



FAIR FEDERATION FOR AMERICAN IMMIGRATION REFORM

Immigration REPORT

APRIL 2011

Inside . . .

A Message from
John Philip Sousa, IV
PAGE 2

DHS Launches
E-Verify Self-Check
PAGE 3

Across the Country
PAGE 4

"Birth Tourism"
Industry Flourishes
PAGE 5

FAIR Op-Ed:
Why Administration Won't
Challenge Utah's
Unconstitutional Laws
PAGE 6

Napolitano Claims Southern Border Is More Secure than Ever

Department of Homeland Security (DHS) Secretary Janet Napolitano used a trip to El Paso, Texas, as an opportunity to claim that the border with Mexico is "better now than it ever has been." Napolitano's assertion is just the latest effort on the part of the Obama administration to convince the American people that they take border enforcement seriously. Convincing the public that they are enforcing our immigration laws — in spite of all evidence to the contrary — is seen as a necessary pre-

condition for promoting the administration's political objective of a sweeping illegal alien amnesty.

Secretary Napolitano cited a decline in the number of border apprehensions as evidence that her department's efforts are discouraging people from crossing illegally. She also pointed to statistics that indicate that violent crime rates along the Southwest border have remained flat or decreased in recent years as evidence that the border does not pose a security risk. However, DHS's own

CONTINUED on page 3

President Obama Still Pushing Amnesty for Illegal Aliens

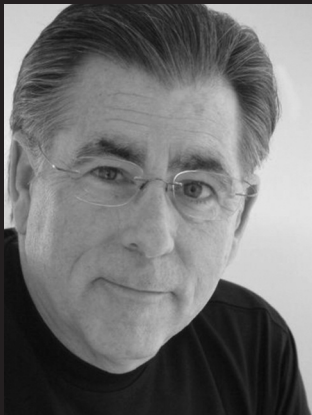
The American people have made it exceedingly clear that they oppose granting amnesty to illegal aliens. The new leadership in the House of Representatives has indicated that they are unlikely to take up any amnesty bills during this session of Congress. But President Obama still is not giving up on the idea of granting amnesty to some or all of the illegal aliens in the country.

Speaking at a Washington, D.C. multicultural high school in March, the president said he was still hopeful that Congress would pass some version of immigration reform that includes

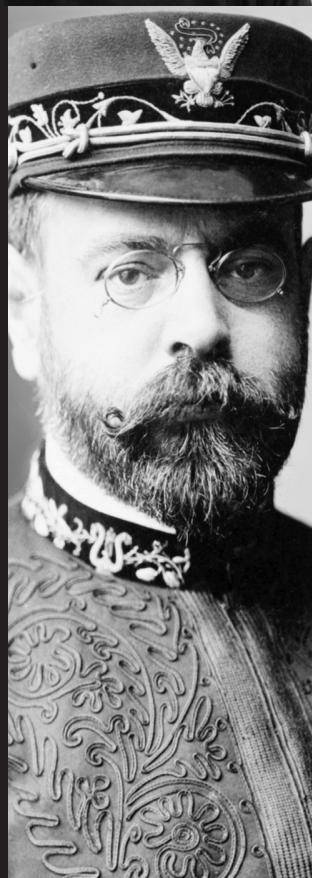
AMNESTY FOR ILLEGAL ALIENS
IS NOT A CIVIL RIGHT. IT IS AN
UNJUSTIFIED REWARD
FOR THOSE WHO ACTED
ILLEGALLY.

CONTINUED on page 7

John Philip Sousa, IV



John Philip Sousa



An Open Letter from John Philip Sousa, IV

MEMBER, FAIR NATIONAL BOARD OF ADVISORS

Dear Friend of FAIR,

I am honored to serve on the National Board of Advisors for FAIR. It is a privilege for me to be associated with this outstanding organization that is dedicated solely to the betterment of our great nation.

My great grandfather wrote *The Stars and Stripes Forever*—the march that President Ronald Reagan signed into law as the National March of The United States of America. It is a march whose very title is being challenged each and every day by forces that want to see our country radically changed by open borders, and by bigger and more intrusive government.

As you very well know, FAIR toils every day trying to help our legislative leaders understand the ramifications of unchecked immigration; the enormous burden illegal immigration and excessive legal immigration has on our economy, on our ability to compete in a world economy that grows more competitive every day.

FAIR is at the forefront of public education on the subject of immigration in the United States. Whenever and wherever there is an opportunity to be in front of the public to insure a better understanding and critical thinking about the immigration issues, FAIR is there.

All of this activity comes with a large price tag: the extensive research, the legal folks to help write and challenge laws, the people to sit down with federal, state and local leadership to help promote a better understanding of the costs and consequences of bad immigration policies, and the media people to help get the message out.

That is why I am asking each of you to donate what you can to help us promote a United States of America friendly immigration policy. **Please write a check or use your credit card to donate to FAIR today...** *The Stars and Stripes Forever* depends on all of us to pitch in.

Thank you for your support.

Sincerely,

John Philip Sousa, IV

P.S. If you donate today, your gift to the FAIR fight will be **matched** thanks to the extraordinary generosity of a long-time FAIR donor. Please see the panel on page 8 for details on donating to FAIR and information on matching gifts.

Immigration REPORT

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NAPOLITANO'S BORDER CLAIMS *continued*

reports indicate that less than half of the 2,000-mile U.S.-Mexico border is under “operational control,” and virtually none of the Canadian border or our coastlines.

Napolitano's claim that the border is more secure than ever drew a sharp rebuke from Cochise County Sheriff Larry Dever. Dever, whose county straddles the border, stated flatly, “I've been here for 60 years, and I'm telling you that's not true.” The sheriff also charges that DHS is cooking the books on border apprehensions by ordering the Border Patrol to arrest fewer illegal entrants.

Dever's skepticism is shared by other experts. Mark Hanna, CEO of a Phoenix-based technology integration and security company agrees that DHS's methodology for measuring border security is flawed. “It is a very dangerous condition for the secretary of Homeland Security to be using incomplete data to form such a conclusion, and then repeatedly announce these conclusions as fact,” Hanna said.

FAIR has also repeatedly questioned administration claims about all aspects of immigration enforcement. In assessing Secretary Napolitano's claim it is important to take several other factors into consideration. First, the border has never been effectively controlled, so “better now than it ever has been” is a very relative measurement of border security. The mandate of DHS

is to implement border security measures that are commensurate with the threats faced by our nation. DHS's own admission that much of the border remains beyond its control indicates that they are falling well short of this goal. The gaping holes that remain in our border security capability are confirmed by a new report from the Government Accountability Office released in late March.

Second, the threat posed by the ongoing lack of border security is not limited to the border region. The border region is a gateway to the rest of the United States that is exploited by foreign criminals and potential terrorists. Examples of criminal activity by illegal aliens (many of whom entered illegally across the Southwest border) can be documented in all parts of the country. Illegal aliens often move beyond the immediate vicinity of the border because the Border Patrol's authority to stop and detain people does not extend beyond the border region.

While making misleading claims about their efforts to secure the border, the Obama administration's policies actually encourage people to attempt to enter the United States illegally. The virtual cessation of meaningful worksite enforcement, unilateral dismissing of deportation cases, and promotion of amnesty for illegal aliens all work against border security. ■

DHS Launches E-Verify “Self-Check”

Advocates for illegal aliens have long argued against making the use of E-Verify mandatory for employers in the United States on the grounds that a tiny percentage of eligible workers are incorrectly identified as being ineligible to work. The Department of Homeland Security (DHS) has now launched a new program that will undermine even that transparent argument against the expansion of E-Verify. In March, DHS unveiled an online self-check program that allows individuals to verify their own work authorization status. The program also provides a mechanism for people to correct any inaccuracies in DHS's or the Social Security Administration's databases before applying for employment.

Some 250,000 employers now use E-Verify to ensure that the people they hire are legally entitled to hold a job in the United States. All federal government contractors are required to use E-Verify, as are contractors in a growing number of states. According to independent audits, E-Verify has a better than 99 percent accuracy rate and enjoys high customer satisfaction ratings from companies that use it. In a small number of cases, E-

Verify fails to confirm eligible workers on the first try. In most cases these inaccuracies are quickly rectified and the individual is approved for employment.

Initially, the E-Verify self-check will be available to workers in Arizona, Colorado, Idaho, Mississippi, Virginia and the District of Columbia. DHS hopes to make it available nationwide within a year. The self-check system allows people to correct any misinformation in their files before applying for a job.

FAIR has looked closely at the design for the new system because of concern that it could be used by illegal aliens to test whether counterfeit documents would get past the E-Verify system. We found that safeguards in the system offer reasonable protection against abuse.

E-Verify has a proven track record of protecting job opportunities for American workers. The implementation of an online self-check mechanism will further protect the interests of legal U.S. workers by virtually eliminating the possibility that incorrect information in government databases will prevent eligible workers from being hired. ■



ACROSS THE COUNTRY

Oklahoma

By an overwhelming 85-7 vote, the Oklahoma House approved an Arizona-style bill to help the state deal with illegal immigration. The bill includes a provision that allows Oklahoma law enforcement to inquire about immigration status when they reasonably suspect an individual they have lawfully stopped is an illegal alien. Other provisions call for the seizure of property when it is used to harbor or transport illegal aliens. The bill was authored by Rep. George Faught. Another Oklahoma legislator, Rep. Randy Terrill who has sponsored other immigration enforcement bills, criticized the failure of this legislation, at the behest of business interests, to target employers who hire illegal aliens. The legislation now heads to the Oklahoma Senate.

Georgia

Legislation aimed at deterring illegal aliens from settling in Georgia took some significant steps forward in the state legislature in March. The Georgia House of Representatives approved HB 87, which is modeled after Arizona's SB 1070 law. Under HB 87 state residents would have the right to sue state and local governments that fail to enforce laws targeting illegal immigration. The bill also imposes penalties against people who "willfully and fraudulently" use fake identity documents in order to seek work in Georgia. People who, while committing another crime, harbor or transport illegal aliens are also subject to penalties under HB 87. The Georgia Senate approved its own bill to deter illegal immigration, SB 40. Legislators from both houses hope to work out the differences between the two bills and send the measure to Gov. Nathan Deal for his signature.

Kansas

A former employee of the Kansas Department of Social and Rehabilitation Services charged that employees in her department were required to overlook the use of fraudulent documents by illegal aliens to obtain state benefits. The former state worker, Lana Reed, leveled that charge in testimony before the State House Judiciary Committee. The committee is considering a bill that requires applicants for state benefits to provide "affirmative proof" of their citizenship and requires state and local agencies to check their status and verify their lawful presence with the Department of Homeland Security. The bill is sponsored by Judiciary Committee Chairman Lance Kinzer who drafted it with the assistance of Kansas Secretary of State Kris Kobach. Reed stated, "There is so much fraud in my caseload, it's indescribable." Kansas faces a projected state budget shortfall of \$492 million.

Tennessee

The State and Local Government Subcommittee of the Tennessee House approved a bill that would mandate the use of E-Verify by Tennessee employers. HB 1378, sponsored by Rep. Joe Carr, is being opposed vigorously by business interests in the state. After attempting to accommodate the concerns of business groups, the subcommittee chairman accused business lobbyists of "foot-dragging" and warned that "we're going to pass these bills out if [business lobbyists] don't get serious." Two other bills were also approved by the subcommittee. HB 1379 requires state and local government workers to verify the immigration status of people seeking state benefits. HB 1380 requires Tennessee law enforcement to check the immigration status of people lawfully stopped for traffic violations or misdemeanors if the officer has reasonable suspicion the individual is an illegal alien.

“Birth Tourism” Reignites Debate about Birthright Citizenship

The discovery of a makeshift maternity ward in a Los Angeles suburb in March has sparked new interest in the issue of whether the United States should continue to grant automatic citizenship to any child born on U.S. soil. Police and building inspectors in San Gabriel, California, discovered a row of houses that were being used to deliver babies to “birth tourists,” primarily from China.

Under the current interpretation of the 14th Amendment, any child born on U.S. soil (with the exception of the offspring of foreign diplomats) is automatically recognized as an American citizen. As a result, an estimated 350,000 children (about the population of St. Louis, Missouri) are born each year to illegal aliens and other non-U.S. residents and are recognized as citizens.

According to the *New York Times* (March 29), the San Gabriel “maternity ward” catered to birth tourists from China who arrived in the United States in later stages of pregnancy with the express intent of giving birth in this country so that their kids would be U.S. citizens. In almost all cases, the new mothers and their citizen babies returned to China. As a U.S. citizen, the child will have the option to return to the United States for school and to work and, as an adult, will be able to sponsor other family members who want to settle here.

The birth tourism facility in San Gabriel and others like it around the country, are run as for-profit businesses by entrepreneurs who have discovered a lucrative opportunity in the misapplica-

tion of our Constitution. FAIR, and many constitutional scholars, have long contended that the language of the 14th Amendment does not require that all U.S.-born children be recognized as citizens.

The amendment states that “All persons born or naturalized in the United States and *subject to the jurisdiction thereof* are citizens of the

tainly people who are residents of other nations and who arrive here solely to give birth are not subject to the jurisdiction of the United States.

Even staunch advocates of illegal immigration who support recognizing the children of illegal aliens as citizens have a hard time defending birth tourism. Angela Kelley of the Center for American Progress admitted that birth



United States and of the State wherein they reside.” (Emphasis added.) While all people who are physically present in the United States must obey our laws, “jurisdiction” has a deeper legal meaning. The framers of the amendment, which was ratified in 1868, clearly defined what “subject to the jurisdiction thereof” meant. In debates on the floor of Congress, the authors of the amendment argued that only people who owe no allegiances to foreign governments can be considered subject to the jurisdiction of the United States.

Illegal aliens — people who are citizens of other nations and whose presence is not legally recognized by this country — would seem to not meet the framer’s definition of being subject to the jurisdiction of this country. Cer-

tourism “deserves a lot more study and a lot more attention,” although she stopped short of saying that the children of birth tourists should not be recognized as citizens.

The flagrant exploitation of the current interpretation of the 14th Amendment by foreign nationals seeking U.S. citizenship for their kids and by businesses who are mining it for profit have caught the public’s and the media’s attention. FAIR has supported legislative efforts at the federal and state level to apply the 14th Amendment as the framers intended. The publicity generated by the discovery of a maternity ward catering to birth tourists illustrates the urgent need to correct a practice that was neither envisioned nor intended by the people who drafted the 14th Amendment. ■

NEWS

OPINION EDITORIAL

STEIN: Obama punts as Utah grants amnesty to illegals*President tackles Arizona for upholding federal immigration law*

by Dan Stein

Published in *The Washington Times* – March 30, 2011

Last April, when Gov. Jan Brewer signed legislation authorizing Arizona to enforce federal immigration laws, President Obama stepped before the television cameras in the Rose Garden and threatened to take action to prevent the law from taking effect. Within weeks, his Justice Department filed suit against Arizona on the grounds that S.B. 1070 preempted the federal government's exclusive authority over immigration policy.

In contrast to Arizona's effort to enforce immigration laws passed by Congress, the Utah legislature enacted legislation in March that creates a completely separate immigration policy for Utah. One of the bills signed by Gov. Gary Herbert would grant two-year work permits to illegal aliens who reside in Utah, provided they have no criminal records. Because federal law expressly forbids illegal aliens from working anywhere in the United States – including Utah – the law gives the governor until 2013 to negotiate a waiver with the federal government. Even if a waiver is not issued, Utah would begin issuing work permits to illegal aliens beginning in 2013.

The 1986 federal law prohibiting the employment of illegal aliens does not include provisions for waivers – a point that was noted by Utah's own legislative attorneys. Thus, the executive branch has no authority to negotiate, much less issue, a waiver that would allow Utah to turn illegal aliens into legal guest workers. To do so would require the Obama administration to invalidate unilaterally a federal statute.

A second piece of legislation signed by Mr. Herbert grants Utahans the right to sponsor up to two foreign individuals, or one entire family, to live in Utah. Utahans, like other Americans, already enjoy the right to sponsor immigrants to the United States provided that they fall within the parameters and quotas established under federal law. Thus, any immigrant intending to settle in Utah must first be granted a visa by the federal government, as states lack any legal authority to admit immigrants.

To date, the only reaction from the Department of Justice to Utah's blatant usurpation of the federal government's exclusive authority over the power to regulate immigration has been a vague statement that they are "monitoring" the situation. That tepid response speaks volumes about the administration's willingness to subvert the Constitution to achieve political ends. Arizona's effort to enforce immigration laws passed by Congress follows a long line of legal precedent that clearly establishes the right of state and local governments to assist in the enforcement of federal immigration laws. Utah, on the other hand, is flagrantly disregarding the federal government's constitutional authority over immigration policy.

The administration clearly supports Utah's objective of granting legal status to illegal aliens (and presumably the right of states to admit new immigrants) and is choosing to do nothing to defend the Constitution. The administration obviously opposes the enforcement of laws against illegal aliens, except in very limited circumstances, and

“The administration that sued Arizona for trying to uphold federal immigration law, must now take action against Utah for *defying* federal immigration law.

moved decisively to prevent Arizona from enforcing them. In fact, in seeking an injunction against S.B. 1070, the administration argued explicitly that it was defending its constitutional authority not to enforce immigration laws.

The administration's failure to sue Utah could trigger a constitutional confrontation over the separation of powers. The Constitution vests the legislative branch with exclusive authority to make immigration laws. The role of the executive branch is to carry out the laws enacted by Congress (whether the administration in office likes those laws or not). Waiving a core provision of U.S. immigration law – the prohibition against the employment of illegal aliens – would clearly exceed any reasonable discretion that the Constitution affords the president in carrying out the law.

As recently as his State of the Union address, President Obama indicated that he will keep trying to gain amnesty for illegal aliens. In the meantime, however, he has an unambiguous responsibility to “preserve, protect and defend the Constitution of the United States,” even if he might approve of the political objective for which the Constitution is being subverted.

Utah's new laws present a clear challenge to the federal government's exclusive constitutional power to make immigration policy. It is time for the Justice Department to stop “monitoring” the situation in Utah and assert the federal government's authority over immigration policy. The administration that sued Arizona for trying to uphold federal immigration law, must now take action against Utah for defying federal immigration law.

ILLEGAL IMMIGRANT AMNESTY *continued*

amnesty for illegal aliens. The president urged amnesty activists not to give up their effort, particularly younger illegal aliens who could gain amnesty under the DREAM Act.

In promoting his amnesty agenda, President Obama invoked false comparisons to the Civil Rights Movement of the 1950s and 1960s. The president reminded his audience that eradicating official discrimination against black Americans happened in “fits and starts.” Mr. Obama went on to equate the effort to gain amnesty for illegal aliens with effort to secure full rights for black citizens. “If you think of the history of the civil rights struggle, though even after *Brown v. Board of Education*, there were still struggles to ensure that ultimately everybody was treated with dignity and respect,” he said.

Such analogies are not only false, but



offensive to many black Americans and others who were part of the civil rights effort. Illegal aliens are people who knowingly violated laws that are designed to protect the interests and security of the American people. As such, amnesty for illegal aliens is not a civil right; it is an unjustified reward for those who acted illegally. While it is important to treat all human beings with respect and dignity, America has no moral obligation to reward people who came to this country illegally.

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Cornerstone Contributors are the building blocks of FAIR's citizen-supported foundation. Time and time again, through their continuing support they have become key officers in our battle to end the destructive mass immigration that is debilitating our great nation.

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