*, 670 F.3d 1335 (11th Cir. 2012). The case arose after police seized computers and external hard drives they tracked using internet protocol addresses they had reason to believe contained child pornography. The defendant was held in contempt after refusing to decrypt the laptops and hard drives for law enforcement. On appeal, the Eleventh Circuit held that decryption and production of the contents of the hard drive would be testimonial and did trigger Fifth Amendment protections.

III. BIOMETRIC SECURITY: Why You Should Turn Off Your iPad/iPhone if You are Stopped

Today, phones and tablets are commonly secured using fingerprints. Computers are regularly secured with fingerprints and are sometimes encrypted with iris scans. While biometric scans offer better security to the average user, there is a distinct downside for everyday users. Unlike a password, which requires something you know to access your data, a biometric scan only requires something you have. In other words, the Fifth Amendment is not implicated in providing a fingerprint or iris scan, where being required to provide a password would give rise to Fifth Amendment protections.

Last week in a Virginia Circuit Court judge ruled that officers can compel individuals to provide their fingerprint

to unlock a phone. The defendant in that case, David Baust, was charged with an assault-strangulation case. The police had reason to believe the fight may have been recorded on Baust's phone and sought to compel him to unlock his cell phone. Judge Steven Frucci ruled that providing a fingerprint does not implicate the Fifth Amendment because fingerprints are nontestimonial in nature. It is no different than being compelled to provide a DNA sample or a physical key: it is something you have, not something you know.

The iPhone 5S, 6, 6 Plus, iPad Air 2, and iPad mini 3 are all equipped with "[TouchID](#)." Users of these devices are allowed to unlock their devices using only their fingerprints. The easiest way for users of these devices to avoid being compelled to provide their fingerprint to unlock their device is to restart the phone. Once the device is turned off, it will require a passcode on restart before TouchID will be active again.

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