



FAIR FEDERATION FOR AMERICAN IMMIGRATION REFORM

# Immigration

## REPORT

JULY/AUGUST 2017

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## Broken Promise? Obama-era Amnesty Continues Under Trump

Last August, Donald Trump pledged to “immediately terminate President Obama’s illegal executive amnesty in which he defied federal law and the Constitution.” Candidate Trump was referring to the Deferred Action for Childhood Arrivals (DACA) amnesty, an Obama program that has granted some 780,000 illegal aliens protection from deportation and work authorization. As president, not only has Trump failed to carry out his promise, the number of illegal aliens granted protection under DACA has increased on his watch.

DACA was created in 2012 by former President Obama after he failed in his effort to get Congress to pass the DREAM Act, which would have granted amnesty to illegal aliens who came to this country as minors. Obama’s broad use of claimed executive power to grant *de facto* amnesty to an entire class of illegal aliens was likely unconstitutional, but it was never challenged in the courts.

Based on his campaign promise, it was widely assumed that the Trump administration would allow the program

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## With Congress Distracted, FAIR helps States Take the Lead on Fighting Non-enforcement Policies

In the early 2000s, FAIR recognized that the highly politicized, special interest-driven atmosphere in Washington posed a significant impediment to true immigration reform being enacted by Congress. Those realities led to a greater emphasis by FAIR on working at the state and local levels to implement policies designed to protect local communities from the burdens created by the federal government’s inability or refusal to enforce our nation’s immigration laws. FAIR



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## House Votes to Stop Handing Out Health Care Money to Illegal Aliens

The U.S. House of Representatives approved legislation on June 13 to close an expensive loophole that has allowed illegal aliens to drain millions of dollars in health care credits from the federal treasury. By a vote of 238-184, the House passed the Verify First Act, H.R. 2581, sponsored by Rep. Lou Barletta (R-Pa.).

A Senate Committee revealed that 500,000 illegal aliens had received nearly \$750 million in health care tax credits, under the Affordable Care Act (aka Obamacare), despite their ineligibility for coverage under the program. Under Obamacare, the federal government pays health care tax credits on a “temporary basis” to individuals who are unable to verify their citizenship. If individuals are ultimately unable to verify their immigration status, the funding is suspended and the Internal Revenue Service attempts to recoup over-

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Photo by Gage Skidmore

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to lapse by not renewing DACA protections when the two-year deferments expired. However, statistics released by the U.S. Citizenship and Immigration Services (USCIS) for the first quarter of 2017 indicate that not only is the Trump administration renewing DACA at a rate almost identical to the Obama administration, but the new administration is approving new applications for DACA protection. During the initial two months of the Trump administration, USCIS renewed 83,630 DACA applications and approved 13,436 new ones.

Even more concerning, Department of Homeland Security (DHS) Secretary John Kelly has revived talk of a legislated amnesty for illegal aliens who came (or claim to have come) to the United States as minors. Kelly expressed his support for revisiting the DREAM Act before the House Homeland Security Committee, in early June. “I am hoping, frankly, because there is bipartisan support for doing something about DACA legally, legislatively,” he told the committee.

Candidate Trump repeatedly pledged to focus on immigration reforms that protect the vital interests of the American people. But the expansion of DACA and his DHS secretary’s support for a stand-alone amnesty bill raise serious doubts about whether the Trump administration is truly committed to pressing Congress to enact the detailed immigration reform agenda the president campaigned on.

FAIR, along with a network of activist groups across the country, will be working to hold the president accountable for fulfilling the promises he made to the American people during the campaign. These include securing our borders, making E-Verify mandatory and protecting American workers, ending sanctuary policies, reforming the legal immigration policies, and opposing amnesty for illegal aliens.

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created a department that focuses on state and local legislation and we strengthened our grassroots activist network.

These efforts paid off with true enforcement policies being passed and implemented in many parts of the country. However, these successes were brought to a screeching halt by the Obama administration, which aggressively sought to prevent state and local governments from carrying out policies that discourage illegal immigration. Notably, after Arizona passed SB 1070 in 2010 and similar bills were approved in a number of other states, the Obama Justice Department sued these states to prevent their implementation. Though Arizona largely prevailed in the federal lawsuit (only a few provisions of SB 1070 were barred by the courts), the threat of a federal lawsuit had a chilling effect on other states.

The Department of Justice is no longer run by Eric Holder or Loretta Lynch. Jeff Sessions, a long-time champion of true immigration reform during his years in the Senate, is now attorney general and many state and local governments are seizing on this opportunity to enact policies aimed at discouraging illegal immigration. These state and local efforts have been focused on outlawing sanctuary policies, requiring the use of E-Verify and other measures that send a signal that illegal immigration will not be rewarded.

Texas has led the way with enactment of SB 4, a strong anti-sanctuary law, and Gov. Greg Abbott has vowed to withhold certain state funding to jurisdictions that defy federal and state laws. But while Texas has captured most of the headlines, 33 states are considering anti-sanctuary legislation and other measures aimed

at discouraging illegal immigration. (A select group of diehard sanctuary states, led by California, have gone in the opposite direction and increased their obstruction of immigration enforcement. See “News from our State & Local Operations,” page 5.)

While federal legislation is still essential to bringing the sort of true immigration reform President Trump promised, the trend at the state and local levels is encouraging and positive. As fewer states and localities remain protective and hospitable to illegal immigration, coming to or remaining in the United States illegally becomes less attractive. So, while FAIR continues to press for meaningful action on immigration reform in Congress, our State and Local legislative department and Field department continue to score meaningful victories all across the country. ■

## Will House Leadership Allow Critical New Enforcement Bill to Advance?

The number of people crossing the border illegally — particularly unaccompanied minors and families with children — has declined dramatically since President Trump took office, as the administration has increased detention and ended the catch-and-release policy. The next critical element in dealing with illegal immigration is to make it more difficult for illegal aliens living in the U.S., particularly criminal aliens, to remain here. Immigration and Border Security Subcommittee Vice-Chairman Raúl Labrador (R-Idaho) and House Judiciary Committee Chairman Bob Goodlatte (R-Va.) have a plan to do just that.

In May, the congressmen introduced an extensive interior enforcement bill that would enhance public safety, protect national security, and restore the rule



Davis-Oliver sponsors Reps. Labrador (L) and Goodlatte (R).

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of law. The bill, the Michael Davis Jr. and Danny Oliver in Honor of State and Local Law Enforcement Act (H.R. 2431), is named for two California law enforcement officers killed in the line of duty in 2014 by an illegal alien gang member with multiple deportations. The families of these slain officers were seated alongside the first lady in the House chamber when President Trump spoke about immigration during his first address to Congress in February.

Davis-Oliver requires federal action to identify and remove certain illegal aliens, and specifically authorizes greater participation by states and local governments in immigration enforcement. The bill grants states and localities specific congressional authorization to enact and enforce their own immigration laws as long as they are consistent with federal law. Further, Davis-Oliver clarifies U.S. Immigration and Customs Enforcement's (ICE) detainer authority by establishing statutory probable cause standards to issue detainers. State and local governments that refuse to honor ICE detainer requests,

or which prohibit employees from communicating with ICE, would be barred from receiving certain federal grants from the Departments of Justice and Homeland Security.

H.R. 2431 would also enhance public safety by making it easier to deport criminal gang members and repeat drunk drivers, and would increase penalties for illegal reentry after being deported. It would also make it more difficult for dangerous aliens — criminals and terrorists — to enter the country in the first place and easier to remove them if they are already here.

FAIR has long worked to inform and educate the public about the dangers posed by criminal aliens and terrorists who slip through lax vetting processes, or who are allowed to remain in the country even after they have been identified and apprehended. Criminal aliens who have been released back into American communities have gone on to commit countless preventable crimes, many of them violent. Illustrative of the scope of this problem, a Freedom of Information Act request from FAIR's

legal arm, the Immigration Reform Law Institute (IRLI), revealed that in 2015 564 illegal aliens who were convicted of sex crimes were released from custody and allowed to remain in the country.

Enactment of this common sense legislation is essential to protecting public safety. Davis-Oliver should have bipartisan support — there is not a large constituency for keeping foreign criminals and terrorists in the country — but it will require a commitment by House and Senate leaders to bring it to the floor of their respective houses for a vote. However, in spite of a clear mandate from voters in the last election for enhanced enforcement of immigration laws, congressional leaders have been slow to act.

**In the coming months, FAIR will work to build pressure on Congress to act on Davis-Oliver and other immigration reform policies.**

## HEALTH CARE *continued from page 2*



payments from the individuals who were wrongly covered. This challenging practice — known as “pay and chase” — is costing taxpayers millions.

The Verify First Act bars payment of these tax credits unless the Treasury Department has received verification from the Secretary of Health and Human Services that the tax credit recipient is a U.S. citizen or an alien

who is lawfully eligible to work in the U.S. Congress explicitly barred illegal aliens from receiving coverage under the Affordable Care Act when the law was passed in 2010. H.R. 2581 must be approved by the Senate and signed by the president before these raids on the Treasury can be halted.

# NEWS FROM OUR State & Local Operations

While efforts at the state and local levels to rein in sanctuary policies have been generally positive during the first half of 2017, a small number of state and local governments have become increasingly defiant of federal law and public safety and strengthened their sanctuary policies.

## Oregon

Oregon lawmakers again seem determined to ignore the will of Oregonians and risk public safety by expanding the state's sanctuary policies. At the request of Gov. Kate Brown and Attorney General Ellen Rosenblum, legislators introduced House Bill 3464, which prohibits state and local agencies in Oregon from sharing information about illegal aliens (including their contact information, time and location of their public appointments, the identity of relatives, and their place of employment) with federal authorities. HB 3464, designated as an "emergency" bill, would also prohibit Oregon institutions from requesting information about a person's immigration or citizenship status. If they already have that information, they "may decline to disclose" the status to federal immigration enforcement agents unless required by law or court order. "Emergency" legislation is designed to address the "immediate preservation of the public peace, health and safety," and would go into effect immediately after being signed by the governor. In reality, this designation was assigned to thwart efforts by Oregonians to freeze implementation while signatures are gathered for a voter initiative to override the Legislature.

## Illinois

The Illinois Legislature finished the 2017 session by approving the "Trust Act" (SB 31), a bill that restricts immigration officials' ability to detain and deport illegal aliens, even if convicted of a crime. SB 31 not only prevents police from inquiring about immigration status, it also bars virtually all forms of communication between Illinois law enforcement and federal immigration authorities, even in response to direct inquiries by ICE. As of completion of the current issue of the FAIR newsletter, Republican Governor Bruce Rauner had not indicated if he will sign or veto this dangerous measure.

## New Jersey

The Port Authority of New York and New Jersey is the agency that ran the World Trade Center when it was struck by terrorists on 9/11. The agency also manages the bridges and tunnels that connect the two states, which have also been targeted by terrorists, but the plots were thankfully thwarted. Shockingly none of these tragedies or near tragedies have deterred the New Jersey Legislature from trying to prohibit employees and officers of the Port Authority, which also runs Newark International Airport, from providing any aid, resources, or assistance to federal officials implementing President Trump's (currently enjoined) March 6 Executive Order related to national security. The Legislature approved SB 3006 in late May which, if signed by Gov. Chris Christie, would severely limit the Port Authority from working with or providing information to federal agencies that might help prevent another attack targeting buildings or infrastructure administered by the Port Authority itself. In February, Gov. Christie indicated that he would be inclined to veto the bill if it reached his desk, but as of completion of the current issue of the FAIR newsletter he has not done so.

## President's Pause in Admissions from Terror Prone Nations Likely Headed to Supreme Court



**T**wo Appeals Courts — the Fourth and Ninth Circuits — ignored both clear statutory language, legal precedent, and empirical evidence of the threats posed by international terrorist organizations in upholding injunctions on President Trump's travel freeze. Judges in Maryland and Hawaii issued the injunctions to prevent implementation of Trump's executive order temporarily barring entry of some citizens from six nations. The revised executive order was issued on March 6.

In a divided ruling on May 25, the Richmond-based Fourth Circuit Court of Appeals affirmed a nationwide injunction of the president's "Protecting the Nation from Foreign Terrorist Entry into the United States" executive order. A U.S. District Court in Maryland blocked that order, which sought to institute a 90-day freeze on the entry of individuals from Iran, Syria, Libya, Somalia, Yemen, and Sudan—all countries designated by Congress and the Obama administration as posing national security risks.

Rather than confining itself to the question of whether the president has the constitutional authority to deny entry to citizens of the six countries covered under the executive order, the majority on the Fourth Circuit placed

great weight on what they perceived to be the president's intent in issuing the order. U.S. Code Title 8 Section 1182 grants the president statutory authorization to prohibit the entry of any aliens or class of aliens in the U.S. if he has deemed their entrance to be detrimental to the interests of the U.S.

Nevertheless, Chief Judge Roger Gregory wrote the majority opinion for the court found that statements made by Trump and his surrogates regarding Muslims create the impression that the purpose of the order is discriminatory. "These statements, taken together, provide direct, specific evidence of what motivated both [executive orders]: President Trump's desire to exclude Muslims from the United States. The statements also reveal President Trump's intended means of effectuating the ban: by targeting majority-Muslim nations instead of Muslims explicitly." The justices also ignored the fact that all of the countries were cited as security concerns by both the Obama and Trump administrations and that the vast majority of the world's Muslims are not affected by temporary entry restrictions.

Three weeks later, on June 12, the Ninth Circuit upheld an injunction issued by a federal district court judge in Hawaii. The Ninth Circuit concluded that the president "exceeded the scope of the authority delegated to him by Congress" in "suspending the entry of more than 180 million nationals from six countries." In the opinion of the three Clinton appointees who wrote the Ninth Circuit ruling, "the President did not meet the essential precondition to exercising his delegated authority: The President must make a sufficient finding that the entry of these classes of people would be detrimental to the interests of the United States."

The Trump administration is appealing the appellate court rulings to the U.S. Supreme Court. As of the deadline for the current issue of the FAIR Immigration Report, the Supreme Court had not indicated whether it will consider the administration's appeal. FAIR's legal affiliate, the Immigration Reform Law Institute filed an amicus brief in support of the administration's appeal, noting among other matters, "the Fourth Circuit defied a large body of Supreme Court precedents establishing

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## Massive Visa Overstay Problem Demonstrates the Need for Better Interior Enforcement

The good news is that illegal aliens entering by illegally crossing the border is way down. The bad news is that illegal aliens entering the country on valid visas and remaining here without authorization is way up. A Department of Homeland Security (DHS) report released in May revealed that 739,478 individuals granted temporary admission into the country failed to depart when required to do so during fiscal year 2016, a 13 percent increase over the previous year. According to DHS, 544,676 of those visa overstays remain in the United States illegally.

DHS says that it is stepping up investigating those who overstay their visas especially those who may pose a threat to national security. However, a recently released audit by the Office of Inspector General revealed that ICE employees, charged with the investigation of individuals overstaying their visas, had to piece together information from up 27 unintegrated internal systems that did not share data, making the process of locating visa abusers unnecessarily difficult.

The surging number of illegal aliens who enter the country legally with the intent of remaining here illegally reinforces the urgency of congressional action on interior enforcement legislation like the Davis-Oliver Act, and the need to fully implement the biometric entry/exit tracking system approved by Congress more than a decade

ago. In addition to being able to know who has overstayed visas, we need to eliminate other incentives for people to enter the United States on visas under false pretenses. Far fewer people would commit visa fraud if they did not believe they could find employment, or be shielded by the patchwork of sanctuary policies that exist across the country.



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**The Immigration Reform Law Institute joins 16 states, which have also filed briefs in support of President Trump's temporary restrictions and urging the Supreme Court to rule on the president's executive order.**

that, in First Amendment challenges, courts should give no more than limited scrutiny to presidential directives in the area of war, foreign relations, and the admission of aliens.”

IRLI joins 16 states, Alabama, Arizona, Arkansas, Florida, Kansas, Louisiana, Mississippi, Montana, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, and West Virginia, which have also filed briefs in sup-

port of President Trump's temporary travel restrictions and urging the Supreme Court to rule on the president's executive order. Texas Attorney General Ken Paxton noted, “The executive order is a tailored response to a very real threat to our national security.”

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## Join FAIR's Seventh Generation Legacy Society

Become a part of this honorary organization made up of FAIR supporters who ensure our work continues long into the future. For nearly four decades we have been fighting for immigration policies that better serve the American people. We wouldn't be able to continue our work without the kind individuals who include FAIR in their planned giving arrangements.

You have many gift options:

-  **Bequest by Will or Living Trust:** A charitable bequest is one of the easiest ways you can leave a lasting impact, and can be made in your will or trust by directing a gift to FAIR.
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