



FAIR FEDERATION FOR AMERICAN IMMIGRATION REFORM

Immigration REPORT

FEBRUARY 2013

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DHS Travesty: ICE Now Won't Even Take Custody of Criminals it says Are "Minor"

As 2102 came to a close, Immigration and Customs Enforcement Director John Morton announced that his agency will no longer take custody of illegal aliens who have been jailed for what are deemed "minor" criminal offenses. In its typical fashion of revealing policy decisions designed to weaken enforcement of U.S. immigration laws, ICE sprang this latest announcement on the Friday afternoon before Christmas.

Under the new policy, ICE agents are proscribed from issuing detainers "against individuals arrested for minor misdemeanor offenses" by state or local police. ICE becomes aware of deportable aliens when local jurisdictions cross-check fingerprints of people they arrest against federal databases under the Secure Communities program. The practical effect of the policy means that ICE agents can no longer take an alien into custody if the alien's only violation

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Obama Administration Slashes Program Used by Local Police to Identify Illegal Aliens

The Obama administration quietly announced the next step in its effort to curtail a congressionally mandated program known as 287(g). The program was established by Congress in 1996 as a cooperative agreement between federal authorities and local police who are trained to identify and detain illegal

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DHS Pols Delayed Arrest of Illegal Alien Child Molester to Protect New Jersey Pro-Amnesty Senator

The Associated Press reports that top officials at the Department of Homeland Security ordered Immigration and Customs Enforcement agents to delay the arrest of an illegal alien sex offender until after the 2012 election to protect U.S. Senator Robert Menendez (D-N.J.). Luis Abrahan Sanchez Zavaleta, an 18-year-old illegal alien who was working as an unpaid intern in Menendez's office, had been found guilty of multiple charges of sexually victimizing a child and was a registered sex offender.

ICE agents first sought to apprehend Sanchez in late October, but were told repeatedly by DHS officials to wait until after the election, in which Sen. Menendez was seeking re-election. Sanchez was not taken into custody until December 6, in spite of the fact that he was a danger to the community. According to a source close to the case, emails between senior DHS officials corroborate that the depart-



IN A DECEMBER 12 APPEARANCE ON MSNBC, DEFENDING HIS OFFICE'S HIRING OF AN ILLEGAL ALIEN, SENATOR MENENDEZ CONCEDED THAT BACKGROUND CHECKS FAILED TO REVEAL EITHER SANCHEZ'S ILLEGAL STATUS OR HIS VERY DISTURBING CRIMINAL RECORD.

ment knew of the seriousness of the criminal activity and still refused to arrest Sanchez immediately.

It is not clear if Sen. Menendez or his office knew that Sanchez was a sex offender or an illegal alien. In a December 12 appearance on MSNBC, Menendez claimed that he was not made aware of the situation until four days after Sanchez's arrest. He also claimed that, upon learning of the news, the director of his New Jersey office fired Sanchez. What remains unclear is when the firing took place, since the senator claims his office was not even made aware until four days after Sanchez was taken into custody.

Even more disturbing, Menendez used the event as an opportunity to promote amnesty for illegal aliens. "[This case] does speak volumes about why we need comprehensive immigration reform because I can't know who is here to pursue the American dream versus who is here to do damage to it if I cannot get people to come forth out of the shadows and go through a criminal background check

and...make sure that those who have criminal backgrounds get deported," Menendez told MSNBC.

However, in the same interview, defending his office's hiring of an illegal alien, Menendez conceded that background checks failed to reveal either Sanchez's illegal status or his very disturbing criminal record. "There is no way we could know about any allegation, as a juvenile, of what his background would be in terms of any sort of criminality," he said. The statement directly contradicts his earlier argument that background checks conducted under an amnesty program would expose criminal aliens and result in their removal.

Immediately after the AP broke the story, Rep. Jason Chaffetz (R-Utah), chairman of the House subcommittee overseeing DHS operations, sent a letter to Secretary Janet Napolitano demanding answers regarding her department's handling and timing of Sanchez's arrest. As of publication of this newsletter, no response had been provided.

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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FAIR Needs Your Help: U.S. Chamber of Commerce Makes Mass Immigration, Amnesty Top Priority for 2013

Tom Donohue, president of the U.S. Chamber of Commerce, kicked off 2013 by announcing that enacting amnesty for millions of illegal aliens and increasing overall immigration will be a top priority for his organization in 2013. The U.S. Chamber of Commerce, which represents more than 3 million businesses, is one of the most vocal advocates for amnesty and expanded immigration.

The powerful business group has long regarded immigration as a source of lower cost labor for its members. Donohue voiced his group's support for "a path out of the shadows for the 11 million undocumented immigrants who live in the United States." He also acknowledged that he has met with both the lead Democratic and Republican senators who are working on amnesty legislation.

At a time when 20 million Americans are either unemployed or underemployed, active support by the U.S. Chamber of Commerce for increasing the levels

of admission for low-skilled and higher-skilled workers is a further indication that many business interests continue to view immigration policy as a way to limit wages for American workers.

PROTECTING THE INTERESTS OF AMERICAN WORKERS HAS ALWAYS BEEN AN IMPORTANT PRIORITY FOR FAIR. OVER THE YEARS, WE HAVE OPPOSED PREVIOUS EFFORTS TO ENACT AMNESTY AND INCREASE IMMIGRATION. WE WILL CONTINUE TO VOICE OUR OPPOSITION TO ANY LEGISLATION THAT HARMS AMERICAN CITIZENS.



ICE Now Secretly Releasing Thousands of Criminal Aliens

The same week that the Associated Press revealed that DHS deliberately delayed the arrest of an illegal alien registered sex offender working in Senator Robert Menendez's (D-N.J.) office, the *Boston Globe* reported that DHS has secretly released thousands of convicted criminal aliens back onto the streets of the United States. According to the *Globe*, immigration officials have released some



8,500 criminals who have completed their sentences, including murderers and rapists, since 2008.

More than 20 foreign governments refuse or delay the repatriation of criminal aliens from the United States, making it impossible for our government to deport them. Rather than using legal protocols to keep these dangerous felons in custody beyond their prison terms, DHS has chosen to release them secretly. The *Globe* investigation found only 13 instances where ICE sought to lengthen a

criminal alien's detention on grounds that release would pose a danger to the community.

"A yearlong *Globe* investigation found the culture of secrecy can be deadly to Americans and foreigners alike," the *Globe* reported. The paper's investigation found numerous instances in which criminal aliens secretly released by ICE had gone on to commit other serious and violent offenses. Moreover, the *Globe* found that ICE policy protects the identities of the criminal aliens who are released and fails to notify the victims of their original crimes. A spokesman for DHS explained that, "In the absence of any identified public interest or explanation as to how the disclosure of the arrestees' information will advance that interest, the personal privacy interests will prevail."

In addition to releasing dangerous foreign criminals back into the community, the federal government has generally failed to take retaliatory action against the governments that hinder the return of their own citizens. Both through diplomatic channels and by refusing to issue visas to officials and citizens of those countries, the U.S. government could exert considerable pressure on them to cooperate. However, in much the same way that our government has placed "the personal privacy interests" of criminal aliens ahead of public safety, it has chosen to defer to the interests of recalcitrant foreign governments that do not cooperate in the repatriation process.

■

Administration and Its Allies Claim Borders Are Under Control; GAO Claims Otherwise

A cornerstone of the Obama administration's campaign to enact a sweeping amnesty for millions of illegal aliens is its claim that illegal immigration, and particularly our nation's borders, are under control. Dur-

ing the last effort to enact amnesty in 2007, the public's perception that illegal immigration was still out of control proved to be an impediment to passage of a bill. Working in concert with ideological allies, the pro-amnesty coali-

New DHS Rule Removes Yet Another Deterrent to Illegal Immigration

The Obama administration began 2013 where it left off in 2012—by undermining another law designed to deter illegal immigration. On January 3, DHS issued an administrative rule waiving the 3- and 10-year bars on legal reentry for illegal alien relatives of U.S. citizens.

In 1996, Congress barred illegal aliens who had been illegally present in the United States for a period of 180 days to one year from legally reentering the country for three years. Under that law, those who remain in the country for more than a year face a ten-year entry bar. The bar against readmission applies to both those who are deported or leave on

THE THREAT OF NOT BEING ALLOWED TO LEGALLY RETURN TO THE U.S. FOR AN EXTENDED PERIOD OF TIME PROVIDES A POWERFUL DISINCENTIVE TO ILLEGAL IMMIGRATION.

their own. The threat of not being allowed to return to the U.S. legally for an extended period of time provides a powerful disincentive to illegal immigration.

The new rule issued by DHS allows illegal aliens who have U.S. citizen family members to apply for and receive a “provisional waiver” of the 3- and 10-year bar while still in the U.S. if they can show that being separated would cause their U.S. citizen relative “extreme hardship.” Extreme hardship is a subjective decision that will likely be liberally applied by an administration inclined to bend rules in favor of illegal aliens.

In circumventing this statute, DHS is tacitly encouraging relatives of U.S. citizens to come to the

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FAIR In Action Across the Country

Illinois

In recent years, Illinois has made a bid to replace California as the state most accommodating to illegal aliens. In early January, Illinois moved one step closer when the state House of Representatives approved SB 957, a bill granting temporary driver's licenses to illegal aliens. The bill was approved by the Illinois Senate in December. Though the temporary licenses for illegal aliens will not be valid as identification documents for purposes such as boarding a commercial airline, they **will** make it easier for illegal aliens to evade federal immigration laws. SB 957 permits applicants to use a wide variety of questionable documents to establish identity when applying for these licenses. Gov. Pat Quinn has indicated his support for the legislation, but his signature on the bill was still pending as of the deadline for this newsletter.

Iowa

In contrast to its neighbor to the east, Iowa has decided not to issue driver's licenses to illegal aliens who are allowed to remain temporarily in the U.S. under President Obama's Deferred Action for Childhood Arrivals (DACA) program. The Iowa Department of Transportation (DOT) declined to issue licenses and identification cards, noting that DACA beneficiaries still do not have legal status in the U.S. “Under Iowa Code...a driver's license or non-operator ID card shall only be issued to a foreign national authorized to be present in the United States,” read a statement from the DOT. Iowa joins Arizona, Nebraska, and Michigan in refusing to grant licenses to DACA beneficiaries.

Montana

Nearly 80 percent of Montana voters approved a ballot initiative last November restricting many public benefits and services to illegal aliens. Nevertheless, an illegal alien rights organization and the state's largest union filed suit in December to prevent LR-121 from taking effect. LR-121 denies state-taxpayer funded services such as state licenses, state employment, unemployment or disability benefits, and aid to illegal alien university students. The law also requires state agencies to notify the U.S. Department of Homeland Security of illegal aliens who have applied for state services. While the suit is still pending, LR-121 took effect on January 1.

ICE IGNORES “MINOR” CRIMINAL OFFENDERS *continued*

of the law is being in the country illegally—they must now have committed a major offense independent of their illegal status. In an accompanying memo, Morton lays out the specific conditions under which detainer requests may be issued.

The *San Jose Mercury-News* reports that in addition to narrowing the criteria for issuing detainer requests, Morton may be backing off an earlier position that local jurisdictions are required to comply with ICE detainer requests. Earlier in December, California Attorney General Kamala Harris issued a legal opinion

stating that law enforcement agencies are not obligated to honor detainer requests for low level criminals. In a meeting with California sheriffs later in December, reports the *Mercury-News*, Morton affirmed Harris’s position.

Prior to the 2012 elections, Morton insisted publicly that honoring ICE detainer requests was mandatory for all local jurisdictions. Morton reiterated this position in a letter to FAIR’s executive director Julie Kirchner earlier in 2012. However, in spite of these strongly stated positions, ICE failed to take specific

action against jurisdictions that adopted noncompliance policies. As a result of the December 21 policy announcement it appears that ICE will be issuing far fewer detainer requests in the future.

This policy change, like the dismantling of the 287(g) program, is a major initiative of the Obama administration in its efforts to effectively terminate immigration law enforcement in the interior of the country and to disregard protection of jobs of Americans against illegal aliens.

287(G) SLASHED *continued*

aliens they encounter in the course of carrying out their normal duties.

Immigration and Customs Enforcement (ICE) slipped the announcement into a year-end press release summing up the agency’s activities for 2012. “ICE has also decided not to renew any of its agreements with state and local law enforcement agencies that operate task forces under the 287(g) program. ICE has concluded that other enforcement programs, including Secure Communities, are a more efficient use of resources for focusing on priority cases,” states the release. Ending the use of task forces under 287(g) will leave a more restrictive form of the program in operation—identifying imprisoned illegal aliens for deportation upon release.

The 287(g) program has been in the administration’s crosshairs since it first took office. Although Congress explicitly intended for local governments to determine how 287(g) should be utilized, the Obama administration, in 2009, restricted its use to identifying and detaining “dan-

gerous criminal aliens.” More recently, ICE has refused to enter into any new 287(g) task force agreements and suspended those it considered to be “least productive.”

The dismantlement of 287(g) is consistent with the Obama administration’s efforts to permit illegal aliens who have not committed other serious offenses to remain in the country. Reflecting these efforts to dismantle the program, the FY 2013 budget calls for a 25 percent cut in funding for the program.

The 287(g) program has been highly effective and popular over the course of its existence, resulting in the removal of thousands of illegal aliens. Unlike Secure Communities, 287(g) trains local law enforcement officers to determine whether an individual is lawfully present, including those with no prior contact with immigration services. Secure Communities only identifies illegal aliens who have prior offenses and whose fingerprints are already in a federal database.

GAO BORDER REPORT *continued*

tion is mounting a high profile public relations effort to convince the American public that illegal immigration is a problem that has been solved and that it is time to move forward with amnesty.

The Government Accountability Office, like much of the American public, is not convinced. The congressional investigative agency found in a report released in January that only 61 percent of those attempting to cross the U.S.-Mexico border illegally are intercepted by the Border Patrol. According to the GAO, that translates into more than 200,000 illegal border crossers who elude capture each year. Of those who got away, about 86,000 are believed to have successfully entered the United States; the remainder returned to Mexico.

The GAO also discounted the Obama administration's repeated claims that our borders are now under control, noting that the administration has failed to develop effective metrics for measuring border

THE BOTTOM LINE IS WE ARE
FAR FROM HAVING
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SOUTHWEST BORDER



control. Two years ago, the Obama administration discarded the Bush administration's yardstick for measuring "operational control" of the border, but has failed to provide a substitute measurement. DHS does not expect to have a new yardstick in place until late 2013.

The GAO confirms that the number of illegal entries has declined since 2006, but attributed at least part of that decline to the sluggish U.S. economy. "The bottom line is we are far from having opera-

tional control of our borders, particularly the southwest border, and as the GAO reports, there still are no metrics to quantify progress," said Rep. Michael McCaul (R-Texas), who chairs the House Homeland Security Committee. McCaul noted that the GAO's findings are hardly reassuring considering the perilous threats posed by international terrorist organizations and criminal drug cartels that operate along the border.

DHS WAIVES RULE *continued*

U.S. illegally. These relatives would be allowed to remain in the U.S. illegally while they wait their turn for legal admission. Once they have been granted a provisional waiver, they are able to travel abroad to apply for the visa to return to the

United States without being subject to the 3- and 10-year bars.

Provisional waivers for relatives of U.S. citizens may be only the first step in the administration's quest to undermine this important deterrent. During a conference call with illegal

alien advocacy groups, U.S. Citizenship and Immigration Services Director Alejandro Mayorkas indicated that his agency will consider extending similar waivers to illegal alien family members of green card holders.

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