



  
FAIR

AN IMMIGRATION REFORM AGENDA FOR THE

112<sup>th</sup> Congress







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JANUARY 2011

## **The Federation for American Immigration Reform**

The Federation for American Immigration Reform (FAIR) is the nation's oldest and largest public interest organization of concerned individuals who believe that our immigration laws must be reformed to better serve the needs of current and future generations. Founded in 1979, FAIR works for policies that put the interests of Americans and our environment ahead of big business and special interest demands. For 31 years we have offered and advocated for solutions that help reduce the harmful impact of uncontrolled immigration on the economy, national security, health care, education, the environment, and the rule of law.

With the help of Americans across the country, we have been very successful in our efforts to secure immigration policies that protect our quality of life and stop those that do not. FAIR presents the facts and offers concerned individuals the opportunity to get involved and shape the outcome of this debate.

FAIR has always fought against invidious discrimination of any kind and our membership is non-partisan and diverse, representing people from all communities, all political persuasions, and all socioeconomic levels. Nearly 50 private foundations and over 200,000 members and activists support FAIR.

FAIR is a highly respected voice on the challenging immigration issue and a reliable source of information on this subject. Academics, lawmakers and other officials who help formulate immigration policy regularly rely on FAIR's expertise, research, and counsel. We testify regularly before Congress on immigration-related legislation. In addition, representatives of our organization are routinely interviewed by the major news networks, radio talk shows, and the print media about all aspects of the immigration debate.

Over the years, FAIR has played a significant role in virtually all major immigration policy changes. We fought for policy improvements in the landmark 1986 Immigration Reform and Control Act and have been instrumental in fashioning legislative and policy reforms since that time. In all we do, FAIR's goal is to educate and increase public awareness of immigration issues, present solutions, and ensure the public's voice is heard.

*FAIR presents this Immigration Reform Agenda for the 112<sup>th</sup> Congress as a guide for ending illegal immigration, reducing legal immigration to a more sustainable level, and improving national security—thereby lifting the burden on the American taxpayer, enhancing our national security, and improving our quality of life. We look forward to working with you through the 112<sup>th</sup> Congress.*

## Introduction

Illegal immigration and mass immigration are detrimental to quality of life in the United States. The American family is increasingly bearing the costs of traffic congestion, urban sprawl, environmental degradation, increased crime, overburdened health care, overwhelmed public schools, and debt-ridden state and municipal governments—all results of uncontrolled immigration. The fiscal costs of immigration, legal and illegal, have always been substantial, but with the recent economic downturn, these costs have become even more burdensome. FAIR estimates that the annual cost of illegal immigration alone to the American taxpayer—after accounting for tax revenue received from illegal aliens—is \$100 billion (see *The Fiscal Burden of Illegal Immigration to United States Taxpayers*). Congress and the federal government must restore legitimacy to the U.S. immigration system by ensuring that existing immigration laws are enforced and passing new legislation that will curtail legal immigration and improve the quality of life for all Americans.

The 111<sup>th</sup> Congress began in the midst of one of the most serious recessions since the Great Depression. However, instead of promoting immigration policies that help American workers, amnesty advocates repeatedly attempted to pass amnesty legislation. In December 2009, Representatives Solomon Ortiz (D-Tex.) and Luis Gutierrez (D-Ill.) introduced [H.R.4321](#), an expansive amnesty bill in the House. In April 2010, Senators Chuck Schumer (D-N.Y.), Bob Menendez (D-N.J.) and Harry Reid (D-Nev.) outlined an [amnesty proposal](#) they hoped would serve as the framework for “comprehensive” immigration reform legislation in the Senate. Then in September 2010, Senator Menendez introduced [S.3932](#), the “Comprehensive Immigration Act of 2010”. None of these proposals, however, traveled far. There was simply no political appetite in the House or Senate—or among the American people—for amnesty legislation, especially with nearly ten percent of Americans out of work.

Although neither body of the 111<sup>th</sup> Congress debated a broad amnesty bill, also known as “comprehensive” immigration reform, members of Congress engaged in a heated debate over immigration policy and its impact on the new health care reform bill ([H.R.3590](#); [H.R.4872](#)). Early versions of the bill (H.R.3200) permitted illegal aliens to participate in the health care exchanges (including the public option) and had no verification procedures for administering tax credits offered to individuals who obtained private health care insurance (affordability credits). The House failed to fix this, and when President Obama was directly challenged on whether he supported granting taxpayer-funded health care benefits to illegal aliens, he backed down. The final version of the health care bill, the Senate version (H.R.3590), barred illegal aliens from participating in the health care exchanges. Unfortunately, however, it also included only a limited verification procedure for the affordability credits and eliminated the five-year waiting period for legal permanent residents with respect to receiving health care benefits under the bill.

With respect to worksite enforcement, the 111<sup>th</sup> Congress did take a step forward on immigration policy by passing a three-year extension of E-Verify in October 2009 in the [FY 2010 Homeland Security Appropriations bill](#) conference report. Congress also appropriated \$137 million through the same appropriations measure to support improvements to the program. Unfortunately, this victory was only partial as Congressional leaders stripped Senate language during the conference committee process that would have made E-Verify a permanent program and instead compromised on the three-year extension.

The 111<sup>th</sup> Congress also made some progress on border security by passing [H.R.6080](#), a \$600 million border security funding bill, which includes money for 1,500 new enforcement agents and additional unmanned drones along the border. To pay for the additional resources, the bill increased H-1B and L visa fees for companies that hire these temporary workers.

This enforcement-only measure angered amnesty advocates, who felt their supporters in Congress did not gain anything in return for the additional border security funding. Moreover, as elections neared and it became more likely that control of the House of Representatives would change, amnesty advocates began to see the chances of Congress passing “comprehensive” immigration reform legislation fade. They switched strategies and began to push for passage of the DREAM Act—another amnesty bill that would legalize illegal aliens under the age of 30 who had met minimal educational or military service requirements. As a result, during the last four months of 2010, Senators and Representatives introduced multiple versions of the bill, hoping each would gain needed votes. Then, in the waning days of the lame-duck session, which included of 96 Representatives who would not be returning, the House passed [H.R.5281](#), its latest iteration of the DREAM Act, 216-198. The Senate took up the House version of the DREAM Act the following week, as 13 Senators were days from vacating their seats. Still, the Senate failed to pass the DREAM Act by a vote of [55-41](#) (60 votes were needed to end debate).

Perhaps the most significant changes in immigration policy during the 111<sup>th</sup> Congress came not from legislation, but from policies implemented by the Obama Administration that dramatically scaled back successful immigration enforcement programs. Between 2009 and 2010, the Department of Homeland Security abandoned worksite enforcement actions, limited the scope of 287(g) agreements, relaxed detention standards, adopted a policy not to detain illegal aliens during traffic stops, rescinded the “no-match” rule for employers, and actively sought the dismissal of certain deportation cases.

Behind the scenes, the Obama Administration was quietly debating using “administrative alternatives” to grant amnesty to illegal aliens. During 2010, several memos surfaced detailing how senior officials sought to quietly “reduce the threat of removal for certain individuals present in the United States without authorization.” This could be done, one of the memos stated, by not issuing notices to appear, broad use of humanitarian parole, broad use of deferred action, or by re-interpreting the three and ten-year bars placed on certain illegal aliens for re-entry into the U.S.

Not only did the Obama Administration abandon immigration enforcement, it proactively sought to stop the states from enforcing immigration laws by suing Arizona over its new immigration enforcement law, SB 1070. Calling the bill “misguided,” President Obama instructed his top officials “to closely monitor the situation and examine the civil rights and other implications of this legislation” ([White House Press Release](#), Apr. 23, 2010). Within weeks, the Department of Justice sued the State of Arizona to enjoin the law in its entirety. Federal District Judge Susan Bolton adopted the government’s arguments that SB 1070 was preempted by federal law and enjoined major portions of the law. As of publication, this injunction is under review by higher courts.

Only when trying to avoid embarrassment did the Obama Administration take steps to improve immigration enforcement. For example, the Obama Administration did adopt a requirement to make E-Verify mandatory

for all federal contractors, but only did so under pressure from the Senate, which voted the very same day to include such a requirement in [H.R.2892](#), the FY 2010 Homeland Security Appropriations Bill. Similarly, after repeated demands by border governors and lawmakers, the Obama Administration finally sent 1,200 National Guard troops to assist at the southern border, but only during the very same week Senators offered an amendment to the Emergency Supplemental Appropriations bill ([H.R. 4899](#)) that would send 6,000 National Guard troops to the border.

By the time the 2010 elections arrived, 62 percent of likely voters believed the policies of the federal government encouraged illegal immigration according to [Rasmussen Reports](#). American voters also disapproved of the way President Obama was handling the issue of illegal immigration, 60 to 28 percent, and favored stricter enforcement over integrating illegal immigrants into U.S. society, 68 to 25 percent according to a poll by [Quinnipiac University](#). Not surprisingly, American voters favored candidates who conveyed a strong support for immigration enforcement (see FAIR's [2010 Election Report](#)). The lesson for the 112<sup>th</sup> Congress is that it must proactively ensure that immigration laws are enforced and make the passage of true immigration reform legislation a top priority.

Within FAIR's legislative agenda for the 112<sup>th</sup> Congress, there are three major areas of true immigration reform: illegal immigration reform, national security reform, and legal immigration reform. These reforms often overlap and many of the suggested policy solutions for one area will prove to address all three areas of immigration policy. The lists of suggested reforms are by no means exhaustive, but do represent reforms FAIR considers to be top priorities and the most effective solutions for solving the immigration crisis in the United States.

## **Illegal Immigration Reform**

The illegal alien population in the United States, which has grown dramatically over the past decade, is comprised of those who either illegally cross the borders or overstay their visas. As this number has expanded over the past few decades, the immigration reform debate has understandably become centered on stopping illegal immigration.

Securing the borders, implementing a proper entry and exit system for visa holders, and denying jobs to illegal aliens are key components for ending illegal immigration. In addition to opposing all efforts to grant amnesty to illegal aliens, the 112<sup>th</sup> Congress should seek to end illegal immigration by implementing the reforms outlined in the following areas.

### ***Worksite Enforcement***

There is overwhelming consensus that most illegal aliens come to the United States for economic reasons, which makes worksite enforcement programs a vital step toward true immigration reform. Recently, ICE has abandoned traditional worksite enforcement actions and refused to deport illegal workers. ICE must renew and expand worksite enforcement operations in order to guarantee a legal workforce and protect American workers. To help ensure a legal workforce, Congress should:

- Permanently authorize the E-Verify program and provide adequate funding to guarantee the future of the program



- Make the E-Verify program mandatory for all existing and new hires
- Support ICE worksite enforcement operations with more agents
- Increase funding to allow for more detention beds
- Permit U.S. citizens and legal permanent residents to file complaints for unfair employment practices under the Immigration and Nationality Act (INA)
- Permit civil actions by employees against other employers who intentionally fail to verify work eligibility of their employees
- Increase and consistently apply civil and criminal penalties against employers of illegal aliens
- Prohibit employers from deducting wages paid to illegal workers
- Reinstate or codify the “no-match” rule

### ***Ensure Identification Documents Are Secure***

Document fraud is one of the primary ways illegal aliens manipulate the system to stay in the United States and gain employment. Fraudulent birth certificates, driver’s licenses, and immigration documents enable illegal aliens to obtain employment and, in some instances, claim benefits for which they would otherwise be ineligible. Hundreds of thousands of fraudulent or stolen Social Security numbers (SSN) are submitted to the Social Security Administration (SSA) each year, which severely impacts the lives of the U.S. citizens and legal aliens whose numbers are stolen. To create secure and tamper proof identification documents, FAIR advocates the following measures:

- Secure the Social Security card by making it counterfeit proof and tamper-resistant
- Increase and implement the use of biometrics for all immigration documents
- Appropriate sufficient funds and enforce state deadlines for the implementation of REAL ID
- Encourage states to require proof of legal presence for the issuance of driver’s licenses by denying federal transportation dollars to states that fail to do so
- Authorize and fund increased training for federal, state, and local law enforcement officers on the detection of fraudulent documents
- Bar the use of matricula consular cards for purposes of establishing identity, especially for illegal aliens opening bank accounts and applying for access to government benefits
- Bar local governments from issuing identification documents to illegal aliens

### ***Support State and Local Enforcement Efforts***

State and local law enforcement and government agencies play a crucial role in ending illegal immigration, and it is important they have the proper support from the federal government to arrest, detain, and transfer illegal aliens to federal custody. To improve the enforcement of immigration laws at the state and local level, FAIR advocates the following measures:

- Reverse the Obama Administration’s restrictions placed on the 287(g) program that limit its use to apprehending and detaining criminal aliens. All illegal aliens should be subject to U.S. immigration laws
- Support the 287(g) program by ensuring adequate funding and training for all local law enforcement agencies that want to participate in the program
- Fully reimburse state and local law enforcement expenses directly related to illegal immigration
- Deny certain federal funds to cities that have sanctuary policies

- Amend the Immigration and Nationality Act (INA) to clarify that Congress has not preempted local immigration enforcement efforts

### ***Federal Agency Reform***

The federal agencies responsible for overseeing immigration programs and enforcement efforts do not have sufficient permission or resources to share information and cooperate with each other, which substantially hinders their ability to perform their respective tasks. To improve their effectiveness, FAIR advocates the following reforms:

- Require the Social Security Administration (SSA) to share information with the Department of Homeland Security (DHS) on issuance of no-match letters to employers and suspicious employment use of legitimate SSNs
- Restrict use of Individual Tax Identification Numbers (ITIN) to tax-related purposes only
- Require the Internal Revenue Service (IRS) to investigate and sanction employers and aliens who submit fraudulent tax documents
- Prohibit employers from deducting wages and benefits paid to illegal aliens from their taxes
- Prohibit the crediting of work performed by illegal aliens towards Social Security benefits regardless of future changes in the aliens' immigration status
- Increase the number of immigration judges employed by the Department of Justice (DOJ)
- Increase the number of asylum officers employed by DHS and set standards for training that specifically include identity fraud

### ***Oppose Efforts to Give Benefits to Illegal Aliens***

Granting benefits to illegal aliens does nothing more than use taxpayer dollars to reward illegal behavior and only encourages more illegal immigration. With the exception of emergency medical care, illegal aliens are ineligible for most federally administered benefits. However, many states have not adopted similar provisions barring illegal aliens from state and local benefits. The 112<sup>th</sup> Congress should refuse to allow federal taxpayer dollars to subsidize state and local policies that encourage illegal immigration. To limit taxpayer-funded benefits to illegal aliens, FAIR advocates enacting the following measures:

- Support efforts to eliminate sanctuary cities by withholding certain federal funds from localities that adopt such policies or practices
- Revise federal law to clarify that states may not, under any circumstances, offer in-state tuition to illegal aliens. Deny certain federal funds to states that pass such measures in violation of federal law
- To help lawmakers better understand the impact of illegal immigration, require schools and hospitals to collect non-identifiable data regarding the immigration status of students and patients. Deny certain federal funds to institutions that do not comply
- Require employers to reimburse states and local governments for education, healthcare, and other services used by legal temporary workers
- Oppose “pathways to citizenship” or other forms of amnesty for illegal aliens

### **National Security Reform**

The undetected presence in the U.S. of the 19 foreign nationals who carried out the 9/11 attacks demonstrated

that immigration law—the regulation of who enters our country, under what conditions, and for what length of time—is an integral aspect of national security policy. The events of 9/11 affirmed what FAIR had been warning for years: if the country is to remain secure, immigration and customs agents and U.S. law enforcement officials must be able to quickly and efficiently ascertain which aliens are in the country legally. The 112th Congress must work with enforcement agencies to develop and implement the infrastructure and technology that will further secure U.S. borders along with new methods for screening and admitting aliens to the country.

### ***Secure the Borders and Ports of Entry***

A fundamental step to solving our illegal immigration problem and ensuring our national security is to secure the borders and ports of entry. Although the number has varied over recent years, the Border Patrol still apprehends hundreds of thousands of illegal aliens every year at the borders and the problem of gang violence and drug and weapon trafficking continues to plague the Southern border in particular. Until sufficient resources, infrastructure, and manpower are placed at the border, these problems will persist. FAIR advocates the following border security measures:

- Appropriate sufficient funds to realize border security efforts
- Dispatch additional National Guard troops to assist in border security efforts
- Complete a double-layered fence on the Southern border
- Increase the number of border patrol agents along the border
- Provide resources to border states and local law enforcement to address border-related issues
- Increase manpower at all ports of entry to provide for thorough screening of all entrants
- Significantly increase detention space to prevent resumption of catch-and-release policies
- Oppose all efforts to implement the Cross Border Trucking program with Mexico

### ***Implement a Secure and Efficient Admission and Removal Process***

Despite advances in obtaining, checking, and retaining biometric and other information on arriving foreign travelers, the U.S. still does not have a comprehensive, functioning entry-exit system. Moreover, the process for admissions and removals is inefficient and contains many loopholes, including wide judicial discretion. To help create a secure admissions and removal system, FAIR advocates the following measures:

- Fully implement US-VISIT to provide for a comprehensive entry-exit system
- Prohibit the granting of immigration benefits until all background checks of applicants are completed to the satisfaction of DHS
- Repeal the Visa Waiver Program
- Require all immigrant visa applicants to go through complete background checks
- Deny visas to nationals of countries that deny repatriation of their citizens
- Streamline processes for immigration litigation
- Restrict temporary protected status (TPS) to aliens legally present in the U.S. when the event occurs that leads to the requested temporary protection
- Reform the TPS, asylum, and refugee programs to prohibit granting such status to gang members
- Authorize the detention of dangerous aliens
- Implement biometric screening for all aliens at all ports of entry

## Legal Immigration Reform

The population of the United States has dramatically increased over the past few decades, accompanied by rises in petroleum, food, and other commodity prices and shortages of natural resources such as clean air and water. This problem will only get worse as the [U.S. Census Bureau](#) projects that the United States will add another 128 million more people by 2050 if current population trends continue. This rapid population growth is integrally connected to our immigration policies; the [Pew Hispanic Center](#) estimates that 82 percent of U.S. population growth is due to immigration. Thus if Congress does not fundamentally change U.S. immigration policies, the U.S. will continue on this trajectory of unsustainable population growth.

These drastic population increases not only impact the environment, they affect the quality of life for every American and raise serious concerns about the capacity of our school systems, physical infrastructure, state budgets, and health care system. Fortunately, it is not too late to curb population growth and prevent irreparable damage. To help stem population growth, the 112<sup>th</sup> Congress should limit guest worker programs, end the chain migration policies that give preferential treatment to extended family members, and categorically oppose efforts to give amnesty to illegal aliens.

### *Cut the Numbers*

The United States currently admits over one million legal permanent residents (green card holders) every year—the equivalent of annually adding a city the size of Detroit ([Department of Homeland Security, April 2010](#)). FAIR believes that a sustainable level of immigration is no more than 300,000 annually. This is more in line with the recommendations of the U.S. Commission on Immigration Reform, established during the Clinton Administration, which recommended lowering the admission of legal permanent residents to around 500,000 annually. To cut the numbers while allowing for the maintenance of nuclear families, FAIR advocates the following measures:

- Eliminate birthright citizenship legislatively
- Repeal the visa lottery
- Grant immigrant visas to skilled workers over unskilled workers
- Restrict family preference visas to nuclear family members (spouse and minor children)
- Oppose any efforts to reauthorize INA § 245(i)

### *Stop Legal Immigration Fraud*

The United States has a rich history of immigration that is unfortunately undermined by high levels of fraud within the refugee, asylum, and visa systems. The U.S. must maintain the credibility of its immigration laws by exercising greater scrutiny over the admissions process and ensuring that the asylum program serves the population for which it was intended. To restore integrity to the immigration system, FAIR recommends the following measures:

- Impose stricter standards for the admission of guest workers
- Reform or eliminate immigration programs with notably high rates of fraud (i.e. TPS and asylum, H-1B visas, religious worker visas, etc.)



### *Protect the American Worker*

U.S. immigration laws already contain a multitude of guest worker programs, including programs for unskilled workers, agricultural workers, high-tech workers, and nurses. Given the current economic situation, the 112<sup>th</sup> Congress should take special care to protect the American worker by restricting the amount of cheap foreign labor that is allowed to compete with U.S. workers. To ensure a legal workforce, FAIR advocates the following measures:

- Require that U.S. workers be given absolute preference in hiring and during lay-offs
- Oppose all efforts to expand guest worker programs
- Reform existing guest worker programs by eliminating fraud, cutting the numbers to a level that reflects the true need for labor, and opposing new programs

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