



FAIR FEDERATION FOR AMERICAN IMMIGRATION REFORM

Immigration

REPORT

AUGUST 2011

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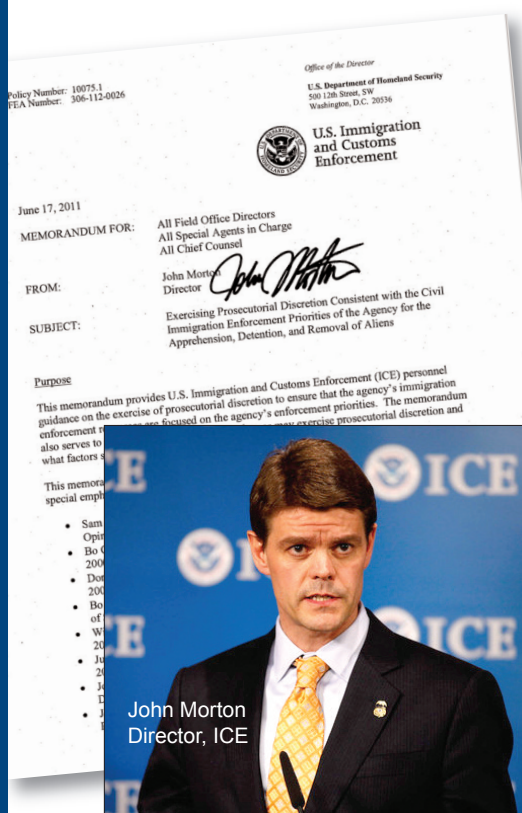
ICE Memo: Administrative Amnesty or just “Prosecutorial Discretion?”

Since taking office, the Obama administration has made it abundantly clear that it is not interested in enforcing immigration laws except against aliens who are violent criminals or potential terrorists. That de facto policy became **official** policy on June 17 in a memo circulated by John Morton, the Director of Immigration and Customs Enforcement (ICE).

In his six-page memo, Morton explicitly instructs ICE personnel to exercise broad “prosecutorial discretion” in enforcing immigration laws. Prosecutorial discretion is accurately defined in the memo as “the authority of an agency charged with enforcing a law to decide to what degree to enforce the law against a particular individual.” Under normal circumstances, law enforcement agencies and prosecutors are afforded reasonable discretion in prioritizing and determining when and how to enforce laws.

However, in the Morton memo, the director lays out entire categories of illegal aliens (as opposed to individuals) for whom ICE will simply choose not to enforce laws as written by Congress. Under the rubric of prosecutorial discretion, ICE personnel are instructed to not initiate cases against these categories of illegal aliens, or to dismiss cases that are already pending.

According to the memo, “ICE officers, agents and attorneys should consider all relevant factors, including, but not limited to” 19 specific categories of deportable aliens. Among the factors ICE personnel are instructed to consider are:



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Coming Soon to a Highway Near You: Mexican Trucks

In early July, Secretary of Transportation Ray LaHood quietly signed a cross-border trucking agreement that will grant Mexican trucks the right to transport goods anywhere in the United States. The agreement, which was signed in Mexico City without notice, implements a provision of NAFTA that has been delayed due to a host of concerns.

President Clinton, who signed NAFTA in 1994, refused to implement the trucking provision, citing concerns about highway safety. Mexican trucks generally do not meet the maintenance standards required of U.S. truckers. The Mexican government retaliated by slapping \$2.4 billion in tariffs on more than 90 U.S. products shipped to Mexico.

To address concerns about highway safety and the road-worthiness of Mexican trucks, the new Memorandum of Understanding (MOU) requires Mexican trucks to be equipped with on-board recorders to



ensure that they meet U.S. safety standards. The MOU calls for American taxpayers to pay for the on-board recorders, prompting an immediate response from members of Congress who oppose implementation of the agreement. Rep. Peter DeFazio (D-Ore.) argued that “it is outrageous that taxpayers are being told to foot the bill for the Mexican trucking industry to comply with American safety standards.”

Implementation of the agreement also threatens U.S. jobs. The Teamsters

Union, which represents American truckers, strongly condemned the agreement, arguing that it will cost many of the union’s members their jobs. In addition, Teamsters President Jim Hoffa suggested that the Department of Transportation acted without the authority of Congress in committing to taxpayer funding of the monitoring devices. Hoffa also noted that although the agreement provides reciprocal access to Mexican highways for American trucks, the guarantee is essentially moot given the raging violence in that coun-

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Immigration REPORT

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FAIR Immigration Report

(ISSN 1067-3337) is published 10 times a year by the Federation for American Immigration Reform a non-profit membership organization.

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House Bill Moves to Limit Prosecutorial Discretion

Responding to the Obama administration’s abuse of prosecutorial discretion, House Judiciary Committee Chairman Lamar Smith (R-Tex.) introduced legislation designed to prevent the administration from circumventing the immigration laws written by Congress by granting administrative forms of amnesty to entire classes of removable aliens. The Hinder the Administration’s Legalization Temptation Act (HALT) — H.R. 2497 — would suspend the administration’s ability to grant administrative amnesty to broad categories of illegal aliens by refusing to enforce laws against them. The bill was introduced on July 12.

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ICE Agents' Union Calls Morton Memo a "Law Enforcement Nightmare"

In a swift and pointed response to Immigration and Customs Enforcement (ICE) Director John Morton's memo on prosecutorial discretion, the National ICE Council, the union representing some 7,000 agents, officers and employees, charged that the agency's leaders are preventing them from doing their jobs. In June 2010, union members unanimously approved a resolution of "no confidence" in Morton and other political appointees who run ICE.

Union chief Chris Crane stated that the union and ICE agents have been "excluded...from the entire process of devel-

oping policies." In an obvious allusion to a round of immigration "stakeholder" meetings conducted by the White House throughout the spring, Crane noted that "ICE worked hand-in-hand with immigrants rights groups, but excluded its own officers." The meetings, held in April and May 2011 were limited to business and immigrant advocacy groups that share the administration's support for amnesty and vast expansion of immigration.

The National ICE Council disputed the assertion that they have any discretion at all in enforcing immigration laws. "Our officers are already under orders not

to make arrests or even talk to foreign nationals in most cases unless another agency has already arrested them; you won't find that written in any public ICE policy," states a June 23 press release. Failing to abide by ICE's hands-off policy "will result in the end of an agent's or officer's career." The release also asserts that the Morton memo is "just one of many new ICE policies in the queue aimed at stopping the enforcement of U.S. immigration laws."

The text of the scathing National ICE Council release can be found on their website: www.iceunion.org.

PROSECUTORIAL DISCRETION *continued*



WHILE NOT CONFERRING LEGAL STATUS ON ILLEGAL ALIENS, THE MORTON MEMO AMOUNTS TO AN ADMINISTRATIVE AMNESTY. NON-CRIMINAL ILLEGAL ALIENS WILL BE PERMITTED TO REMAIN AND WORK IN THIS COUNTRY WITHOUT FEAR OF REMOVAL WHILE THE OBAMA ADMINISTRATION AND ITS CONGRESSIONAL ALLIES CONTINUE TO PURSUE FORMAL AMNESTY LEGISLATION.

- The length of an individual's presence in the United States.
- Potential eligibility for the DREAM Act or other proposed amnesty programs, or other relief from deportation.
- Lack of a criminal record.
- Ties to the community.
- Relationship to a legal permanent resident or a U.S. citizen.
- Age, with particular consideration given to minors and the elderly.

The full text of the memo, including all 19 categories of aliens for whom prosecutorial discretion should be exercised, can be found on the ICE website, www.ice.gov.

While not conferring legal status on illegal aliens, as a formal legislative amnesty would, the Morton memo amounts to an administrative amnesty. Non-criminal illegal aliens will be permitted to remain and work in this country without fear of removal while the Obama administration and its

congressional allies continue to pursue formal amnesty legislation.

The Morton memo confirms the charges that FAIR has been making since early 2009 that the administration is refusing to carry out its responsibilities to enforce most immigration laws. In essence, the executive branch is now making U.S. immigration policy. Under the Constitution, Congress — the legislative branch of government — is vested with authority over immigration policy, while the role of the executive branch is to carry out and enforce those laws.

The memo also reinforces the need for state-based immigration enforcement policies — a strategy that FAIR has pursued in recent years. With the Obama administration's non-enforcement policy now firmly on record, state and local governments that want to discourage illegal immigration have no choice but to enact policies on their own.

ACROSS THE COUNTRY

AS FAIR PREDICTED AT THE START OF THE YEAR, 2011 HAS BEEN A BUSY ONE FOR STATE LEGISLATURES ATTEMPTING TO DISCOURAGE ILLEGAL IMMIGRATION. WHILE STATE LAWS HAVE BEEN CHALLENGED BY ILLEGAL ALIEN ADVOCACY GROUPS — TEMPORARILY PREVENTING THEM FROM TAKING EFFECT — THE OVERALL RESULTS ARE POSITIVE AND HAVE SET IN MOTION COURT REVIEW THAT WILL LIKELY RESULT IN THESE ISSUES BEING DECIDED BY THE U.S. SUPREME COURT. WITH MANY LEGISLATURES HAVING WRAPPED UP BUSINESS FOR THE YEAR, HERE IS A SYNOPSIS OF STATE LEGISLATION THAT WAS ENACTED DURING THE FIRST HALF OF 2011.

Alabama • Gov. Robert Bentley signed legislation that would give Alabama the most effective state policies to deter illegal immigration. The law requires police to inquire about immigration status during a lawful stop when they reasonably suspect an individual is an illegal alien, and to detain the individuals until they can provide adequate documentation. The law mandates the use of E-Verify for all employers and imposes penalties against businesses found to be employing illegal aliens. School districts would be required to inquire about immigration status while providing K-12 education as mandated by the U.S. Supreme Court. The law is scheduled to take effect on September 1, but faces legal challenges from illegal alien advocacy groups.

Georgia • Gov. Nathan Deal signed legislation that, like Alabama's, requires police to inquire about immigration status during a lawful stop and to detain suspected illegal aliens. It empowers the state to penalize businesses found to be employing illegal aliens. It also makes it a state crime to harbor or transport illegal aliens for the purpose of employment. In response to a lawsuit filed by illegal alien advocates, a federal judge blocked implementation of the provisions that require police to investigate immigration status and the provision pertaining to harboring and transporting illegal aliens. Other provisions went into effect on July 1.

Indiana • Gov. Mitch Daniels signed a bill that allows police to ask about immigration status during a lawful stop when they reasonably suspect that an individual is in the country illegally. The law also bans the use of foreign consular documents as valid identification. Those two provisions were blocked from taking effect by a federal judge. Other provisions, including requirements that employers use E-Verify to ensure that workers are eligible to be employed, went into effect on July 1.

Louisiana • Gov. Bobby Jindal signed two bills intended to ensure that businesses hire legal workers. The first bill requires that all businesses seeking state or local government contracts use the federal E-Verify system. A second piece of legislation requires all employers in the state to either use E-Verify, or maintain photo ID records on each employee as well as copies of documents that indicate they are authorized to work, such as a birth certificate or naturalization records.

North Carolina • Gov. Beverly Purdue signed legislation requiring all businesses with 25 or more employees to use E-Verify. About 40 percent of businesses in the state will be covered by the law over the next two years. Agricultural interests won an exemption for their workers hired for less than 90 days.

South Carolina • Gov. Nikki Haley signed legislation requiring businesses to use E-Verify beginning January 1. Businesses that are caught employing illegal aliens could face suspension or revocation of their business license. The law also requires police to check immigration status during a lawful stop if they reasonably suspect that an individual is an illegal alien.

Utah • Gov. Gary Herbert signed four immigration bills in March. One bill required Utah police to check immigration status during a legal stop if they reasonably suspect that an individual is an illegal alien. Illegal alien advocacy groups challenged the law in court and it was enjoined from taking effect. Two of the other three bills directly challenge federal authority to make immigration law. One would turn all illegal aliens in Utah into guest workers in 2013, even though federal law prohibits their employment. Another law would allow Utahans to sponsor immigrants, even though the state has no authority to admit people to the country. The latter two laws, though clearly unconstitutional, have yet to be challenged by the Obama administration.

Maryland Voters Put In-State Tuition Issue on the 2012 Ballot

In April, the Maryland Legislature and Gov. Martin O'Malley ignored the state's gaping budget shortfall and the will of the public when they enacted legislation that would grant in-state tuition subsidies to illegal aliens attending public colleges and universities in Maryland. By the end of June, voters across the state and across the political spectrum made it clear that the law would not go into effect until their voices were heard.

A grassroots coalition of activists collected 130,000 signatures on a petition to put the issue of in-state tuition for illegal aliens on the November 2012 ballot. Only about 56,000 signatures were needed to qualify the initiative for the ballot. The certification of the petition by the Maryland Board of Elections also has prevented the state from implementing the policy until after voters rule on the issue at the ballot box.

CASA de Maryland, a powerful ethnic advocacy lobby with close ties to Maryland elected officials, strongly promoted the in-state tuition bill. Maryland Comptroller Peter Franchot unabashedly admitted that, "[W]hen

Gustavo Torres [CASA de Maryland's director] calls, I generally get in my car and go over and ask him what he wants." In addition to some \$3 million a year in state funding for CASA, Torres demands millions more in tuition benefits for illegal aliens who want to attend Maryland colleges and universities. CASA de Maryland has also been the beneficiary of financial backing from leftist Venezuelan strongman, Hugo Chavez.

Placing the issue on the 2012 ballot without substantial financial assistance from outside sources is a testament to the commitment of immigration reform activists who collected 130,000 signatures in just two months. About 30 percent of the signatures collected were from registered Democrats — a positive sign for passage of the measure in a state where Democrats enjoy a significant advantage in voter registration.



MARYLAND DELEGATE KATHY AFZALI
SITS ATOP BOXES OF SIGNED PETITIONS

MEXICAN TRUCKING *continued*

try. Even if American truckers were willing to risk transporting goods across Mexico, it is doubtful that anyone would insure either their vehicles or their cargo.

FAIR shares the Teamsters concerns that still more Americans will lose jobs to foreign workers as a result of this agreement. In addition, FAIR raised concerns about border security and human smuggling. The existing volume of cross-border traffic already precludes adequate inspection of what is being transported across the border and throughout the country. Criminal organizations and international terrorists could easily

take advantage of the chaos and corruption in Mexico to smuggle contraband, illegal aliens, and potentially lethal weapons into the United States.

While Mexican truckers are already allowed access between 20 and 50 miles inland from ports of entry, that limitation means that any smuggling of contraband and illegal aliens to the interior of the country requires the complicity of U.S.-based criminals. Under the agreement signed by Secretary LaHood, Mexican trucks would be able to transport legitimate and illegitimate cargo **anywhere** in the U.S.

NEWS

OPINION EDITORIAL

It's Time to Recognize State Contributions to Enforcement

by Dan Stein • Published in *USA Today* – July 15, 2011

FAIR'S PRESIDENT DAN STEIN ARGUES THAT STATE LAWS AIMED AT CURBING ILLEGAL IMMIGRATION ARE NECESSARY AND EFFECTIVE.

Alabama is the latest state to adopt legislation to enforce state laws that mirror certain federal laws that Washington refuses to enforce.

State and local governments have a compelling interest in assisting in the enforcement of laws that deter illegal immigration. The failure to enforce immigration laws imposes enormous fiscal and social burdens on states and localities where illegal aliens settle.

States and localities must provide essential services, such as education and emergency health care, to illegal aliens and cope with withering criminal justice costs. They must also deal with the adverse impact of illegal immigration on workers who lose jobs and become dependent on state services.

Congress and the courts have repeatedly recognized state and local governments as stakeholders in immigration policy and have encouraged them to become partners in immigration enforcement. It's a matter of basic self-determination.

Under the best of circumstances, state participation is indispensable to effective enforcement of immigration laws. In light of the Obama administration's refusal to enforce immigration laws, evidenced in repeat complaints from the labor union representing Immigration and Customs Enforcement workers that they are being hamstrung by administration policies, state laws provide the only meaningful enforcement.

There is empirical and anecdotal evidence that state enforcement policies work. In Arizona and Georgia, where such policies have been implemented, there have been significant and immediate declines in the number of people residing illegally. These successes not only provide a model for other states that wish to reduce the burdens associated with illegal immigration, they're also an effective rebuttal to those who claim that mass amnesty is the only way to solve our illegal immigration crisis.

Instead of fighting states that implement local enforcement strategies, the executive branch should be emulating those strategies. Consistent national policies that remove the incentives for illegal immigration would encourage millions of illegal aliens to return home and, at the same time, reassert the constitutional balance between the states and the federal government as full partners in federal immigration enforcement.

PROSECUTORIAL DISCRETION *continued*

“Over the course of the last year, the Obama administration has ignored the will of Congress and the American people by using executive branch authority to allow illegal immigrants to remain in the U.S.,” stated Smith in a press release. The legislation is pointedly directed at the current administration in that it would remain in force only through the remainder of President Obama’s current term in office.

The HALT Act would prevent the executive branch from further abusing its prosecutorial discretion by suspending its ability to:

- Grant deferred action, parole or extended voluntary departure to illegal aliens other than those being tried for a crime or acting as a witness at trial, those needed for significant law enforcement or national security purposes, or those whose life is imminently threatened;

- Waive the three and ten year bars to admission for aliens who have been illegally present in the U.S.;
- Cancel the removal and adjust the status of illegal aliens ordered deported;
- Designate additional countries as qualifying for Temporary Protected Status (TPS); and
- Grant work authorization to illegal aliens.

FAIR strongly endorses H.R. 2497 as a necessary measure to curb the administration’s announced intention to use prosecutorial discretion to carry out policies that have neither been enacted by Congress, nor enjoy the support of the American people. Sen. David Vitter (R-La.) is expected to introduce companion legislation in the Senate.

FAIR Unveils New Blog Site

In July, we rolled out a new blog site that is the next dimension in FAIR’s mission to educate and inform Americans about the impact of mass immigration on their lives. The site, www.ImmigrationReform.com, goes beyond the headlines by offering insight, analysis and commentary on all aspects of immigration.

As the only immigration reform organization with active government affairs, field, research, legal and media programs, FAIR has access to information that is not readily available through other sources. Our staff highlights important news and information and makes sense of it all in an easy, reader-friendly format.

Visit the blog at www.ImmigrationReform.com and give us your feedback.

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The High Cost of Illegal Immigration

House Judiciary Committee Strikes a Blow for Common Sense by Approving a Bill that Would End the Visa Lottery
JULY 20, 2011 BY IRA MEHLMAN • 1 COMMENT

The so-called Diversity Visa lottery has been in the news lately, not because it was a dumb idea to begin with, but because the State Department managed to screw it up and was forced to tell thousands of people who thought they had won one that they had not. The real story isn't that the State Department made a mistake. Rather, the ... [Read More...]

Michigan Governor Imagines the Past and Remembers the Future
JULY 19, 2011 BY IRA MEHLMAN • 1 COMMENT

When things are going as badly as they are in Michigan, it is tempting to look for magic potions to cure what ails you. For Michigan Governor Rick Snyder, the elixir du jour is immigration, and lots of it. Michigan has been in a long and steep decline, brought on by the woes of the auto industry. Unemployment exceeds 10 percent, and ... [Read More...]

Polls
Two bills to make E-Verify mandatory have been presented recently. What thoughts about these bills?

- ☒ They are strong enforcement bills support both (57%, 46 Votes)
- ☒ It's a step in the right direction but concerned about some of the language in either bill (21%, 26 Votes)
- ☐ I oppose them. Leave enforcement states. (9%, 7 Votes)
- ☐ Send them back to the drawing board (13%, 16 Votes)

Total Votes: 89

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FAIR is a 501(c)(3) organization. All contributions are tax-deductible.

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Our funding relies on the personal contributions of individual citizens and philanthropic foundations. Your support is crucial to our ability to improve border security, stop illegal immigration, and promote immigration levels consistent with the national interest.

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.

To become a Cornerstone Contributor, pledge to give a specific monthly contribution to FAIR. This donation, electronically transferred conveniently to FAIR each month from your credit card or checking account, enables FAIR to count on you to help support our ongoing immigration reform efforts.

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