



FAIR FEDERATION FOR AMERICAN IMMIGRATION REFORM

Immigration REPORT

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Exposed: Congress Grills Justice Department for NOT Cracking Down on Sanctuary Cities

When the chairman of the subcommittee that controls your department's budget sends you a strongly worded letter, you kind of have to pay attention. That's the situation Attorney General Loretta Lynch found herself in on February 1 when she received a letter from Rep. John Culberson (R-Texas), chairman of the House Appropriations Subcommittee on Commerce, Justice, Science and Related Agencies. In the letter Cul-

berson stated clearly that he "expects" her to take action against jurisdictions that maintain policies that shield illegal aliens or impede federal immigration law enforcement. Among those expectations would be denying these jurisdictions certain federal grants.

Neither Attorney General Lynch, nor her boss, President Obama, wants to crack down on any sanctuary jurisdiction. But neither could they simply ignore a powerful subcommittee chair-

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FAIR's Legal Affiliate Files Friend of the Court Brief for the Supreme Court Executive Amnesty Case

On April 18, the Supreme Court will hear oral arguments in the case known as *United States v. Texas*. The Obama administration is asking the high court to lift a lower court's injunction blocking implementation of two executive amnesty policies announced by the president in November 2014. Deferred Action for Parents of

Far from being an exercise of reasonable executive discretion, the president's proposed actions effectively nullify much of U.S. immigration law.



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SANCTUARY NON-ENFORCEMENT *continued*

man. What they did instead was provide a carefully worded response that sounded as though the administration was prepared to act on the chairman's demands.

That effort seemed to work initially. The media and even members of Congress who are normally skeptical of the administration's immigration enforcement claims were taken in by the letter released just moments before Lynch's testimony before Culberson's subcommittee on February 24.

The letter, written by Assistant Attorney General Peter Kadzik, agreed that sanctuary jurisdictions pose a threat to public safety and violate federal statutes. Further, the letter appeared to agree that the Department of Justice (DOJ) would deny certain funds to sanctuary jurisdictions. However, after careful analysis of Kadzik's letter, FAIR's Government Relations department found gaping loopholes in the letter that almost guarantee that the administration will take no action

against sanctuary jurisdictions. In reality, the letter suggests that the administration will continue to enforce its own policy priorities (which is to deport as few illegal aliens as possible), and will give a free pass even to jurisdictions that turn criminal aliens back onto the streets.

Among the many loopholes identified by FAIR, the letter affirms that DOJ "can potentially seek criminal or civil enforcement options against" entities that impede immigration enforcement. "Can potentially seek" is very different from "shall seek criminal and civil enforcement options."

The letter promises that DOJ is "actively considering ways in which we may most effectively carry out

our public safety mission," a clear reference to the administration's unilateral enforcement "priorities," which is very different from a commitment to enforce the law as written by Congress.

DOJ also leaves sanctuary jurisdictions a convenient way of getting around the statutory requirement that they share pertinent information on illegal aliens with the federal government by simply not collecting that information in the first place.

With the FY 2017 budget process underway, Culberson's subcommittee will have the opportunity to use Congress's power of the purse to ensure that DOJ actually does take steps to rein-in sanctuary policies that openly flout federal law. ■

Universities Collude With Obama Administration to Make DACA an Actual "Pathway to Citizenship"

When President Obama unveiled his Deferred Action for Childhood Arrivals (DACA) program in 2012, he categorically denied that the program was an amnesty or that it would put recipients on a pathway to citizenship, and that it only conferred temporary legal status. He repeatedly asserted that only Congress has the power to do those things. (Of course, he had previously claimed that he did not have the authority to grant blanket deferred action.)

Turns out there are some loopholes in the president's assertions that DACA only provides temporary legal status, and that beneficiaries have no pathway to citizenship. With the help of some universities, those loopholes are now being exploited. Those loopholes entail study abroad programs run by the universities, and "advance parole," a power the Executive Branch is supposed to exercise only on a very limited case-by-case basis to allow

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U.S. v. Texas continued

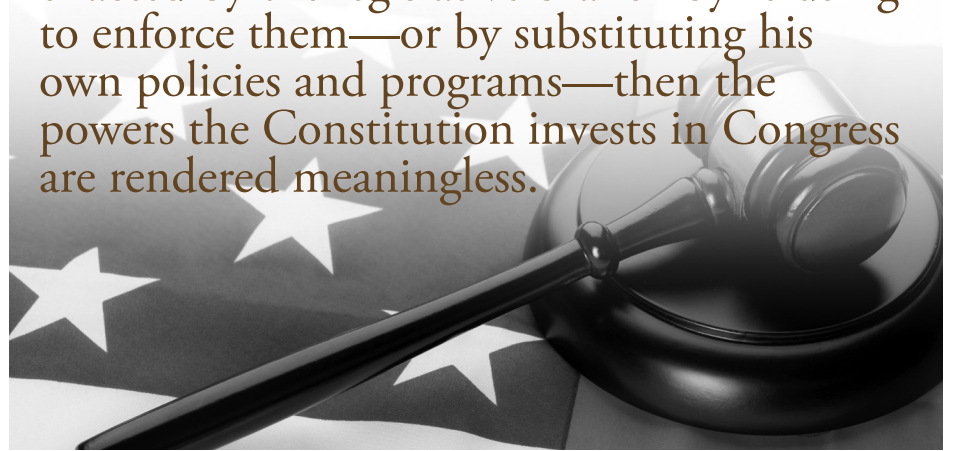
Americans (DAPA) and an expanded version of the president's 2012 amnesty program, Deferred Action for Childhood Arrivals (DACA), could grant temporary legal status and work authorization to about 4.7 million illegal aliens.

These two new executive amnesty programs were the subject of a lawsuit filed by 26 states, led by Texas. In February 2015, Federal District Court Judge Andrew Hanen issued a temporary injunction, which was subsequently upheld by the 5th Circuit Court of Appeals. Judge Hanen found that the states had legal standing to challenge the administration's actions and that they were likely to win on the merits.

At each step of the case's journey through the judicial system, FAIR—through our legal affiliate IRLI—has filed a detailed amicus brief supporting the legal challenge brought by the 26 states. Once again, now that the case has reached the Supreme Court, FAIR has filed a brief presenting legal arguments for why the court should declare the president's unlegislated amnesty programs unconstitutional.

FAIR's brief rebuts the administration's contention that its amnesty programs represent a prudent exercise of executive discretion in carrying out laws enacted by Congress. Far from being an exercise of reasonable executive discretion, the president's proposed actions effectively nullify much of U.S. immigration law. Between 1980 and 2005, Congress acted repeatedly to restrain, limit, or roll back the extra-statutory authority of the president and the executive branch

If a president has the power to nullify laws enacted by the legislative branch by refusing to enforce them—or by substituting his own policies and programs—then the powers the Constitution invests in Congress are rendered meaningless.



to categorically grant relief from the nation's laws. Every congressional legislative act that addressed the question of agency prosecutorial discretion since 1952 has either rolled back or prohibited the exercise of discretion, replaced extra-statutory discretion with statutory standards for relief, or enacted specific legalization or amnesty procedures.

The brief cites numerous precedent setting cases in which the court clearly affirmed Congress's plenary authority to make immigration laws and narrow limits on the use of executive discretion in carrying out immigration policy.

Ever since President Obama introduced his first version of DACA in 2012 (after claiming publicly on 22 occasions that he did not have the constitutional authority to do so), FAIR has also argued that the consequences of these actions extend far beyond immigration policy. Rather, what is also at stake is the cornerstone of our constitutional form of government: The separation-of-powers doctrine, which was fundamental to the framers' clear intent to avoid consolidating

vast power in the hands of a single individual, even one elected by the people. If a president has the power to nullify laws enacted by the legislative branch by simply refusing to enforce them or, as President Obama is attempting to do, by substituting his own policies and programs in their place, then the powers the Constitution invests in Congress are rendered meaningless.

The outcome of this case has been complicated by the unexpected death of Justice Antonin Scalia in February. In previous immigration cases that have come before the court, Scalia was vociferous in his assertions that the administration has been overstepping its authority on immigration. In an ideologically divided court, his absence could result in a 4-4 tie. In that event, the injunction issued by the lower court would stand, but it would fall short of a precedent-setting decision making it clear what the limits of executive authority are in the area of immigration.

A decision is expected to be handed down by the Supreme Court in late June.

Illegal Aliens Sue to Get Oregon Driver's Licenses

A group of illegal aliens is suing Gov. Kate Brown and several state agencies claiming their constitutional rights were violated by Oregon voters who overturned a state law that would have granted them driver's licenses.

In 2013, the Oregon Legislature approved a measure to grant driver's licenses to illegal aliens. The bill was signed into law by Gov. John Kitzhaber (who was subsequently forced to resign from office in disgrace). But the Oregon Legislature and Gov. Kitzhaber failed to check with the people of Oregon. Before the law went into effect, a citizens' group, Oregonians for Immigration Reform (OFIR) collected enough signatures to put the issue before Oregon voters in November 2014. The voters said no—resoundingly. Measure 88 was approved by the voters by an overwhelming 66 percent of the state's voters.

That should have been enough to put the matter to rest. But it hasn't. Two illegal alien rights groups, Familias En Accion and Los Ninos Cuentan, along with five illegal aliens, have gone to federal court claiming that the voters of Oregon violated their constitutional rights, under the 14th Amendment, when they approved Measure



88. The basis of their claim is that the 14th Amendment protects politically unpopular minority groups from being targeted by state action and that this group could encompass illegal aliens.

Thus to summarize: A group of people who are violating federal law are going to federal court, claiming that they are being politically targeted because illegal aliens are an unpopular minority group, to demand that the will of 66 percent of Oregon voters be reversed.

In addition, the illegal alien coalition is attempting to block OFIR, which collected the signatures to put Measure 88 on the ballot, from intervening on behalf

CONTINUED ON NEXT PAGE

"PATHWAY TO CITIZENSHIP" *continued*

otherwise inadmissible aliens to enter the U.S. legally for humanitarian purposes.

Universities are encouraging students with DACA status to participate in study abroad programs. These students do not have U.S. passports and, under federal law, they could be barred from reentering the U.S. for up to ten years based on having lived in the country illegally. To get around this problem, the DACA students are being encouraged to apply for advance parole, which allows them to leave the country with a pre-arranged promise that they will be paroled back

into the country when they return.

When they come back as parolees, rather than DACA recipients, they are well on their way toward permanent amnesty and citizenship. Paroled aliens who are immediate relatives of U.S. citizens are generally eligible to apply for a green card and, eventually, citizenship.

Thus far, about 6,400 DACA recipients have requested advance parole, and 88 percent of those requests have been granted. Moreover, if the injunctions blocking the president's 2014 amnesty programs are lifted by the Supreme Court later this year, the administration

could grant complete amnesty and citizenship to millions of illegal aliens by rubberstamping advance parole requests.

House Judiciary Committee Chairman Bob Goodlatte (R-Va.) warned about the potential for such abuse of advance parole in 2015. With the help of some compliant public universities, potentially hundreds of thousands of DACA beneficiaries may qualify for taxpayer subsidized study abroad programs with a pathway to citizenship laid out for them when they return.



Across the Country

Georgia In the absence of any meaningful federal action to rein in illegal sanctuary policies, Georgia joins a growing list of states that are making an effort to outlaw them. On February 26, the Georgia Senate passed Senate Bill 269, which conditions the receipt of state funding on local governments certifying to the state that they are in compliance with an existing state law forbidding sanctuary policies. SB 269 also requires local jurisdictions to certify that they are complying with state laws requiring the verification of work authorization of new hires using E-Verify and the confirmation of eligibility for public benefits with the SAVE system. The bill was approved 49-2 in the Senate and awaits action in the Georgia House.

The Georgia Senate also took action on February 29 to stop illegal aliens granted deferred action under President Obama's executive amnesty from receiving standard driver's licenses. Instead, Senate Bill 6 requires deferred action recipients to receive "driving safety cards" or "special identification cards" which indicate that the holder does not have lawful status in the U.S. SB 6 was approved 37-17 and also awaits action in the House.

New Mexico And then there was one. On March 8, Gov. Susana Martinez signed a bill ending New Mexico's practice of issuing full driver's licenses to illegal aliens. Washington now remains the only state where illegal aliens can obtain the same driver's licenses as legal residents. The bill signed by Gov. Martinez is less than ideal. It creates a two-tiered licensing system that allows illegal aliens to obtain driving privilege cards, but which cannot be used for identification purposes. Driving is a privilege, not a right, and FAIR has consistently opposed driving privilege cards for illegal aliens. These documents make it easier for illegal aliens to live and work illegally in the U.S. Ironically, on the same day that Gov. Martinez signed the legislation, state officials announced the arrest of four illegal aliens attempting to use fraudulent documents to obtain New Mexico licenses.

Wisconsin Gov. Scott Walker's pro-enforcement stance on immigration lasted about as long as his bid for the Republican presidential nomination, which is to say, not very long at all. After the Wisconsin Assembly easily approved AB 450 legislation to outlaw sanctuary policies that shield criminal aliens, Walker went out of his way to see to it that the measure would die in the Republican controlled State Senate. In late February, Walker offered the self-fulfilling prediction that the anti-sanctuary legislation would not get taken up in the Senate, adding that he's "just fine with that."

ILLEGAL ALIEN DRIVERS IN OREGON *continued*

of Oregon voters. OFIR is being represented by the Immigration Reform Law Institute, FAIR's public interest legal affiliate. Unfortunately, the people of Oregon cannot rely on the state's attorney general, Ellen Rosenblum, to vigorously defend their interests. Rosenblum's office falsely charged that OFIR made derogatory statements about Hispanics in an effort to get out the vote in November 2014. In addition, the attorney general has attempted to undermine OFIR's efforts to gain voter approval for another ballot measure that would require that Oregon employers use E-Verify to protect the jobs of American workers.

FAIR and IRLI will continue to work with OFIR to beat back this effort by illegal aliens and their advocates to overturn the will of Oregon voters and undermine the democratic process.

Victory: E-Verify Stands Strong in Oregon After Sabotage Attempt

In 2014, Oregon voters soundly rebuffed the political establishment's efforts to give driver's licenses to illegal aliens. The same group that put Measure 88 on the 2014 ballot, Oregonians for Immigration Reform (OFIR), has collected enough signatures to put another voter initiative on the ballot in 2016.

This latest effort by OFIR, known as Initiative Petition 52 (IP 52), would require all Oregon businesses with five or more employees to use the federal E-Verify system to ensure that the workers they hire are legally eligible to work in the U.S. In an effort to sabotage this effort, the Oregon attorney general approved a biased and misleading description of IP 52 to appear on the ballot.

The straightforward description proposed by OFIR was that the initiative "Requires employers to verify new employees' authorization to work in the United States using E-Verify program." Instead, Attorney General Ellen Rosenblum's office certified the almost unintelligible description, "Imputes 'employment license' to employers; conditions 'license' on using specified federal program for employment authorization."

Represented by IRLI (FAIR's public interest legal affiliate), and Portland-based attorney Jill Gibson, OFIR challenged the attorney general's effort to sabotage the initiative. On March 3, the Oregon Supreme Court agreed that the ballot language certified by the attorney general obfuscates the true purpose and effect of IP 52. The court likewise found the questions that will be posed to voters and summary of the law to be defective and misleading. The court ordered the attorney general to re-draft the ballot language consistent with its decision.

This ruling by the state's highest court represents another significant victory by OFIR, an Oregon-based coalition of true immigration reformers. Thanks to their efforts, when Oregon voters go to the polls in November, they will decide on an accurately described effort to protect Oregon jobs for legal U.S. residents—apparently much to the dismay of the state's political leadership.

FAIR In Action... SHINING A LIGHT ON H-1B ABUSE

In our ongoing effort to protect skilled American workers from abuses of the H-1B guest worker program, FAIR has been running a national ad campaign highlighting the practices of Fortune 500 companies who replace American workers with H-1B workers—but not before requiring them to train their replacements. FAIR's public interest law affiliate, the Immigration Reform Law Institute (IRLI), has filed lawsuits on behalf of American workers who have lost their jobs as a result of these practices.

Our efforts have now received the attention of Congress. On February 25, the Senate Subcommittee on Immigration and the National Interest held a hearing entitled "The Impact of High-Skilled Immigration on U.S. Workers." The hearing included some of the workers featured in FAIR's ads and an attorney associated with IRLI.

Witnesses, including John Miano, of counsel to IRLI, explained how the loopholes in the H-1B law make it perfectly legal for companies to replace American workers with foreign H-1B workers. They pointed out how those loopholes (inserted by business interest lobbyists) not only allow employers to hire guest workers instead of American workers, they also allow them to **replace** U.S. workers with H-1Bs. The witnesses testified that H-1B workers are often preferred because they are tied to the employers who sponsor them and the statutory "prevailing wage" is lower than the free market wage an American worker could command.

Highlighting the abuse of guest worker programs was the testimony of Leo Perrero. Perrero—who was featured in FAIR's national ad—lost his job at Disney, but not before the added indignity of having to train his H-1B replacement as a condition of his severance package.

Disney is far from alone among major American companies that have engaged in this unethical, though legal, abuse of guest worker programs. The powerful business lobby continues to press for increased access to foreign guest workers and will undoubtedly fight any effort to close loopholes that allow them to bypass or displace American workers.

Get to know FAIR

HOW WE'RE MAKING A DIFFERENCE IN IMMIGRATION POLICY



Robert Law

DIRECTOR OF FEDERAL GOVERNMENT RELATIONS

Rob graduated from Catholic University School of Law and heads the three-person Federal Government Relations department, which works directly with Members of Congress to ensure that FAIR's voice is heard on Capitol Hill. His passion for the immigration issue began a decade ago when he learned that Bank of America worked to help illegal immigrants get mortgages. Outraged, he marched down to the local branch and closed his account. "The immigration issue touches every aspect of life," he said. "I am a rule of law person, so this complete disregard of our [immigration] laws doesn't sit right with me."

Stay informed.

FAIR's weekly Legislative Update explores every aspect of immigration legislation at the federal, state and local levels.

Visit **FAIRus.org** to sign up and receive timely legislative news and updates in your mailbox.

What is a typical day like for you?

The exciting thing about government relations is that no two days are alike. We work with relevant committees to keep amnesty out of legislation, amendments and regulations. We conduct legal analysis, build our base of connections and expand our network on the Hill. I got here just when the Gang of Eight bill started picking up steam, so my timing has been good.

How do you measure your impact?

Some of what we do is reactive, say fighting the 2013 Gang of Eight bill. We have been successful over the last three years stopping other bad legislation, though we can't keep the administration from acting unilaterally. This year we have also had some proactive success getting ahead of many issues, including ensuring that the National Defense Authorization Act has no amnesty provision for illegal aliens who serve in the military, defunding sanctuary cities and working with appropriations committees to get positive language in funding bills, like fully funding detention beds or implementing biometric entry and exit data at the borders. When I first got here, few people believed that we have a glut of tech workers and that the H1-B visa program takes jobs away from Americas. In the last six months, though, people are starting to realize that this is a ploy by the tech companies to bring in cheap foreign labor.

How can FAIR members make an impact on the Hill?

Be aware of the issues, get engaged in the legislative and political process and make your voice heard. Urge your members of Congress to support true immigration reforms. Make phone calls, send emails and above all, use social media. Posting on your legislator's Facebook and Twitter pages is the best way to let them know that you support true immigration reform principles that benefit the American people and serve the national interest and you expect them to do the same.

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