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## PAVING THE ROAD TO AMNESTY

*A comprehensive assessment of President Obama's record on  
immigration during his first year in office*

A REPORT BY ZACH SWARTZ, GOVERNMENT RELATIONS ASSOCIATE

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DECEMBER 2009

## Executive Summary

- After winning the 2008 election, President Obama has surrounded himself with individuals who support granting amnesty to millions of illegal aliens living in the United States.
- Over the past year, members of the Obama administration — including the President himself — have repeatedly made clear their support for and intention to push amnesty legislation through Congress.
- Previous debates over amnesty legislation have revealed overwhelming public opposition to any type of plan to legalize the illegal alien population. Knowing this, the Obama administration will likely attempt to make their amnesty proposal more palatable to the American people by tying the legislation to empty promises of immigration enforcement.
- The Obama administration's record on enforcement thus far, however, tells the American people everything they need to know about the administration's commitment to immigration enforcement. In less than one year, President Obama has undermined nearly every enforcement measure available to him, including:
  - ✓ Delaying — on three separate occasions — a requirement that federal contractors use the federal E-Verify system to ensure that their employees are legally authorized to work in the United States and not illegal aliens;
  - ✓ Gutting worksite enforcement operations by allowing illegal aliens to remain in the workforce to compete with American citizens and legal immigrants for jobs;
  - ✓ Undermining the 287(g) program, which allows federal officials to train state and local law enforcement agencies in the enforcement of federal immigration laws, by forcing agencies who participate in the program to focus on removing “dangerous criminal” aliens, as opposed to all illegal aliens;
  - ✓ Failing to utilize the National Guard to secure our porous borders;
  - ✓ Advocating passage of the PASS ID Act, legislation that would gut uniform security requirements for State-issued driver's licenses and identification cards and re-establish many of the security and immigration loopholes that allowed the 9/11 hijackers to carry out the attack on the Pentagon and the World Trade Center; and
  - ✓ Altering the immigration detention system in such a way that will almost certainly lead to an increase in the number of illegal aliens who abscond after apprehension.
- Accordingly, the Obama administration has not only failed to effectively secure America's borders and enforce immigration laws, but has also taken affirmative steps to disable enforcement. All of this administration's efforts are geared toward allowing illegal aliens to live, work, and collect public benefits as the administration seeks the political opportunity to formally legalize their status in the United States.

## **Introduction**

As President Obama closes the books on his first year in office, his record, as opposed to his rhetoric, now defines his political agenda. During 2009, President Obama's record on immigration policy points to certain inescapable conclusions. The overriding objectives of this administration are to enact a massive amnesty for current illegal aliens and vastly expand future flows of immigration to the United States. At the same time, President Obama is a very astute politician who understands that neither of these goals can be achieved so long as the American public distrusts the government's ability and willingness to enforce the nation's immigration laws.

As such, the efforts of the Obama administration in 2009 have been geared toward laying the groundwork for amnesty and increased levels of immigration, while attempting to portray themselves as tough enforcers of existing immigration law. However, when it comes to enforcement of U.S. immigration laws, the administration's record falls far short of its rhetoric and claims of accomplishments.

In fact, rather than demonstrating a firm commitment to enforcing laws designed to protect the security and economic well-being of the vast majority of Americans, the administration has systematically worked to dismantle the enforcement capability of the Immigration and Customs Enforcement bureau. Moreover, what distinguishes this administration's record of non-enforcement from its predecessors' is that they inherited an effective immigration enforcement strategy, belatedly begun at the end of the Bush administration, that was actually producing positive results.

This report details the numerous ways in which the Obama administration is working to enact amnesty for illegal aliens while undermining enforcement of U.S. immigration laws. After one year in office, there can be little doubt that the Obama administration is prepared to sacrifice the interests and security of the American people in order to carry out a radical immigration agenda that includes mass amnesty and ever-expanding levels of future immigration.

## **President Obama's Appointees:**

### *Surrounding Himself with Supporters of Amnesty*

In the final 2008 presidential debate, then-Senator Barack Obama stressed the importance of "who I associate with." Obama indicated that "Democrats and Republicans, who have shaped my ideas ... will [surround] me in the White House."<sup>1</sup> Almost immediately after his election on November 4, 2008, President-elect Obama began surrounding himself with supporters of amnesty. An analysis of the people President Obama has nominated and appointed to work for

him indicates that this administration is filled with open-borders, special interest advocates who support amnesty and oppose real enforcement without regards to the American people or the nation as a whole.

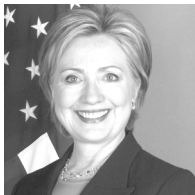
## CABINET-LEVEL APPOINTEES

Several amnesty supporters have filled cabinet-level positions in the Obama administration, including:



### **JANET NAPOLITANO, SECRETARY OF HOMELAND SECURITY**

As governor of Arizona, Napolitano vetoed several immigration-related bills, including legislation that would have: (1) denied benefits to illegal aliens; (2) required proof of citizenship when registering to vote; (3) allowed local law enforcement agencies to arrest and detain suspected illegal aliens; (4) barred acceptance of the Mexican matricula consular card as a valid form of identification; and (5) made English the official state language. Napolitano has also expressed opposition to the construction of a physical fence along the U.S.-Mexico border<sup>2</sup> and was an outspoken supporter of the 2007 Bush-Kennedy amnesty bill.<sup>3</sup> As the head of the federal agencies tasked with enforcing our federal immigration laws, Secretary Napolitano's hostility toward immigration enforcement has become increasingly more evident since her confirmation in January 2009.



### **HILLARY CLINTON, SECRETARY OF STATE**

As a former Senator, Clinton supported the Bush-Kennedy amnesty bill,<sup>4</sup> as well as the DREAM Act.<sup>5</sup> The DREAM Act grants amnesty to a broad range of individuals who meet certain minimal educational requirements and broad definitions relating to student status.



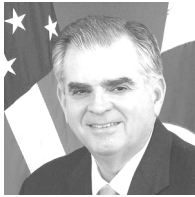
### **HILDA SOLIS, SECRETARY OF LABOR**

As a former Member of the House of Representatives, Solis openly supported multiple pieces of amnesty legislation, including co-sponsorship of both the DREAM Act<sup>6</sup> and the STRIVE Act,<sup>7</sup> legislation that included a guest worker amnesty for millions of illegal aliens. In addition, Solis voted against the REAL ID Act of 2005,<sup>8</sup> legislation that was intended to improve document security, in part by requiring driver's license applicants to establish legal residence.



**KEN SALAZAR, SECRETARY OF THE INTERIOR**

As a Member of Congress, Salazar served on a bipartisan group of Senators that helped put together the failed Bush-Kennedy amnesty bill of 2007. In March 2008, Salazar displayed support for sanctuary policies by voting to kill an amendment that would have ensured that federal funding did not go to sanctuary cities.<sup>9</sup> Salazar has also voted no on declaring English the official language of the United States<sup>10</sup> and against the Secure Fence Act of 2006, which provided for a fence along the U.S.-Mexico border.<sup>11</sup> Salazar's confirmation is particularly troubling because, as Secretary of the Interior, he heads a department that has jurisdiction over all national parks, many of which are the preferred locations for drug trafficking organization/illegal alien-produced narcotics and other dangerous drugs.<sup>12</sup>



**RAY LAHOOD, SECRETARY OF TRANSPORTATION**

As a former Congressman, LaHood testified in 2007 before a House subcommittee in support of the STRIVE Act,<sup>13</sup> legislation that included a guest worker amnesty for millions of illegal aliens.

Two other amnesty supporters were nominated to fill cabinet-level positions in the Obama administration but were not ultimately confirmed:

**BILL RICHARDSON, DEPARTMENT OF COMMERCE**

On December 3, 2008, President-elect Obama announced his intention to nominate New Mexico Governor Bill Richardson to head the Department of Commerce. Richardson supports granting driver's licenses to illegal aliens<sup>14</sup> and amnesty<sup>15</sup> and opposes immigration enforcement measures, such as the construction of a physical fence along the U.S.-Mexico border<sup>16</sup> and worksite enforcement operations conducted by the Department of Homeland Security's (DHS) Bureau of Immigration and Customs Enforcement (ICE).<sup>17</sup> A federal investigation into ties that Richardson had with a company that had contracted with the state of New Mexico ultimately prompted the Governor to withdraw his name from consideration for the Commerce post.

**TOM DASCHLE, HEALTH AND HUMAN SERVICES**

Eight days after announcing the Richardson nomination, President Obama indicated his intention to nominate former Senator Tom Daschle (D-S.D.) to serve as his Secretary of Health and Human Services. During his Senate career, Daschle co-sponsored legislation that would have granted amnesty to millions of illegal aliens.<sup>18</sup> Daschle ultimately withdrew his name from consideration after a controversy arose over his tax records.

## LOWER-LEVEL APPOINTEES

President Obama has also appointed a number of anti-enforcement amnesty supporters to lower-level positions, including:

### **ESTHER OLAVARRIA, DEPUTY ASSISTANT SECRETARY OF POLICY, DHS**

From 1998 to 2007, Olavarria worked as a General Counsel to former Senator Ted Kennedy (D-Mass.). According to *The Miami Herald*, “observers on both sides of the aisle credit her with essentially drafting the 2007 immigration reform bill sponsored by Kennedy and Sen. John McCain of Arizona.”<sup>19</sup> The Kennedy-McCain bill that Olavarria is credited with drafting would have granted amnesty to millions of illegal aliens.

### **CECILIA MUÑOZ, WHITE HOUSE DIRECTOR OF INTERGOVERNMENTAL AFFAIRS**

Prior to assuming her position in the Obama administration, Muñoz worked as a lobbyist for the National Council of La Raza (NCLR). NCLR is an ardent supporter of amnesty for illegal aliens, including advocating for passage of the DREAM Act and AgJOBS amnesty bills. Furthermore, NCLR has consistently worked to undermine enforcement measures, most notably REAL ID and 287(g).<sup>20</sup> 287(g) is the incredibly popular program that allows ICE to train state and local law enforcement officials in the enforcement of federal immigration laws. In order for her to assume her post as Intergovernmental Affairs Director, Muñoz first had to receive a lobbyist waiver from President Obama in order to circumvent his executive order barring lobbyists from working in his administration.

### **THOMAS PEREZ, DIRECTOR, DEPARTMENT OF JUSTICE, CIVIL RIGHTS DIVISION**

Perez formerly served as the President of the board of CASA de Maryland, an organization that has explicitly encouraged local police agencies to stop enforcing civil immigration laws,<sup>21</sup> and has sued local police for attempting to enforce immigration laws through the 287(g) program.<sup>22</sup> Furthermore, as President of the Montgomery County, Maryland Council, Perez urged banks to accept Mexican matricula consular identification cards as valid documentation to prove identity.<sup>23</sup> Perez’ decision to support the matricula consular as a secure form of identification directly conflicts with conclusions drawn by DOJ — the Department Perez now works for — and the Federal Bureau of Investigation (FBI), both of which have said that “the Matricula Consular is not a reliable form of identification.”<sup>24</sup>

### **JOHN TRASVIÑA, ASSISTANT SECRETARY FOR FAIR HOUSING AND EQUAL OPPORTUNITY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

Prior to accepting his post in the Obama administration, Trasviña worked as President and General Counsel at the Mexican American Legal Defense and Education Fund (MALDEF). MALDEF openly supports amnesty for illegal aliens, the DREAM Act, and granting driver’s

licenses to illegal aliens.<sup>25</sup> MALDEF has also: (1) filed a lawsuit against an Arizona rancher who was attempting to protect his property against illegal alien trespassers; (2) sued local police over their participation in 287(g); and (3) challenged state legislation in Arizona that requires all employers to use E-Verify,<sup>26</sup> the online, electronically operated system that allows employers to quickly and easily ensure that their new hires are legally authorized to work and not illegal aliens.

**ARIF ALIKHAN, ASSISTANT SECRETARY FOR POLICY DEVELOPMENT, DHS**

Alikhan previously worked as an advisor to Los Angeles Mayor Antonio Villaraigosa, focusing specifically on the areas of homeland security and law enforcement. Under Villaraigosa, Los Angeles has continued to adhere to a sanctuary city policy preventing police from asking a person about his or her immigration status unless the person has been arrested for another offense. This policy — known as Special Order 40 — was thrust into the spotlight in spring 2008 when Los Angeles high school student Jamiel Shaw, Jr. was murdered by a criminal alien gang member.<sup>27</sup> In addition, Villaraigosa has expressed opposition to ICE worksite enforcement operations.<sup>28</sup>

**CRAIG BECKER, NATIONAL LABOR RELATIONS BOARD (NOT YET CONFIRMED)**

Becker currently serves as Associate General Counsel to both the Service Employees International Union and the AFL-CIO, union coalitions notorious for their support of amnesty.<sup>29</sup> Becker's nomination is still working its way through the Senate confirmation process.

## **The Administration's Rhetoric:**

### *Repeatedly Expressing Support for Amnesty*

Given the pro-amnesty background of the people that the President has chosen to surround himself with, it comes as no surprise that this administration has been extraordinarily outspoken in its support for amnesty. In a span of less than seven months, members of the Obama administration — including the president himself — have reiterated the administration's support for amnesty on no less than ten separate occasions:

#### **FEBRUARY 18, 2009**

##### **PRESIDENT OBAMA ON SPANISH-LANGUAGE RADIO**

Speaking as a guest on a Spanish-language radio show, the president stated his support for granting amnesty to the approximately 12 million illegal aliens residing in the United States: "We're going to start by really trying to work on how to improve the current [immigration] system so that people who want to be naturalized, who want to become citizens...are able to do it; that it's cheaper, that it's faster, that they have an easier time in terms of sponsoring family members." After making this initial comment, President Obama



acknowledged what legal American workers already know intuitively — that amnesty is not in their best interest — but then, in the face of rising unemployment, endorsed amnesty anyway: “And then we’ve got to have comprehensive immigration reform. ...Politically, it’s going to be tough. It’s probably tougher now than it was, partly because of the fact that the economy has gotten worse.” The president also noted that his staff was already working on amnesty: “We’ve got some wonderful people on my White House staff who are working on this issue on an ongoing basis.”<sup>30</sup>

#### **MARCH 18, 2009**

##### **PRESIDENT OBAMA AND THE CONGRESSIONAL HISPANIC CAUCUS**

One month later, President Obama held a White House meeting with members of the Congressional Hispanic Caucus (CHC), a group of Members of Congress who are well-known proponents of amnesty. While the meeting was closed to the public, CHC Member Rep. Luis Gutierrez (D-Ill.) told reporters that the president “was clear and eloquent and determinate to let us know that we are all together” in the pursuit of amnesty legislation. CHC Leader Rep. Nydia Velazquez (D-N.Y.) remarked after the meeting: “We believe that we are moving forward this year, we are going to work with the president.”<sup>31</sup> A White House press release about the meeting noted that “the President discussed how the administration will work with the CHC to address immigration concerns in both the short and long term.” The press release also said that Obama used the meeting to announce his intention to travel to Mexico to meet with Mexican President Felipe Calderon and discuss how the countries can work together toward an amnesty for illegal aliens living in the United States.<sup>32</sup> Later in the day, Obama reiterated his support for amnesty at a town hall forum in Costa Mesa, California.<sup>33</sup>

#### **APRIL 8, 2009**

##### **CECILIA MUÑOZ AND THE PRESIDENT’S CONTINUED SUPPORT FOR AMNESTY**

In early April, *The New York Times* interviewed White House Director of Intergovernmental Affairs Cecilia Muñoz — formerly an employee of the radically pro-amnesty National Council of La Raza. Referring to amnesty, Muñoz told *The Times* that the president “intends to start the debate this year.”<sup>34</sup>

#### **APRIL 16, 2009**

##### **THE PRESIDENT IN MEXICO**

As he promised the CHC in March, President Obama did in fact fly to Mexico to meet with Mexican President Felipe Calderon. At a press conference with Calderon by his side, the president addressed the issue of immigration and restated his pledge to pass an amnesty bill.<sup>35</sup>

**MAY 6, 2009**

**SECRETARY NAPOLITANO AND THE DREAM ACT**

In early May, the Senate Judiciary Committee held a DHS oversight hearing. Secretary Napolitano was invited to testify at the hearing and ultimately went on the record as supporting the DREAM Act amnesty bill. During the hearing, Senator Dick Durbin (D-Ill.) used his allotted time to discuss the DREAM Act amnesty, legislation that he has co-sponsored for eight years. Durbin then asked Secretary Napolitano for her opinion on the bill. Napolitano replied: “We have to have the ability to deal with some of the human issues that arise here. And the one that you have identified is one of the most acute. I supported the DREAM Act when I was governor. I support it now.”<sup>36</sup>

**JUNE 25, 2009**

**THE WHITE HOUSE AMNESTY SUMMIT**

In perhaps the most direct endorsement of amnesty to date, the White House convened a twice-delayed amnesty summit in late June. While the meeting itself was closed to the public, the president addressed the media afterwards and reassured amnesty supporters that his “administration is fully behind an effort to achieve comprehensive immigration reform.”<sup>37</sup>

**JULY 22, 2009**

**THE PERF AMNESTY SUMMIT**

One amnesty summit was not enough for the Obama administration. About a month later, White House and Homeland Security officials joined about 100 police chiefs and administrators from across the United States at a “National Summit on Local Immigration Policies,” hosted by the Police Executive Research Forum (PERF) in Phoenix. During the closed-door meetings, the PERF Summit participants agreed that the U.S. needs a “comprehensive” new law, including an amnesty for illegal aliens. The participants were also highly critical of the 287(g) program. One of the attendees of the PERF Summit was Dennis Burke, a senior adviser to DHS Secretary Janet Napolitano. Burke agreed with the position of attendees at the forum and said that “Congress needs to work quickly.” Burke added: “Secretary Napolitano has said the situation the country is in is not defensible.”<sup>38</sup>

**AUGUST 10, 2009**

**THE PRESIDENT IN MEXICO (AGAIN)**

President Obama made a second trip to Mexico in mid-August, where he met with Canadian Prime Minister Stephen Harper and Mexican President Felipe Calderon. The president predicted that Congress would pass an amnesty bill in 2010, stating: “Secretary Napolitano is coordinating these discussions, and I would anticipate that before the year is

out we will have draft legislation along with sponsors potentially in the House and the Senate who are ready to move this forward, and when we come back next year, that we should be in a position to start acting.” In his remarks, the president also conceded that overcoming the overwhelming opposition of the American people to an amnesty bill would be difficult: “Am I going to be able to snap my fingers and get this done? No. This is going to be difficult.”<sup>39</sup>

## **OCTOBER 21, 2009**

### **USCIS DIRECTOR AND THE PRESIDENT’S CONTINUED SUPPORT FOR AMNESTY**

In late October, the Director of DHS’ Bureau of U.S. Citizenship and Immigration Services (USCIS), Alejandro Mayorkas, reiterated President Obama’s support for amnesty. Speaking before a briefing of the Foreign Press Center, Mayorkas was asked: “[W]hat do you think about the future of illegal immigrants?” His response was unsurprising: “[T]he President has spoken about the — his belief that a path to citizenship should be created as part of comprehensive immigration reform for a certain population of undocumented workers in this country today.”<sup>40</sup>

## **NOVEMBER 13, 2009**

### **NAPOLITANO’S SPEECH BEFORE THE CENTER FOR AMERICAN PROGRESS**

On Friday the 13<sup>th</sup> of November, DHS Secretary Napolitano gave a speech on immigration policy at the Center for American Progress, a liberal think tank. Napolitano described the Obama administration’s vision of immigration legislation as a “three-legged stool.” This so-called “stool” consists of: (1) a mass amnesty for the approximately 12 million illegal aliens currently living in the United States; (2) “improved legal flows for families and workers,” which means a dramatic increase in legal immigration; and (3) empty promises of “serious and effective enforcement.”<sup>41</sup> Napolitano added that she expected to see an amnesty bill move in Congress in “the first part” of 2010.<sup>42</sup>

## **The Administration’s Track Record:**

### *Gutting Immigration Enforcement*

While questions remain as to timing, it is clear from the Obama administration’s rhetoric that a debate over “comprehensive immigration reform” legislation that grants amnesty to millions of illegal aliens is on the horizon, despite overwhelming public opposition to such a plan. During debate over the 2007 Kennedy-McCain amnesty bill, Rasmussen poll results clearly demonstrated that voters did not believe that the Senate’s “comprehensive” approach would accomplish the goal of improving border enforcement or reducing illegal immigration. In fact,

Rasmussen found that the so-called “comprehensive immigration reform” bill of 2007 faced “broad public opposition” and that just “22% of American voters [favored] the legislation.” Only 32% believed the bill was better than doing nothing at all. Rasmussen also found that only “16% [of American voters believed] the Senate bill would reduce illegal immigration” while 71% of American voters believed that “another bill would be required to focus on securing the border and reducing illegal immigration.”<sup>43</sup>

To make an unpopular amnesty proposal more palatable, proponents of the 2007 legislation included enforcement provisions in the bill that, they claimed, would reduce illegal immigration. Despite a significant push by special interest groups, the American people saw through these empty promises of enforcement, and the bill ultimately died in the Senate. If past is prologue, we can expect that the Obama administration, in an attempt to sway public opinion on amnesty, will make many of the same empty promises about enforcement that were made in 2007. However, the Obama administration’s record on enforcement thus far tells the American people everything they need to know about the administration’s commitment to immigration enforcement. In less than one year, President Obama has undermined nearly every enforcement measure available to him, including those related to E-Verify; worksite enforcement operations; the 287(g) program; border security; secure identification documentation; and immigrant detention.

#### **E-VERIFY FOR FEDERAL CONTRACTORS: THE FOURTH TIME’S THE CHARM**

On June 6, 2008, then-President George W. Bush issued Executive Order 13,456, which requires federal contractors to use an electronic employment eligibility verification system to verify the work authorization status of their employees. The Order also required then-DHS Secretary Michael Chertoff to choose the system to be used. On June 9, 2008, Secretary Chertoff designated E-Verify as the system to be used by Federal Contractors under the Executive Order. In November 2008, the Bush administration set January 15, 2009 as the implementation date for the federal contractor E-Verify requirement to go into effect. However, a coalition of special interest groups — led by the U.S. Chamber of Commerce — sued to block the rule from taking effect as scheduled. Prior to leaving office, the Bush administration caved into the special interests and delayed the E-Verify requirement from taking effect until February 20, 2009.

Upon taking office, the Obama administration capitulated to the special interests on *three additional occasions*. On January 29, 2009, DHS Secretary Napolitano pushed the E-Verify requirement back to May 21;<sup>44</sup> in April, the mandate was delayed to June 30;<sup>45</sup> and finally, in early June, Napolitano postponed implementation one more time, to September 8.<sup>46</sup> The E-Verify contractor mandate was ultimately allowed to take effect on September 8, but not before more than seven months’ worth of federal contracts — including many stimulus contracts — were signed by the Obama administration.

## **GUTTING WORKSITE ENFORCEMENT**

At first, it appeared as though the Obama administration might pursue worksite enforcement. About a month after Obama's inauguration, an ICE operation at a Bellingham, Washington manufacturing plant resulted in the arrest of 28 illegal aliens (25 of whom were placed in removal proceedings). According to an ICE official, the agency decided to conduct the operation after information from two "gang members" led agents to begin investigating the company. Many of the illegal aliens who were apprehended as a result of the operation had obtained jobs at the plant using false Social Security numbers and other counterfeit documents.

However, two days after the Bellingham operation, Napolitano told Members of Congress that she did not know about the operation before it occurred and that she wanted to "get to the bottom of this."<sup>47</sup> A day later, Napolitano met with members of the Congressional Hispanic Caucus and expressed "grave concerns" about the Bellingham operation.<sup>48</sup> In late March, *The Washington Post* revealed just how Napolitano had decided to "get to the bottom" of worksite enforcement. *The Post* indicated that Napolitano had delayed a series of worksite enforcement operations, and that she had asked agents "to apply more scrutiny to the selection and investigation of targets as well as the timing of" the operations.<sup>49</sup> But Napolitano didn't stop there — on March 31, several media reports revealed that the Obama administration had actually *released* illegal aliens that had been detained as a result of the Bellingham operation. According to *The Seattle Times*, the illegal aliens "were freed without bail...and offered legal permission to work in the United States."<sup>50</sup>

Since the Bellingham debacle, the administration has taken additional steps to undermine worksite enforcement. In late April, ICE issued new worksite enforcement guidelines for all of its agents in the field. These guidelines were troubling to true immigration reformers for two primary reasons. First, they state that ICE will "continue to fulfill its responsibility to arrest and *process for removal* illegal workers encountered during worksite enforcement operations." Processing for removal, however, could simply mean releasing the illegal aliens and giving them a notice to appear in court on a certain day to begin removal proceedings. Such a practice is tantamount to reinstating the catch and release policy — a Border Patrol policy that was widely criticized as ineffective and counterproductive, and which was ended in 2005. Second, the guidelines call into question whether illegal alien workers will be arrested in the first place because they generally require ICE offices to obtain indictments, search warrants, or a commitment from the Department of Justice to prosecute the employer before arresting the illegal workers for civil immigration violations. This places a significant burden on ICE offices because federal prosecutors will be unlikely to commit to prosecuting a case before reviewing all of the evidence that would come to light through an enforcement action.

The final action that the Obama administration has taken to gut worksite enforcement is rescission of the so-called “No Match” Rule.<sup>51</sup> Under the No-Match Rule, the Social Security Administration (SSA) would have been required to notify employers who report earnings for at least ten employees whose names do not match their Social Security numbers (SSNs). The rule would have required that employers double-check their records for accuracy and then have employees correct any discrepancies. When DHS announced the No-Match Rule in October 2008, the Department stated: “there is a substantial connection between social security no-match letters and the lack of work authorization by some employees whose SSNs are listed in those letters.” Additionally, DHS cited a private study that concluded that “most workers with unmatched SSNs are undocumented immigrants.”<sup>52</sup> When Secretary Napolitano announced that DHS was planning to rescind this important rule, however, she completely ignored the role that No-Match letters play in immigration enforcement and instead attributed most Social Security no-match letters to “typographical errors or unreported name changes.”<sup>53</sup>

The detrimental effects of the actions taken by the Obama administration with respect to workplace immigration enforcement have been striking. On Wednesday, November 18, 2009, DHS released data showing that worksite enforcement statistics in four key categories — criminal arrests, criminal indictments, criminal convictions and administrative arrests — fell dramatically from Fiscal Year (FY) 2008 to FY 2009. Specifically, administrative arrests of illegal aliens fell 68% (from 5,184 to 1,644); criminal arrests of illegal aliens dropped 60% (from 1,103 to 443); criminal indictments of illegal aliens decreased 58% (from 900 to 376); and criminal convictions of illegal aliens fell 63% (from 908 to 338).

The only enforcement category that has seen an increase under the Obama administration is paper audits of I-9 forms.<sup>54</sup> While the administration has used the results of these I-9 audits to force employers to fire illegal aliens and issue nominal fines, Homeland Security has simply allowed these illegal aliens to remain in the United States and find jobs with other employers.<sup>55</sup> As for companies that receive these fines, most consider them nothing more than a cost of doing business.

#### **A CASE STUDY IN UNDERMINING 287(G): THE MARICOPA COUNTY, ARIZONA SHERIFF’S OFFICE**

Prior to the Obama administration taking office, state and local law enforcement agencies had come to rely on the federal 287(g) program as an effective tool in helping them enforce immigration law and keep their communities safe. As of April 2009, more than 60 law enforcement agencies had enrolled in the program. Each of these agencies was free to leave the program at any time, but none ever had. That has since changed.

On March 10, 2009, the Civil Rights Division of President Obama’s Justice Department sent a letter to Maricopa County, Arizona Sheriff Joe Arpaio. The letter informed Arpaio that the administration was planning to investigate allegations that Maricopa County deputies had discriminated against Hispanics in their enforcement of federal immigration laws as a result of the Department’s participation in 287(g). The administration’s decision to pursue this investigation was the result of pressure from amnesty-advocating special interest groups who have long decried Sheriff Arpaio’s “crime saturation” patrols for allegedly engaging in racial profiling. However, neither these groups nor the Obama administration have addressed the fact that, before it began these patrols, the Maricopa County Sheriff’s Office (MCSO) received strict, straightforward guidelines from the county Attorney’s Office that were meant to make certain that deputies did not violate the civil rights of any potential illegal aliens caught in the sweeps.<sup>56</sup>

The DOJ investigation, however, was only a prelude of what was to come. In July, Homeland Security Secretary Janet Napolitano announced that ICE had “standardized” the Memorandum of Agreement (MOA) used to enter into 287(g) partnerships. According to a press release, this new MOA “aligns 287(g) local operations with major ICE enforcement priorities — specifically, the identification and removal of criminal aliens.” The new MOAs are apparently, according to DHS, meant “to address concerns that individuals may be arrested for minor offenses as a guise to initiate removal proceedings.”<sup>57</sup>

Homeland Security’s “standardization” of MOAs represents a setback in immigration enforcement because it does not reflect the true legislative intent of 287(g). According to House Judiciary Committee Ranking Member Lamar Smith (R-Tex.), the author of the legislation that created the 287(g) program, the goal of 287(g) “was to really enable those local law enforcement authorities who wanted to enforce the immigration laws in whatever way they thought best...and that’s really a decision made by the government in individual situations.” Additionally, the Obama administration’s newfound emphasis on aligning 287(g) with the identification and removal of criminal aliens is another departure from Congress’ intent. According to Rep. Smith, 287(g) MOAs were supposed to be tailored to suit the needs of law enforcement agencies who elect to participate in the program, “and that might or might not include [focusing] on those who have committed serious crimes.”<sup>58</sup> The Government Accountability Office has confirmed Smith’s statements, concluding that “...287(g) and its legislative history do not detail...which removable aliens should be prioritized for removal.”<sup>59</sup>

These changes have undermined the usefulness of 287(g) in the estimation of state and local law enforcement agencies who had been participating in the program. For the first time since the program was created in 1996, several law enforcement agencies have decided to discontinue their participation in 287(g).<sup>60</sup> Furthermore, in late July, Sheriff Arpaio released audio tapes that

indicated ICE intended to entirely ignore illegal aliens that did not fit their new threshold for detention. In light of DHS' announcement concerning the 287(g) MOAs, MCSO deputies consulted ICE officials about whether they still had permission — as they had previously — to take thirteen illegal aliens who had committed civil (and not criminal) violations into custody. The audio tapes that Sheriff Arpaio released revealed that an ICE official had, incredibly, instructed MCSO deputies “not to take into custody those [illegal aliens] who don't have a criminal history.”<sup>61</sup>

In October, ICE forced Arpaio to sign a weakened 287(g) agreement reflecting the changes that Napolitano had announced in July. Under this new MOA, the MCSO will no longer be able to use its 287(g) authority to enforce immigration law against illegal aliens charged with traffic infractions and other “minor” violations.<sup>62</sup> Instead, the Obama administration has only allowed the MCSO to retain the ability to enforce immigration law against illegal aliens who have committed “dangerous” crimes, been caught, prosecuted, convicted, sentenced and booked into local jails.<sup>63</sup>

#### **WHAT'S LEFT TO UNDERMINE? BORDER SECURITY, SECURE IDENTIFICATION, AND IMMIGRANT DETENTION**

True immigration reformers understand that E-Verify, worksite enforcement, and 287(g) are crucial pieces to the enforcement puzzle. However, there are many other enforcement tools available for the Obama administration to utilize. Unfortunately — and, perhaps, unsurprisingly — the administration has worked towards gutting these measures, as well.

For decades, true immigration reformers have sought to enhance the security of our porous borders. The Obama administration, however, has failed to make border security a priority. In early March, border state Governors Rick Perry (R-Tex.) and Jan Brewer (R-Ariz.) asked President Obama for additional support resources, including the use of the National Guard, to provide enhanced border security. On March 11, Obama himself responded with reluctance, saying that his administration would only “examine whether and if National Guard deployments would make sense and under what circumstances.” Obama failed to clarify the circumstances by which he would deploy the National Guard, saying: “I don't have a particular tipping point in mind,” and that he is “not interested in militarizing the border.”<sup>64</sup> One day later, Obama administration official Roger Rufe — DHS' Director of Operations, Coordination and Planning — echoed Obama's comments, telling a House Homeland Security subcommittee panel: “We very much do not want to militarize our border. So that is essentially a last resort.”<sup>65</sup> It therefore appears that the administration has no plans to utilize the National Guard to help secure the



border: in late September, a media report revealed that DHS does not intend to bring even one more mile of our porous border within “effective control” over the course of Fiscal Year 2010.<sup>66</sup>

For those illegal aliens who do breach our borders, secure identification is an enforcement tool that the federal government can use to help enforce immigration law within America’s interior. In response to the 9/11 terrorist attacks, Congress passed the REAL ID Act, legislation that establishes uniform security requirements for State-issued driver’s licenses and identification cards. Disappointingly, the Obama administration is working towards gutting this, as well. On June 15, 2009, Senator Daniel Akaka (D-Hawaii) introduced legislation (S. 1261) entitled “Providing for Additional Security in States’ Identification Act of 2009” (PASS ID). PASS ID seeks to repeal many of the security and immigration enforcement provisions established by the REAL ID Act and would re-establish many of the security and immigration loopholes that allowed the 9/11 hijackers to carry out the attack on the Pentagon and the World Trade Center.<sup>67</sup>

The Obama administration has actively lobbied Congress for passage of PASS ID, designating Secretary Napolitano as the President’s point person on this issue. Upon the bill’s introduction in June, Napolitano immediately announced the administration’s support, saying that she was “committed to supporting this important bill,” and that it was her “hope that Congress will pass it into law as quickly as possible.”<sup>68</sup> A month later, Secretary Napolitano appeared on Capitol Hill to further lend her support for the bill at a hearing before the Senate Committee on Homeland Security. At the hearing, Napolitano criticized REAL ID as “too rigid and needlessly expensive in mandating how states meet their security goals,” and claimed that, had PASS ID been law on September 11, 2001, we would have caught “most” of the 9/11 hijackers.<sup>69</sup>

Immigration detention has also been a victim of the administration’s immigration policies. In early October, ICE announced a series of new initiatives aimed at reforming the system the federal government utilizes to detain deportable aliens. One of these new “initiatives” is a plan “to advance the...use of alternatives to detention (ATD),” which ICE stated would be submitted to Congress for nationwide implementation.<sup>70</sup> Just weeks later, however, a *Houston Chronicle* investigation revealed that two of the existing ATD programs ICE manages are ineffective. The *Chronicle* report showed that, over the past five years, nearly 20 percent of suspected illegal aliens who went through the ATD unit’s “Intensive Supervision Appearance Program” (ISAP) failed to appear for their day in immigration court, and that “private contractors that administer ISAP...were ‘unable to locate’” these aliens.<sup>71</sup> Given the findings of the *Chronicle* investigation, ICE’s pursuit of a nationwide ATD program will almost certainly lead to an increase in the number of illegal aliens who abscond after apprehension. This means that more illegal aliens will be able to avoid their day in court, and, as a result, also avoid their ultimate deportation.

## **Conclusion**

The American people are very clear that they oppose rewarding people who have broken our immigration laws with amnesty, or adding to our already record levels of government mandated immigration. What they want is precisely the opposite: overall reductions in immigration levels and a firm and rational approach to enforcement that includes enhanced border security, additional worksite enforcement, greater involvement of state and local law enforcement, and detention and removal of people found to be in the country illegally.

At a time when more than 25 million people in the United States are unemployed or underemployed, when the federal deficit has reached \$1.4 trillion and when numerous state and local governments face fiscal crises, the Obama administration has steadfastly pursued immigration policies that would exacerbate each of these problems. The record clearly indicates that the administration has not only failed to effectively secure America's borders and enforce immigration laws, but has also taken steps to disable enforcement.

The Obama administration's position on immigration policy is no longer a matter of conjecture or speculation. It is a matter of record. All of its efforts are geared toward allowing illegal aliens to live, work, and collect public benefits as the administration seeks the political opportunity to formally legalize their status in the United States.

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## ABOUT FAIR

The Federation for American Immigration Reform (FAIR) is a national, nonprofit, public-interest, membership organization of concerned citizens who share a common belief that our nation's immigration policies must be reformed to serve the national interest.

FAIR seeks to improve border security, to stop illegal immigration, and to promote immigration levels consistent with the national interest — more traditional rates of about 300,000 a year.

With more than 250,000 members and supporters nationwide, FAIR is a non-partisan group whose membership runs the gamut from liberal to conservative. Our grassroots networks help concerned citizens use their voices to speak up for effective, sensible immigration policies that work for America's best interests.

FAIR's publications and research are used by academics and government officials in preparing new legislation. National and international media regularly turn to us to understand the latest immigration developments and to shed light on this complex subject. FAIR has been called to testify on immigration bills before Congress more than any organization in America.

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