

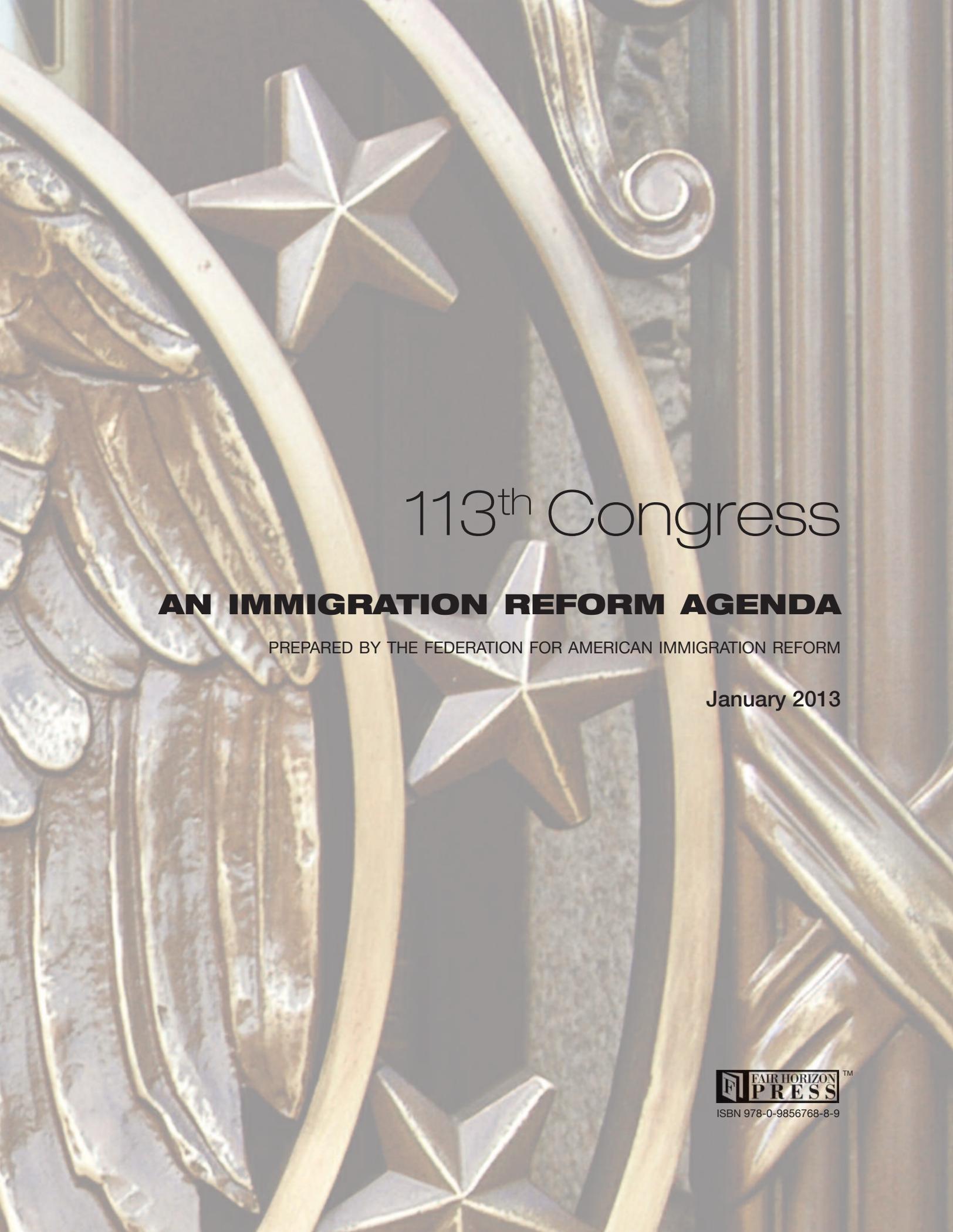
# 113<sup>th</sup> Congress

## **AN IMMIGRATION REFORM AGENDA**

PREPARED BY THE FEDERATION FOR AMERICAN IMMIGRATION REFORM

  
FAIR





# 113<sup>th</sup> Congress

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## **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. Since 1979, 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, political persuasions, and socioeconomic levels. Nearly 50 private foundations and over 250,000 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 113<sup>th</sup> Congress as a guide for ending illegal immigration, reducing legal immigration to a more sustainable level, and improving/enhancing national security—thereby lifting the burden on the American taxpayer, and improving our quality of life.*

*We look forward to working with you through the 113<sup>th</sup> Congress.*

## Introduction

Illegal immigration and mass immigration are detrimental to the 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 roughly \$113 billion.<sup>1</sup> 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.

As the 112<sup>th</sup> Congress was sworn in, the U.S. was slowly digging itself out of the worst recession to hit our nation since the Great Depression. Unemployment had dropped to roughly nine percent, but official data showed that immigrants benefitted disproportionately from the creation of new jobs.<sup>2</sup> However, instead of adopting immigration policies that prioritized American workers, Congress accomplished little in that arena. Lawmakers instead generally limited their work to narrow immigration bills, and even then, had little success in enacting anything.

On the issue of **border security**, the 112<sup>th</sup> Congress took up a handful of small measures. One bill that became law was The Border Tunnel Prevention Act (H.R. 4119). Introduced by Rep. Silvestre Reyes (D-Tex.), the Act expands existing law to make it easier to prosecute people who participate in illicit border tunnel activities. Another bill that became law was the Jaime Zapata Border Enforcement Security Task Force Act (H.R. 915). That bill sought to provide a statutory framework for the existing Border Enforcement Security Task Force (BEST) program, an initiative designed to facilitate communication and mutual assistance between agencies at different levels of government.

Sadly, Congress made little progress funding our immigration enforcement agencies, failing to pass a Homeland Security appropriations bill for either FY 2012 or FY 2013. While the House did debate the FY 2012 Department of Homeland Security (DHS) Appropriations Bill (H.R. 2017) and pass it off the House floor with important immigration amendments, the Senate did not pass any companion legislation. Then, as the elections neared, Senate Majority Leader Harry Reid announced that the Senate would not pass any appropriations legislation for FY 2013, effectively stalling any negotiations on FY 2013 DHS appropriations in either chamber. In the end, for both FY 2012 and FY 2013, the DHS was funded through “continuing resolutions,” which generally are resolutions that keep the previous year’s spending allocations in place.

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<sup>1</sup> Martin, Jack and Eric Ruark, “*The Fiscal Burden of Illegal Immigration on United States Taxpayers*,” FAIR 2010.

<sup>2</sup> Camarota, Steven A. and Karen Zeigler, “Who Got Jobs During the Obama Presidency? Native and Immigrant Employment Growth, 2009 to 2012,” Center for Immigration Studies, November 2012.

Not only did Congress fail to pass Homeland Security Appropriations legislation, it also failed to protect the American taxpayers from subsidizing illegal immigration through our tax laws. One of the major culprits is the Additional Child Tax Credit, which, according to government reports, gives illegal aliens approximately \$4.2 billion annually. Illegal aliens obtain these funds because the law allows anyone to claim it with only an Individual Taxpayer Identification Number (ITIN), which the IRS gives out freely to illegal aliens. The House included a provision in the Payroll Tax Cut Bill (H.R. 3630) that barred the use of ITINs to claim the credit, instead requiring the use of a Social Security Number. However, Congressional leaders stripped this provision during conference committee negotiations and the provision did not become law.

Regarding **worksite enforcement**, in 2011 the House of Representatives made a serious push to adopt mandatory E-Verify legislation. With the support of the powerful Chairman of the House Judiciary Committee, Rep. Lamar Smith, the House marked up this legislation, H.R. 2885, and sent it to the floor. However at that point, the bill ran into several obstacles. First, the Agribusiness Lobby objected to the adoption of mandatory E-Verify legislation without the simultaneous passage of a new, expansive agricultural guest worker program. Second, FAIR and other grass roots organizations raised objections that the legislation preempted state and local E-Verify laws. Finally, as the 2012 elections approached, Congressional leaders sought to avoid contentious floor battles. In the end, the House Judiciary Committee did not pass any new agricultural guest worker programs and H.R. 2885 never reached the House floor.

While neither chamber voted on mandatory E-Verify legislation, the 112<sup>th</sup> Congress did not hesitate to pass a three-year re-authorization of the E-Verify program. Unfortunately, this simple re-authorization was only accomplished by lumping together the re-authorization of E-Verify with the extension of three other dubious immigration programs: the religious worker visa program, the EB-5 immigrant visa program, and the “Conrad 30” J-1 visa program. In August 2012, the Senate passed S. 3245 to reauthorize these four programs. In September, the House of Representatives followed suit and sent the bill to President Obama for his signature.

Regarding **legal immigration**, the 112<sup>th</sup> Congress ignored the systemic problems in U.S. immigration law and took up only narrow measures. One bill Congress passed was H.R. 3992, which expands the E-2 investor visa program to allow participation from Israelis. Other bills relating to legal immigration saw action, but were not enacted. The House of Representatives passed H.R. 1933 to resurrect a lapsed guest worker program for nurses and H.R. 3012, which eliminated the country caps for all employment-based green cards. Then the House took up—but did not pass—H.R. 6429, which eliminated the visa lottery and made those 55,000 green cards available to foreign nationals who graduate from U.S. universities with Master’s or Doctoral degrees in the fields of science, technology, engineering, or mathematics (STEM). The House voted a second time on H.R. 6429 during the lame-duck session of the 112<sup>th</sup> Congress, that time passing the legislation. However, the bill was still not able to overcome objections by the far left to the elimination of the visa lottery and subsequently died in the Senate.

Finally, Congress spent several months in 2012 debating whether to expand the U visa program via legislation to reauthorize the Violence Against Women Act (VAWA). The Senate version (S. 1925) significantly expanded the program, while the House version (H.R. 4970) kept the program in its current form. Senate leaders ultimately

refused to go to conference to hash out differences between the two bills, allowing VAWA to die at the conclusion of the 112<sup>th</sup> Congress.

While the 112<sup>th</sup> Congress accomplished little, the White House seized the opportunity to administratively make sweeping changes in immigration policy. Beginning in March 2011, DHS laid the groundwork for these changes by issuing a series of memos, called the **Morton Memos**. Collectively, these memos relaxed the enforcement of immigration laws by directing Immigration and Customs Enforcement (ICE) agents to ignore illegal aliens unless they had committed additional offenses.

Then, in August 2011, Homeland Security Secretary Janet Napolitano announced her Department would undertake a **case-by-case review** of over 300,000 pending removal cases to determine which cases could be administratively closed pursuant to the new policies set forth in the Morton Memos. ICE then began a review process and closed tens of thousands of cases within the course of months.

Finally, in June 2012, DHS announced it would grant deferred action to illegal aliens who were eligible to receive amnesty under the DREAM Act—legislation Congress had rejected multiple times over the course of a decade. Under this program, called **Deferred Action for Childhood Arrivals** (DACA), illegal aliens who qualify may receive a two-year reprieve from deportation plus work authorization. These aliens may also renew their deferred action status and work authorization every two years indefinitely. It is estimated that at least 1.7 million illegal aliens are eligible for deferred action under DACA. To date, over 350,000 illegal aliens have applied and the Obama Administration has granted these benefits to over 100,000.

Fortunately, despite these and other measures launched by the Obama Administration to undermine immigration enforcement, the states obtained an important policy victory through the Supreme Court's decision in *Arizona v. United States*, 132 S. Ct. 2492 (2012). In that decision, the Supreme Court upheld Section 2(B), the core provision of Arizona's immigration enforcement law, SB 1070. Section 2(B) requires local law enforcement officers to make a reasonable attempt to determine the immigration status of an individual during a lawful stop if the officer has reasonable suspicion to believe the person is an illegal alien. Measures similar to Section 2(B) have been adopted in other states, including Alabama, South Carolina, and Indiana. The Court's decision now paves the way for this important enforcement measure to be implemented in those states plus all states that choose to follow suit.

These actions, plus all those summarized above, set the stage for the 113<sup>th</sup> Congress to act. We hope FAIR's Legislative Agenda for the 113<sup>th</sup> Congress will provide lawmakers with a roadmap for reform.

Within FAIR's Legislative Agenda, 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 the other areas of reform. These recommendations 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 U.S., 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 113<sup>th</sup> Congress should seek to end illegal immigration by implementing the reforms outlined in the following areas.

### ***Worksite Enforcement***

There is an overwhelming consensus that most illegal aliens come to the U.S. 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 Social Security Administration's "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 U.S. 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, which include jurisdictions that:
  - Have official policies or laws that prohibit the collection of immigration data
  - Have official policies or laws that prohibit officials from honoring detainers issued by ICE
- Amend the INA to clarify that Congress has not preempted local immigration enforcement efforts and address other issues raised by the Supreme Court ruling in *Arizona v. United States*, 132 S. Ct. 2492 (2012).

### ***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 SSA to share information with DHS on issuance of no-match letters to employers and suspicious employment use of legitimate SSNs
- Restrict use of ITINs to tax-related purposes only. Prohibit the use of ITINs to apply for the Additional Child Tax Credit
- Require the 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 SSA from crediting 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 113<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 measures in violation of such federal law
- Help lawmakers better understand the impact of illegal immigration by requiring 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 the legal temporary workers they employ or sponsor
- Oppose “pathways to citizenship,” temporary or permanent visas, or other forms of amnesty for illegal aliens

## **National Security Reform**

The ability of the 19 hijackers who carried out the 9/11 attacks to enter and remain in the U.S. undetected underscores 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: the U.S. will not be secure from terrorist attacks unless federal law enforcement agents are able to quickly and efficiently ascertain which aliens are in the country legally. The threat to national security from foreign nationals has only increased as drug cartels along the U.S.-Mexico border have become more and more violent, and as a result, have expanded their monopoly on the passage of goods and people over our Southern border. Therefore, it is imperative that the 113<sup>th</sup> Congress work with law 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. While the exact number varies, 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 de-facto 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, including the biometric exit component
- Prohibit DHS from granting 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 refuse to repatriate their citizens
- Streamline processes for immigration litigation, including increasing the number of immigration judges
- 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 continued detention of dangerous aliens
- Implement biometric screening for all aliens at all ports of entry
- Statutorily define and significantly limit the use of deferred action and other forms of “prosecutorial discretion”

## **Legal Immigration Reform**

The population of the U.S. 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 U.S. will add another 113 million more people by 2050 if current population trends continue.<sup>3</sup> 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.<sup>4</sup> Thus, if Congress does not fundamentally change U.S. immigration policies, the U.S. will continue on this trajectory of unsustainable population growth.

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<sup>3</sup> U.S. Census Bureau, [http://www.census.gov/newsroom/releases/pdf/cb11-116idb\\_table1.pdf](http://www.census.gov/newsroom/releases/pdf/cb11-116idb_table1.pdf)

<sup>4</sup> PEW Hispanic Center, February 11, 2008, <http://pewhispanic.org/reports/report.php?ReportID=85>

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 113<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 U.S. currently admits over one million legal permanent residents (green card holders) every year—the equivalent of adding a city the size of Dallas annually.<sup>5</sup> Because unregulated immigration has such a significant impact on our lives, experts have long urged the federal government to adopt reasonable limits on immigration. In 1981, the Select Commission on Immigration and Refugee Policy (SCIRP) concluded that immigration to the U.S. was “out of control” and recommended to Congress that it pursue a “cautious approach” that recognizes “the reality of limitations.”<sup>6</sup>

In the mid-1990s the Clinton Administration established the U.S. Commission on Immigration Reform, headed by the well-known civil rights advocate, Congresswoman Barbara Jordan (D-Tex.). In a series of reports,<sup>7</sup> the Jordan Commission also recommended that the federal government:

- Reduce legal immigration and implement an overall annual cap of 550,000;
- Prioritize skilled workers over unskilled workers; and
- Prioritize nuclear family members over extended family members.

FAIR believes that a sustainable level of immigration is no more than 300,000 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 U.S. 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

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<sup>5</sup> “U.S. Legal Permanent Residents,” Annual Flow Report, Department of Homeland Security, April 2010.

<sup>6</sup> Vernon Briggs, Testimony Before the U.S. Commission on Immigration Reform, February 23, 1995, located at <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1014&context=briggstestimonies>.

<sup>7</sup> The Jordan Commission Reports to Congress, <http://www.utexas.edu/lbj/uscir/reports.html>.

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 visa program, 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 113<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

For more information, contact FAIR's Government Relations staff.

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*The Federation for American Immigration Reform is the largest and most influential nonprofit immigration organization in the United States. Made up of more than 250,000 concerned citizens, we share a common belief that our nation's immigration policies must be reformed to serve America's needs and interests today and into the future.*

*Since our founding in 1979, we have been leading the call for immigration reform, using our grassroots network to help Americans use their voices to speak up for effective, sensible immigration policies and legislation.*

*We believe our nation can and must have immigration policies that are nondiscriminatory and designed to serve the societal, environmental, and economic needs of our country. Recent polls show that the American public feels the same way.*

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