



FAIR FEDERATION FOR AMERICAN IMMIGRATION REFORM

# Immigration REPORT

MARCH 2012

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## Leading Senators Push for Expansion of Backdoor Amnesty Policy

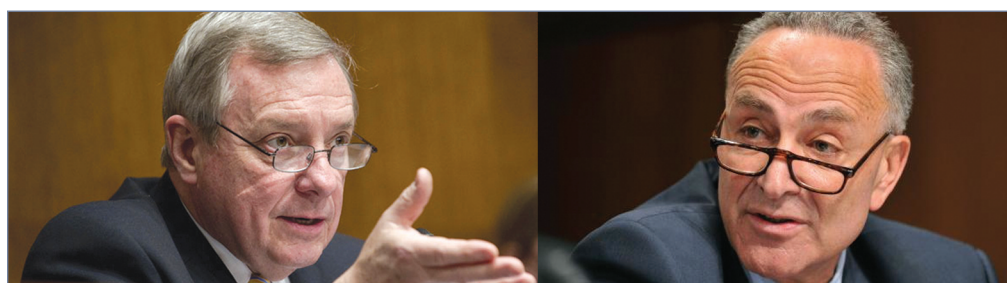
**E**ven though Congress has never given its approval to the backdoor amnesty program being implemented by the Obama administration, two top Senate Democrats are complaining that the administration is not going far enough in its effort to allow illegal aliens to remain and work in the United States. Senate Majority Whip Dick Durbin (D-Ill.) and Sen. Chuck Schumer (D-N.Y.) held a Capitol Hill meeting with the Immigration and Customs Enforcement (ICE) Director John Morton to urge him to fully implement the Obama administration's backdoor

amnesty policy and to grant deferred action and work authorization to illegal aliens whose deportation cases are dismissed.

Deferred action status is what DHS grants when it decides, by its own discretion, not to remove an illegal alien. Those who receive deferred action usually also receive work authorization. There is no statutory basis for deferred action status ; it is merely referred to in the federal regulations. Even more troubling, deferred action is not subject to judicial review.

Senators Durbin and Schumer are

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DURBIN AND SCHUMER'S EFFORTS TO EXPAND THE ADMINISTRATION'S BACKDOOR AMNESTY PROGRAM AND GRANT WORK AUTHORIZATION TO TENS OF THOUSANDS OF ILLEGAL ALIENS COMES IN SPITE OF CONTINUED HIGH UNEMPLOYMENT IN THE UNITED STATES.

## Obama Administration to Help Visa Holders Find Jobs

There are some 23 million Americans who are out of work, or involuntarily working part-time. Nevertheless, the Obama administration announced in late January that it intends to amend several visa programs in order to help aliens find jobs in the U.S. or keep the ones they have.

The administration announced that it intends to expand the Optional Practical Training (OPT) program, which allows foreign students (F-1 visa holders) who graduate from U.S. colleges and universities in certain fields to remain in the U.S. to work for up to a year following graduation. This is the second effort by the administration to expand the OPT program in less than a year. Last spring, the length of time foreign graduates with degrees in science, technology, engineering or mathematics (STEM) were permitted to remain in the U.S. to work after graduation was extended from 12



UNDER THE ADMINISTRATION'S PROPOSED REGULATION CHANGES, AMERICAN WORKERS WOULD FIND THEMSELVES COMPETING FOR SCARCE JOBS NOT ONLY WITH H-1B WORKERS, BUT WITH THE HUSBANDS AND WIVES OF H-1B WORKERS.

months to 29 months. Under the latest proposal, foreign graduates earning degrees in other fields could qualify for OPT, provided they have previously earned STEM degrees. In addition, the administration is seeking to expand the number of degrees that could be classified as STEM.

The Obama administration is also proposing to grant work authorization to some spouses of H-1B visa holders. The H-1B program itself is loosely monitored and allows employers to fill vacancies with foreign guest workers even when qualified U.S. workers are available. Under the administration's pro-

posed regulation changes, American workers would find themselves competing for scarce jobs not only with H-1B workers, but also with the husbands and wives of H-1B workers.

The administration did not state how soon these changes would be taking effect, merely that they would be sometime in the "future" and are part of the administration's dedication to "comprehensive immigration reform." In the parlance of the administration, comprehensive immigration reform translates as amnesty for illegal aliens and vast increases in overall admissions to the U.S.

### Immigration REPORT

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## House Seeks to Close Tax Credit Loophole for Illegal Aliens

**T**he Inspector General of the U.S. Department of Treasury reported last year that tax filers using the Individual Taxpayer Identification Number (ITIN) collected \$4.2 billion from just one tax credit program in 2010. The overwhelming majority of people filing tax returns using ITINs are illegal aliens, who do not qualify for Social Security numbers (SSNs). The Inspector General reported that 72 percent of ITIN filers claimed the Additional Child Tax Credit (ACTC) on their returns. In total, about 2.3 million ITIN filers took advantage of the ACTC. Just 14 percent of the returns claiming the ACTC were filed by persons using SSNs.

In February, House Republicans moved to close this glaring loophole in the tax law that has resulted in illegal aliens draining billions of dollars out of the Treasury. The effort to close the loophole is part of efforts to offset the cost of extending a reduction in Social Security taxes for most American wage earners. ITIN filers are barred from claiming other tax credits, like the Earned Income Tax Credit, under legislation approved by Congress in 1996. However, the ACTC was not specifically mentioned in the 1996 legislation (because the credit had not yet been created) the IRS has been permitting ITIN filers to benefit.

The proposal to bar ITIN filers

from claiming the ACTC has garnered bipartisan support. “Illegal immigrants bilked \$4.2 billion from the U.S. taxpayers (in 2010). I think that it’s time that we fixed it,” stated Rep. Sam Johnson (R-Tex.). “We have rules about tax credits and benefits, and it seems to me they need to be applied fairly and across the board,” said Sen. Claire McCaskill (D-Mo.), who is facing a difficult re-election bid this fall.

However, supporters of illegal aliens and their allies in Congress are waging an all-out battle to preserve the illegal alien tax benefit. Senate Majority Leader Harry Reid (D-Nev.) charged that barring ITIN filers from claiming the tax credit

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## Pilot Review of Deportation Cases Results in More than 1,600 Dropped Cases

**I**n preparation for its planned nationwide review of 300,000 pending deportation cases, Immigration and Customs Enforcement (ICE) carried out pilot reviews in Denver and Baltimore. ICE attorneys in those two cities pored through 11,682 case files to determine which ones should be pursued and to dismiss those that the Obama administration deems to be “low priority.”

The reviews were carried out over a six-week period beginning in late November and culminating on January 13. In the end, attorneys in the Denver office recom-

mended that 1,301 cases be closed, while their colleagues in Baltimore identified 366 cases for closure. ICE spokespeople hastened to add that further reviews may result in additional cases being dismissed in Denver and Baltimore.

The pilot reviews are intended to serve as the first phase of full implementation of the backdoor amnesty announced in August 2011. In November, the administration issued guidelines for carrying out its amnesty program with the stated goal of dismissing cases that do not

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## FAIR Polling Shows Strong Support for Immigration Enforcement in New England

**P**olling of likely voters across the New England states shows strong support for immigration enforcement, overall reductions in immigration, and solid opposition to granting in-state tuition benefits to illegal aliens attending public colleges and universities. The polls, commissioned by FAIR and conducted by Pulse Opinion Research in early January, sampled opinions of 500 likely voters in each of the region's six states: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont.

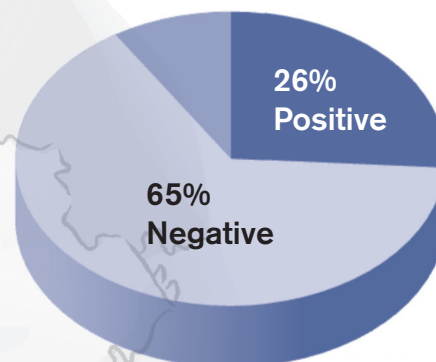
Two New England states — Rhode Island and Connecticut — extended in-state tuition subsidies to illegal aliens in 2011. However, voters in those states overwhelmingly oppose those policies. While sanctuary policies are in place in many jurisdictions across the region, voters expressed strong support for Arizona- or Alabama-style immigration enforcement measures. A majority of New Englanders also favor overall reductions in immigration to the U.S.

The results from New England are significant because they dispel the notion that support for sensible immigration enforcement or denying non-essential public benefits to illegal aliens is limited to a few border states, or the deep south. Even in more liberal regions of the country, like New England, there is strong support for sensible immigration enforcement.

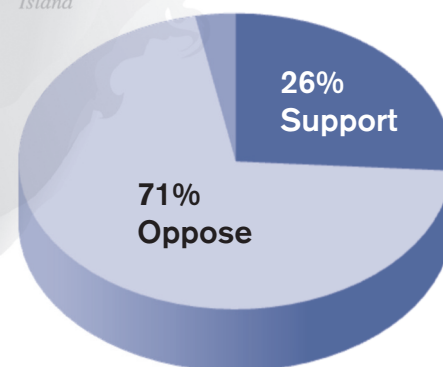
### Key Poll Findings

(combined results from all six states)

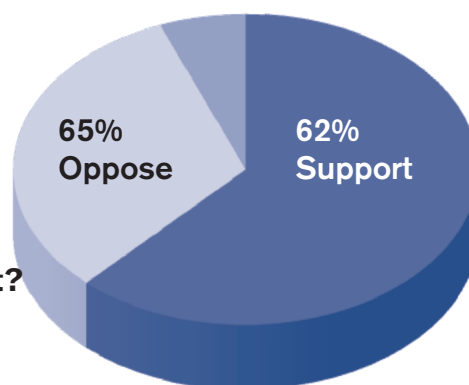
**Do you believe illegal immigration has a positive or negative impact on your state?**



**Do you support or oppose in-state tuition benefits for illegal aliens?**



**Do you support or oppose state and local immigration enforcement?**



The complete state-by-state poll results can be found at [www.fairus.org](http://www.fairus.org).



## Obama Orders Speed-Up of Visa Issuance Process

President Obama chose Walt Disney World in Orlando, Florida, as the backdrop for an announcement that requirements to secure a visitor's visa to the U.S. will be relaxed. During the same speech, the president proposed expanding the number of countries whose citizens are allowed to enter the U.S. without visas under the Visa Waiver Program (VWP).

Speaking to business executives whose profits are tied to tourism, Mr. Obama ordered the Secretaries of State and Homeland Security to come up with a plan within 60 days that: (1) increases nonimmigrant visa processing in China and Brazil

by 40 percent over the coming year; and (2) ensures that 80 percent of nonimmigrant visa applicants are interviewed within three weeks of the government receiving their applica-

THE VWP WAS CITED BY THE COMMISSION INVESTIGATING THE 9/11 ATTACKS AS A DANGEROUS VULNERABILITY IN OUR EFFORTS TO PREVENT TERRORISTS FROM GAINING ACCESS TO OUR COUNTRY.

tion. In order to carry out the president's directive, the Department of State announced that it will waive the long-standing statutory requirement that aliens seeking to renew visas undergo in-person interviews with a consular officer.

In addition to tourists and business travelers, the relaxed screening process will benefit hundreds of thousands of guest workers who are admitted to the U.S. each year.

The policy change, which the president justified as "a new national tourism strategy focused on creating jobs," came just two weeks after the Office of the Inspector General released a report charging that national security is already being compro-

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## Supreme Court to Hear Arguments on Arizona Immigration Law in Late April

Late in 2011, the U.S. Supreme Court announced that it would review a lower court's ruling that has prevented Arizona from implementing important provisions of its immigration enforcement law, known as SB 1070. In early February, the high court set April 25 as the day it will hear oral arguments in the state's effort to have the 9th Circuit Court of Appeals' injunction overturned. Shortly after SB 1070 was enacted in 2010, the U.S. Department of Justice filed suit against Arizona claiming that the law preempts federal authority over immigration policy — including authority claimed by the Obama administration to establish its own enforcement priorities and not enforce laws against many classes of

immigration lawbreakers.

FAIR and the Immigration Reform Law Institute (IRLI) submitted amicus briefs in support of SB 1070 as the federal government's suit was considered by a federal judge and later appealed to the 9th Circuit. FAIR and IRLI will again file amicus briefs as the case reaches the Supreme Court. Legal experts expect the Supreme Court to issue its ruling by late June. Only eight justices will be involved in the decision. Justice Elena Kagan, an Obama appointee, has recused herself from the case because of her earlier role in the case while she was the president's Solicitor General.

BACKDOOR AMNESTY PUSH *continued*

pushing for deferred action for illegal aliens whose cases are closed precisely because it usually comes with authorization to work legally in the U.S. In a letter presented to Morton at the meeting, Schumer, who chairs the Senate Judiciary Subcommittee on Immigration, wrote, “The inability to work and support oneself and one’s

family would make a favorable exercise of discretion a potentially hollow victory to the vast majority of those who may otherwise benefit from this discretionary exercise of law enforcement priorities.”

Durbin and Schumer’s efforts to expand the administration’s backdoor amnesty program and grant

work authorization to tens of thousands of illegal aliens comes in spite of continued high unemployment in the United States. The U6 unemployment rate — which includes people who have no jobs and those who have been involuntarily relegated to part-time work — stands at 15.1 percent of the workforce.

ILLEGAL ALIEN TAX LOOPHOLE *continued*

unfairly targets the children of poor Hispanics, while the Senate’s second ranking Democrat, Dick Durbin (Ill.) argued that the new restriction would “create obstacles to supporting low-income families who are trying to care for their children.” Illegal alien advocacy groups like the National Council of La Raza are also vehemently opposed to preventing ITIN filers from claiming the ACTC. “It’s outrageous and it’s crazy,” complained Leticia Miranda of La Raza.

In reality, what is outrageous and crazy is maintaining a policy that is increasingly abused by illegal aliens to the

tune of billions of dollars each year. ACTC payments to ITIN filers grew from \$924 million in 2005 to \$4.2 billion in 2010. As the Inspector General’s report states, “The payment of federal funds through this tax benefit appears to provide an additional incentive for aliens to enter, reside, and work in the United States without authorization, which contradicts federal law and policy to remove such incentives.”

As of the deadline for the current edition of the *FAIR Immigration Report*, Congress had not taken action to close the loophole.

DROPPED DEPORTATION CASES *continued*

meet its priority criteria. DHS officials say they plan to use the results of the Denver and Baltimore pilots to review the remaining estimated 300,000 pending deportation cases, as well as to assess whether incoming cases should be pursued.

While some congressional Democrats are urging the administration to apply the Denver and Baltimore model to the remaining

300,000 deportation cases around the country, other members of Congress are disturbed by the pilot program’s preliminary results. “Nearly 2,000 illegal and criminal immigrants in Denver and Baltimore have been granted backdoor amnesty that allows them to remain in the U.S. and apply for work authorization. And this administration routinely grants work authorization to 90% of

illegal immigrants when their cases have been administratively closed,” stated House Judiciary Committee Chairman Lamar Smith (R-Tex.) It is unclear, however, what steps congressional Republicans are prepared to take to prevent the administration from moving forward with its plans to review all 300,000 deportation cases.

# Did you know...

**81%** of likely voters oppose granting in-state tuition to illegal aliens in their state, with 12% supporting tuition breaks for illegal aliens.

—Rasmussen, August 2011

## FAST-TRACKING VISA ISSUANCES *continued*



UNDER PRESSURE FROM THE POWERFUL TOURISM INDUSTRY, THE PRESIDENT AND MANY IN CONGRESS ARE SEEKING TO EXPAND THE NUMBER OF COUNTRIES PARTICIPATING IN THE VISA WAIVER PROGRAM.

mised by administration pressure to speed up approval of applications for immigration benefits. [See February 2012 FAIR *Immigration Report*.]

President Obama told the business executives gathered at Disney World that he will push for expansion of the VWP. Foreign nationals who carry passports of VWP countries are not required to apply for a U.S. visitor's visa or go through a screening process at a U.S. embassy or consulate. The VWP was cited by the commission investigating the 9/11 attacks as a dangerous vulnerability in our efforts to prevent terrorists from gaining access to our country. However, under pressure from the powerful

tourism industry, the president and many in Congress are seeking to expand the number of countries participating in the VWP.

While an in-person screening of a visa applicant overseas cannot preclude the admission of a terrorist or a potential illegal alien, U.S. consular officers are trained to spot potential security or illegal immigration risks. This necessary security measure cannot be effective if visitors are not required to appear for an interview with a consular officer, or if the visa application process is rushed in an effort to comply with lobbyist-driven demands that visas be issued within some arbitrary period of time.

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