



FAIR FEDERATION FOR AMERICAN IMMIGRATION REFORM

Immigration

REPORT

SEPTEMBER 2015

Obama Administration Blocks FAIR's Investigation into the Costs of DACA to Taxpayers

In January, the Immigration Reform Law Institute (IRLI), on behalf of FAIR, filed a Freedom of Information Act (FOIA) request with Immigration and Customs Enforcement to ascertain the agency's costs as a result of the 2014 border surge. The FOIA request was an attempt to disprove one of the administration's key justifications for implementing DACA. The administration claimed that since it does not have the funds to deport millions of illegal aliens it would concentrate its efforts on deporting criminals and grant deferred action to those who fall outside their self-declared priorities for

removal. (The administration has never sought additional funds to remove illegal aliens, and released 76,000 criminals over the past two years.)

Despite the enormity of the 2014 border crisis, the only information ICE could, or would, provide were seven pages of redacted government purchase orders and two spreadsheets estimating costs for transferring and removing illegal aliens. What little information was provided reveals that the limited tasks for which ICE has cost estimates increased fourfold over a two-year period, from \$15.6 million to \$58.3 million in 2014.

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GAO Points Finger at DACA for Illegal Alien Border Surge

A new report by the Government Accountability Office (GAO) lays significant blame for the ongoing surge of Central American minors, both unaccompanied and in the company of parents, at the feet of the Obama administration's 2012 unlegislated Deferred Action for Childhood Arrivals

(DACA) amnesty program. In Fiscal Year 2014, 68,541 unaccompanied minors were apprehended entering the U.S. In FY 2011, when President Obama still claimed he did not have the constitutional authority to grant blanket deferred action, just 15,949 unaccompanied minors were

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Sheriffs to Washington: Your Immigration Policies Are Endangering Our Communities

On August 5, sheriffs all across the nation participated in a series of press briefings and community education sessions coordinated by the National Sheriffs' Association (NSA) in which they discussed the repercussions of the Department of Homeland Security's abandonment of immigration enforcement. The refusal of the Obama administration to enforce most immigration laws and the lack of coordination between Immigration and Customs Enforcement and state and local law enforcement is endangering the lives of Americans, contend the sheriffs. The public stand taken by the sheriffs came just days after Santa Maria, California, Police Chief Ralph Martin, held national, state and local politicians culpable for a "trail of blood" in a string of murders committed by illegal aliens who had been shielded from deportation.

Specifically, the sheriffs put a spotlight on the ineffectiveness of the Priority Enforcement Program

"It is unconscionable that after spending resources to investigate and apprehend criminal illegal aliens and remove them...the federal government would order sheriffs to release them back into our neighborhoods."

—Sheriff Thomas Hodgson,
Bristol County, Massachusetts



(PEP) that ICE falsely claims will be used to identify and remove dangerous criminals who wind up in the custody of police and sheriffs' departments. PEP is being offered as a replacement for the much more effective Secure Communities program scrapped by DHS Secretary Jeh Johnson last November. In reality, PEP's very narrow guidelines ensure that most criminal aliens who are arrested and charged with other offenses are released back onto the streets of communities across the country.

In recent years, FAIR has worked with sheriffs from across the country who are concerned about the impact of the Obama non-enforcement policies on the safety of the communities they have been elected to protect. One of the sheriffs who has been leading the effort for more responsible immigration enforcement is Thomas Hodgson of Bristol County, Massachusetts. At a news conference in his community, Hodgson said, "It is unconscionable that after spending resources to investigate and apprehend criminal illegal aliens and remove them from our streets that the federal government would order sheriffs to release them back into our neighborhoods to victimize our citizens, legal residents, and their families once again."

As a result of the efforts of these sheriffs, the NSA has begun to take a more active role in demanding an end to immigration policies that endanger public safety.

The FAIR Immigration Report

(ISSN 1067-3337)

Published 10 times a year by the Federation for American Immigration Reform, a non profit membership organization.

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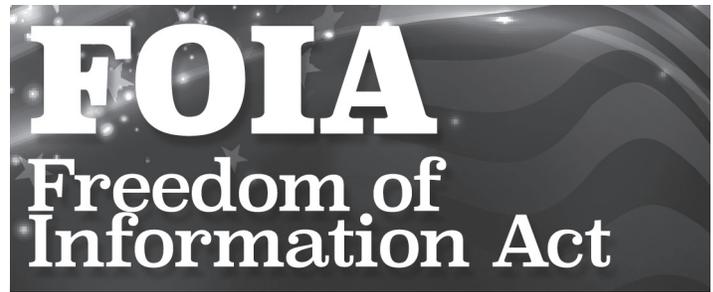
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DACA COSTS TO TAXPAYERS *continued*

Of course, the cost to ICE represents only a fraction of the federal costs resulting from the border surge. Almost all unaccompanied alien children (UACs) were immediately transferred to the custody of the Department of Health and Human Services (HHS), which placed them with family members (some of whom are living here illegally). Others remain in the care of HHS. The FOIA request did not seek information about costs to state and local governments where the UACs have been settled. Given that most of the services required, particularly education, are largely paid for at the state and local level, those costs likely far exceed federal costs.

The ironic conclusion that taxpayers can draw is that the consequence of an unconstitutional amnesty, which was justified as fiscally prudent, has resulted in a surge of new illegal immigration, the cost of which the Obama administration can't or won't reveal.

FAIR WILL CONTINUE TO MONITOR AND EXPOSE THE IMPACT OF EXECUTIVE OVERREACH ON AMERICAN TAXPAYERS. ■



IRLI's Request for ICE Operation Costs

- Constructing additional family detention facilities.
- Apprehension, processing, and detention of UACs.
- Transporting transferring and repatriation of UACs.
- Government representation in removal proceedings.
- The number of instances in which the foreign governments objected to the return of their citizens.

GAO REPORT ON DACA *continued*

apprehended. In addition to the unaccompanied minors, the Border Patrol apprehended 68,445 people entering as part of family units in FY 2014, a 360 percent jump from the 14,835 in FY 2013.

"[G]eneral perceptions concerning U.S. immigration policy have played a growing role in (unaccompanied children) UAC migration," states the report. The GAO also implicitly blames the failed bipartisan effort in Congress to pass amnesty legislation for encouraging a new wave of illegal immigration. "[M]any Guatemalan citizens believe undocumented migrants in the United States will be encouraged to send for their children from Guatemala so they can come to the United States and they can benefit together for any upcoming comprehensive immigration reform, or even be eligible for Deferred Action for Childhood Arrivals."

The GAO noted that actions speak louder than words. While administration officials, including Department of

Homeland Security Secretary Jeh Johnson, were vowing that the migrants surging across the southern border would be sent home promptly, the opposite was true. Through ubiquitous social media, migrants were able to report back to friends and relatives in their homelands that, rather than being returned home, they were being released into the United States.

The report thoroughly dismissed the Obama administration's contention that the surge in Central American illegal immigration was a result of a spike in violence in those countries. While violence in the three primary sending countries, El Salvador, Guatemala and Honduras, is prevalent, the GAO concluded that the phenomenon is not new. "Violence, poverty, and poor access to education and other services have been pervasive development challenges in all three countries, pre-dating the UAC migration increase," notes the report.

House Approves Anti-Sanctuary City Legislation

In response to a series of recent high profile crimes committed by criminal aliens who had been shielded from deportation by state and local sanctuary policies, the House of Representatives approved the Enforce the Law for Sanctuary Cities Act, H.R. 3009, on July 23. The bill, sponsored by Rep. Duncan Hunter (R-Calif.), would deny federal grants to jurisdictions that refuse to honor ICE requests to detain criminal aliens before they are released from custody, or that prohibit local police from inquiring about a suspect's immigration status. The bill passed largely along party lines by a 241-179 vote, with five Republicans opposing it and six Democrats in support.

Jim Steinle called the murder of his daughter a “self-inflicted wound” caused by policies that put her killer back onto the streets.

Before adjourning for the August recess, both the House and Senate held hearings that gave victims of local sanctuary policies and the administration's lax enforcement policies a chance to speak to the public. Among those who testified were Jim Steinle, the father who witnessed his daughter's murder by a criminal alien who was released as a result of San Francisco's sanctuary policies. Other witnesses included Susan Oliver, the widow of Sacramento County, California, Deputy Sheriff Daniel Oliver, who was murdered last year by an illegal alien criminal.

In his testimony, Jim Steinle called the murder of his daughter a “self-inflicted wound” caused by policies that put her killer back onto the streets of San Francisco. Steinle pleaded with Congress to pass new legislation, because if it only saved “one daughter, one son, a mother,[or] a father,” his own daughter's death would not be in vain.

The Senate adjourned for the August recess without voting on legislation to rein in sanctuary jurisdictions.

Across the Country

California

Gov. Jerry Brown signed legislation that removes the legal term “alien” to describe noncitizens from the state's labor code. “Alien is now commonly considered a derogatory term for a foreign-born person and has very negative connotations,” said the bill's author, State Senator Tony Mendoza (D-Artesia). While the change in terminology may seem like purely a matter of semantics, it represents an ongoing effort by California officials to eliminate any meaningful distinctions between citizens and (dare we say) aliens, and between legal residents and illegal aliens. That attitude was reinforced in the city of Huntington Park, where two illegal aliens were appointed by the city council to serve on city commissions.

Michigan

In response to the murder of Kathryn Steinle in San Francisco, the majority leader of the Michigan State Senate, Mike Kowall (R-White Lake) introduced SB 445, a bill that would prohibit local units of government from enacting or enforcing any law, ordinance, policy or rule that limits local officials, officers, or employees from communicating or cooperating with federal officials concerning the immigration status of individuals. If a local governmental unit fails to comply, the state treasurer shall withhold certain state funds relating to law enforcement until compliance is resumed. Currently Detroit and Ann Arbor have sanctuary policies in place. According to Kowall, there is broad public support for his legislation. “We already have had thousands of Michiganders sign the petition calling for an end to sanctuary cities,” Kowall said.

Texas

Ending sanctuary policies is also a priority for Dan Patrick, the lieutenant governor of Texas. At a news conference in early August, Patrick pledged to make local cooperation with federal immigration authorities a priority for the state's next legislative session. State Senator Charles Perry introduced a bill, SB 185, in the 2015 legislative session to ban sanctuary policies in the state. While it passed the Senate Veteran Affairs and Military Installations Committee, the bill was ultimately unsuccessful in the full Senate. “I'm totally confident that we now have the votes” and that “one of the first measures we will pass in 2017, when we come back, will be to ban sanctuary cities in Texas,” said Patrick.

Police Chief Charges There Is a “Trail of Blood” from Sacramento to Washington in the Murder of a California Woman

Less than a month after Kathryn Steinle was shot to death by an illegal alien with a long criminal record who had been put back on the streets when San Francisco authorities refused to honor an ICE detainer request, a second California woman fell victim to policies that resulted in the release of a criminal alien. Marilyn Pharis, a 64-year-old Air Force veteran, was attacked with a claw hammer, sexually assaulted, and tortured in the bedroom of her Santa Maria apartment by two men, one of whom was a known illegal alien criminal. Ms. Pharis subsequently died as a result of the attack.

Victor Aureliano Martinez Ramirez, 29, had been arrested six times over the previous 15 months. Ramirez’s most recent arrest came just two weeks before his mur-

Santa Maria Police Chief Ralph Martin pulled no punches in assigning responsibility for this brutal and avoidable murder. At a news conference, a visibly angry Martin charged that, “[F]rom Washington, D.C., to Sacramento, there’s a blood trail into the bedroom of Marilyn Pharis...I think it starts in Washington, D.C., with this administration that we see and their policies. I think you can draw a direct line over to Sacramento with the policies of, I’m going to say, this governor and the Legislature.”

The carnage wrought by federal, state and local policies that put criminal aliens back on the streets instead of deporting them is not limited to California. Also in July, Margaret Kastelnick, a 60-year-old woman in Lake

Every government and law enforcement official who, for political reasons, has established policies that shield illegal aliens (especially those who have been arrested for other offenses) are culpable for subsequent crimes committed by deportable aliens... they must be held accountable by the people they are supposed to serve.

derous assault on Ms. Pharis, when Santa Maria police charged him with possession of methamphetamine. An earlier arrest was for felony assault with intent to commit sexual assault, but the charges were later reduced to a misdemeanor.

Despite the seriousness of the previous offense and Ramirez’s record, ICE withdrew a detainer request to take custody of the deportable felon, “based on the agency’s enforcement priorities after a thorough review of his case history showed he had no prior deportations or felony criminal convictions.” Under the administration’s self-imposed priorities, Ramirez no longer met their criteria for removal.

Moreover, under the California Trust Act, signed into law by Gov. Jerry Brown in 2013, Santa Barbara County authorities would not have been allowed to comply with the ICE detainer request even if it had not been dropped.

County, Ohio, was murdered by Juan Emmanuel Razo, yet another illegal alien who had been released from custody after an earlier arrest because ICE told local police that he did meet the Obama administration’s priorities for removal.

Santa Maria Police Chief Martin is correct. Every government and law enforcement official who, for political reasons, has established policies that shield illegal aliens – especially those who have been arrested for other offenses – are culpable for subsequent crimes committed by the deportable aliens their policies put back on the streets. They must be held accountable by the people they (are supposed to) serve for the bloody trail that leads directly to the doors of the officials who deliberately endanger public safety.

Would Denying Children of Illegal Aliens Birthright Citizenship Be Unconstitutional?

As the 2016 presidential campaign heats up, several candidates have called for ending the practice of granting automatic birthright citizenship to the U.S.-born children of illegal aliens and the growing number of “birth tourists” who arrive here during the late stages of pregnancy for the express purpose of giving birth to an American citizen.

The clause in the 14th Amendment under which children of illegal aliens and birth tourists are now recognized as U.S. citizens states that, “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”

John C. Eastman, a constitutional law professor at Chapman University in California puts forth three legal arguments for why the current policy fundamentally misinterprets the citizenship clause and concludes that children born to illegal aliens or birth tourists need not be recognized as U.S. citizens:

1. The parents are not under the “complete jurisdiction” of the United States.
2. The parents are in the United States without the consent of the American people.
3. Congress has a well-established authority to define the terms of citizenship.

Eastman notes that all persons present in the United States, except for foreign diplomats, are “neces-



Advocates for illegal aliens insist that birthright citizenship for the children of millions of illegal aliens and birth tourists is constitutionally uncontestable... constitutional scholars demonstrate, there is a solid legal basis for Congress to interpret the citizenship clause differently.

sarily subject to the jurisdiction of the United States.” Therefore, he concludes, the inclusion of the phrase “subject to the jurisdiction thereof” indicates that the “provision must therefore require something in addition to mere birth on U.S. soil.”

According to Eastman, “The language of the 1866 Civil Rights Act, from which the Citizenship Clause of the Fourteenth Amendment was derived, provides the key to its meaning. The 1866 Act provides: ‘All persons born in the United States, and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States.’

As this formulation makes clear, any child born on U.S. soil to parents who were temporary visitors to this country and who, as a result of the foreign citizenship of the child’s parents, remained a citizen or subject of the parents’ home country was not entitled to claim the birthright citizenship provided by the 1866 Act.”

Eastman also stresses the importance of the “consent of the governed” in determining who should be included in the body-politic of the United States. “Thomas Jefferson in the Declaration of Independence... posits the following: Governments are instituted among particular peoples, comprised of

Obama Policies Shield 87 Percent of Illegal Aliens from Enforcement

While President Obama's efforts to grant deferred action and work authorization to about 4.7 million illegal aliens have captured most of the public attention, and are the subject of a lawsuit brought by 26 states, other administration policies are quietly shielding 87 percent of illegal aliens from removal. According to the Migration Policy Institute (MPI), a pro-amnesty think tank, under the Obama administration's self-declared criteria for removal, about 11.3 million illegal aliens (based on FAIR's estimate of 13 million illegal aliens) are off-limits to enforcement.

Last November, President Obama unilaterally overhauled our immigration system to protect illegal aliens from deportation through ten policy memoranda that are sweeping in scope. One of the memos rescinded the Morton Memos — the administration's 2011 enforcement "priorities" policy — and created a three-tiered enforcement priority. Under these priorities, the Obama administration will only enforce immigration laws against: (1) aliens who pose a threat to national security, border security, or public safety; (2) aliens with multiple misdemeanor convictions and new immigration vio-

lators; and (3) aliens who have been issued a final order of removal after January 1, 2014.

Another memo gutted the successful Secure Communities program and replaced it with Priority Enforcement Program (PEP), a much more limited program that is designed to deport only convicted criminals by using fingerprints and working with the Justice Department to remove illegal aliens in federal prisons.

In essence, the administration has gutted the vast majority of immigration enforcement laws constitutionally enacted by Congress, simply by issuing a series of policy memos. While every law enforcement department prioritizes its targets for enforcement, there is no precedent for any law enforcement agency to declare, on its own, that it will simply ignore 87 percent of lawbreakers. These memos represent a threat not only to immigration enforcement, but to our constitutional form of government, under which Congress is empowered to make laws and the executive branch is tasked with carrying them out.

Congress has shown little resolve toward holding the president accountable for his undermining of federal immigration laws. However, because these policies are being implemented under a series of policy memos, not executive orders, they can be easily reversed by a subsequent president.

BIRTHRIGHT CITIZENSHIP *continued*

naturally equal human beings, to secure for themselves certain unalienable rights," Eastman writes. "This consent must be present, either explicitly or tacitly, not just in the formation of the government, but also in the ongoing decision whether to embrace others within the social compact of the particular people."

Finally, Eastman argues that Congress has authority to define the terms of citizenship under the 14th Amendment so long as that definition does not "dip below the constitutional floor." "The Supreme Court itself has repeatedly acknowledged, Congress's power over naturalization is 'plenary,' while 'judicial power over immigration and naturalization is extremely limited.'"

Currently, Sen. David Vitter (R-La.) has introduced legislation that, in his words, would make the "necessary clarifications and close the loopholes in our immigration laws to make sure that birthright citizenship is given only to the children of U.S. citizens and legal resident aliens."

Advocates for illegal aliens insist that birthright citizenship for the children of millions of illegal aliens and birth tourists is constitutionally uncontestable, and can only be altered by a constitutional amendment. However, as Eastman and other constitutional scholars demonstrate, there is a solid legal basis for Congress to interpret the citizenship clause differently.

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