



FAIR FEDERATION FOR AMERICAN IMMIGRATION REFORM

Immigration

REPORT

MAY 2016

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Amnesty Case: What's At Stake?

On April 18, the U.S. Supreme Court heard arguments from both sides in *United States v. Texas*, a case challenging the Obama administration's authority to grant deferred action and work authorization to an estimated 4.7 million illegal aliens. The Obama administration is asking the Court to lift an injunction preventing it from implementing two executive amnesty programs, Deferred Action for Parents of Americans (DAPA) and an expanded Deferred Action for Child-

hood Arrivals (DACA). The Court is expected to issue a ruling in June.

It would not be an exaggeration to say that *United States v. Texas* is not only the most important immigration case the Court will decide this year, but also the most important constitutional issue it will be asked to consider.

In November 2014, the Obama administration, claiming broad discretionary power, announced it would grant temporary legal status to millions of illegal aliens and the right to

CONTINUED ON PAGE 2

Obama Administration Tells Border Patrol: Don't Bother Arresting Most Illegal Aliens, No Intention of Deporting

Just in case anyone had any lingering doubts about the state of immigration enforcement policy, the testimony of the president of the National Border Patrol Council (NBPC), the union representing Border Patrol agents, should put to rest the idea that the Obama administration is committed to protecting our borders.



CONTINUED ON PAGE 3

U.S. v. TEXAS *continued*

work here. Even though Republican congressional leaders unanimously declared that, in their opinion, the president's actions were unconstitutional, they took no meaningful legislative or legal actions to prevent him from carrying out his plans. However, 26 states, led by Texas, filed suit claiming that these actions would harm them. In February 2015, a federal judge issued a temporary injunction, which was later upheld by the Fifth Circuit Court of Appeals. The Obama administration is appealing that decision before the Supreme Court.

As it has done at every step of the judicial process, FAIR filed an amicus brief before the Supreme Court in support of the 26 states seeking to block DAPA and DACA+ from being implemented. Together with FAIR's legal affiliate, the Immigration Reform Law Institute (IRLI), the amicus brief provides a clear and concise summary of the comprehensive legal framework which Congress

put in place precisely to control the Executive Branch's politicization of immigration policy.

(IRLI also filed a second brief on behalf of organizations representing American workers who would be directly harmed by the issuance of work permits to millions of illegal aliens.)

The unexpected passing of Justice Antonin Scalia has set up the potential for a 4-4 split vote. In the event of a tie vote, the lower court's decision stands—meaning the injunction stays in place. However, a split vote means there is no precedent set and the Court will unlikely include an analysis when rendering the decision. This is noteworthy because, in addition to the points raised by the Obama administration on appeal, the justices asked the parties to brief and argue whether DAPA and expanded DACA “violates the Take Care Clause of the Constitution, Art. II, §3.” The

Take Care Clause mandates that the president “take care that the Laws be faithfully executed” and there is evidence that Obama breached his constitutional duty.

The justices devoted significant time to the technical issue of whether the states have legal standing to challenge the administration's actions. Both Judge Hanen in issuing the injunction and Fifth Circuit in upholding it agreed that the states had shown they would suffer harm as a result of the president's actions.

Regardless of who is elected president in November, FAIR will continue to press Congress to uphold its constitutional responsibilities to see to it that the Executive Branch faithfully carries out our nation's immigration laws, including barring this or future presidents from spending funds to implement policies that were never approved by Congress.

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WHAT'S AT STAKE

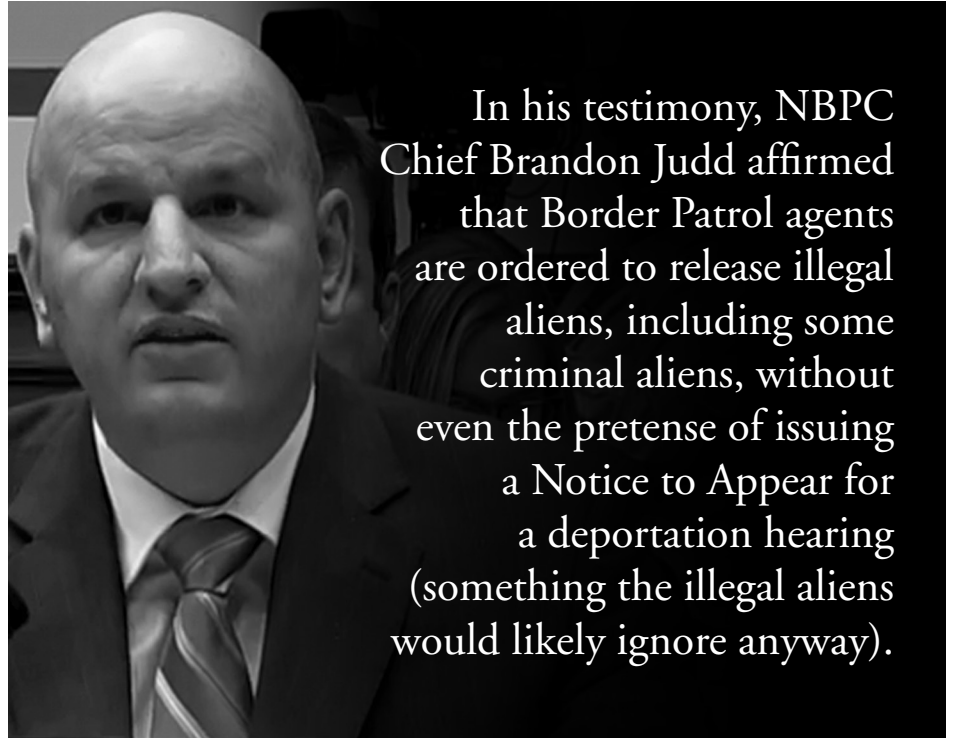
- The Obama administration has made wildly broad claims of unlimited power to permit millions who are outside the rules stipulated by the Immigration and Nationality Act to remain here. If the injunction is lifted, Congress and the American people will be left without remedy in the face of an unprincipled executive who willingly refuses to carry out his legal and constitutional responsibilities.
- The entire premise of more than a century of immigration policy: Namely, the legitimacy of laws that restrict immigration in order to protect the social, economic, and security interests of the American people.
- The integrity of the Constitution's Separation of Powers doctrine, under which laws are made by the Legislative branch and faithfully carried out by the Executive branch.

ADMIN HAS NO INTENTION OF DEPORTING ILLEGALS *continued*

In written testimony to the House Judiciary Committee in late March, NBPC Chief Brandon Judd affirmed that the Border Patrol has been told directly by Department of Homeland Security (DHS) officials in Washington that “catch and release” is and will remain the policy throughout the duration of the Obama administration. The policy directly contradicts the administration’s stated priority of removing recent illegal entrants (as an excuse for ignoring the millions who are already here).

According to Judd, affirmation of “catch and release” as official DHS policy came from Deputy Secretary Alejandro Mayorkas. In his testimony, Judd stated that Border Patrol agents are ordered to release illegal aliens, including some criminal aliens, without even the pretense of issuing a Notice to Appear (NTA) for a deportation hearing (something the illegal aliens would likely ignore in any event). He also told the committee that agents have been told verbally not to even interview minors who cross the border illegally.

Judd reported that Mayorkas’s reason for issuing these orders is to prevent the courts from becoming even more clogged than they already are (with the task of enforcing laws) and because the wholesale disregard for NTAs has become an embarrassment for DHS. Mayorkas “stated, ‘Why would we [issue an] NTA to those we have no intention of deporting?’ He also stated, ‘We should not place someone in



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deportation proceedings, when the courts already have a 3-6 year backlog,” testified Judd.

Judd’s contentions were disputed, sort of, by Customs and Border Patrol Commissioner R. Gil Kerlikowske. In his own testimony, Kerlikowske essentially said that Judd and front line Border Patrol agents don’t know what they’re talking about and, if they don’t think they’re being allowed to do their jobs, they should just quit. “Well, if you really don’t want to follow the directions of your superiors, including the president of the United States and the commissioner of Customs and Border Protection, then you really do need to look for another job,” said Kerlikowske.

Chillingly, news of the near complete abandonment of border enforcement coincided with the terrorist attacks in Brussels and renewed ISIS threats to carry out

attacks in other Western nations, including the U.S. In further testimony, Judd confirmed that Middle Eastern migrants are showing up and asserting “credible fear” claims and being released into the United States. Judd said he believes only a small percentage of these asylum claimants are making legitimate claims. “[T]he vast majority we arrest are telling our agents that they are coming because they know they will be released. That’s why they are coming.” Others are exploiting the administration’s self-declared policy of not enforcing immigration laws against people who claim to have entered the country prior to January 1, 2014. Foreign nationals who simply say they have been in the country for more than two years are released without Notices to Appear, said Judd.

HOW WE'RE MAKING A DIFFERENCE IN IMMIGRATION POLICY

Get to Know FAIR's Legal Support Arm



Dale L. Wilcox, EXECUTIVE DIRECTOR

Dale L. Wilcox is executive director and general counsel at the Immigration Reform Law Institute (IRLI), the affiliated legal organization of FAIR, which fights for true immigration reform in the courts and the halls of legislatures across the country. Prior to joining IRLI, he worked at FAIR as director of state and local government outreach and at Judicial Watch.

What does IRLI do that FAIR cannot do?

We are the true immigration reform movement's legal arm and routinely provide legal assistance to the other national and state immigration reform groups on our side of the issue. We also represent individual Americans, taxpayers, laborers and the most vulnerable in our society like minorities, seniors, and students, who have been harmed by unlawful immigration policies. For instance, we are lead counsel in the *Washtech v. DHS* case that challenges the Department of Homeland Security's (DHS) unlawful regulation allowing foreign students to work on student visas long after they graduate. We are also lead counsel in *Save Jobs USA v. DHS*, which challenges DHS's regulation unilaterally granting work permits for the spouses of H-1B visa holders, which DHS has stated will add 169,000 job seekers to the already-depressed labor market in the first year and 55,000 every year thereafter. And from the very beginning, we have been involved in the *Texas v. United States* case that the Supreme Court took up in April. IRLI's objectives are to improve the quality of life and well-being for all Americans. We achieve this through litigation, legislation and regulation, investigation and education.

Why do you call IRLI the movement's sword and shield?

At times we are on the offense, suing the government to comply with the law or digging into what public officials are doing through Freedom of Information Act requests, seeking to expose waste, fraud, abuse and dereliction of duty. At other times, we are on defense, defending state and local jurisdictions that are sued by anti-sovereignty fanatics, giving expert advice and opinions to legislators, when requested, and filing public comments regarding the pros and cons of governmental regulations. We regularly testify as experts before legislative bodies. We also draft law review articles that contribute to scholarship, which creates a reliable framework on the immigration reform discussion for courts and legislators.

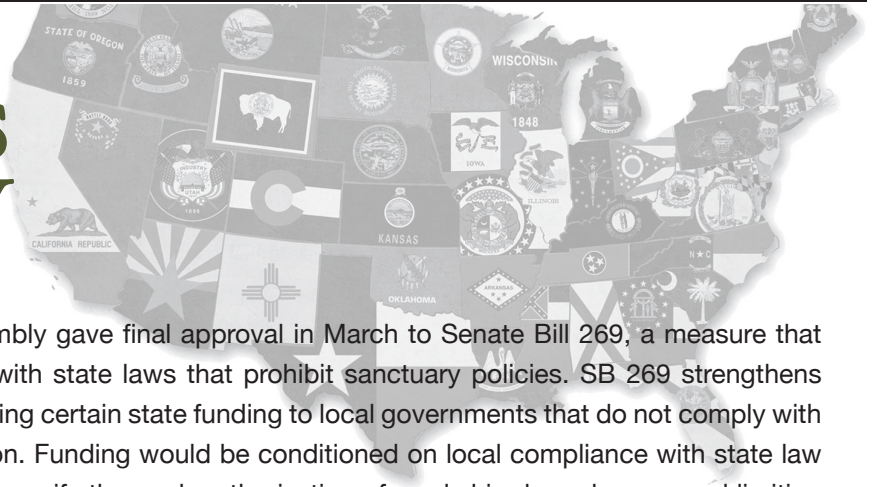
How do you choose your cases?

We prioritize the cases we get involved in based on where we can have the greatest impact in representing the public interest in immigration policy. This often involves making painful choices. We hope that IRLI's successes defending the public interest will provide us with the opportunity to grow and expand our reach.

IRLI's new website features a way for the public to contact you, right?

Yes, people contact us all the time and I personally answer every inquiry. We encourage people to contact us if they want to comment, blow the whistle on corruption or malfeasance, suggest a case, or request an appearance by an IRLI attorney.

Across the Country



Georgia

The Georgia General Assembly gave final approval in March to Senate Bill 269, a measure that would ensure compliance with state laws that prohibit sanctuary policies. SB 269 strengthens existing laws against sanctuary jurisdictions by denying certain state funding to local governments that do not comply with state laws designed to discourage illegal immigration. Funding would be conditioned on local compliance with state law forbidding sanctuary policies, their use of E-Verify to verify the work authorization of newly hired employees, and limiting public benefits to those lawfully in the country. Gov. Nathan Deal is expected to sign SB 269 into law.

Mississippi

The Mississippi State Legislature advanced two bills, SB 2306 and House HB 1296 that would prohibit sanctuary policies and strengthen the state's prohibition against issuing driver's licenses to illegal aliens. SB 2306, approved by the Senate in March, outlaws any local policies limiting or restricting the enforcement of immigration law. The bill also requires law enforcement officers to fully honor any detainer request placed by federal immigration officials upon a person who is not legally present in the United States and to notify ICE when an illegal alien convicted of a violation of state or local law is being released. HB 1296 requires that all non-citizen applicants for driver's licenses or identification cards have their immigration status verified using a federal database. Further, it makes a common sense amendment to the state's driver's licenses law requiring that non-citizen driver's licenses expire on or before the date that the applicant's lawful status in the United States expires. The bills must be approved by both houses of the Mississippi Legislature before they can be sent to Gov. Phil Bryant for his signature.

Florida

While other states in the South pushed ahead with efforts to outlaw sanctuary policies, the Florida Senate stifled an effort to implement a similar law in that state. In February, the Florida House approved an anti-sanctuary bill (HB 675) by an 80-38 vote, but Senate Judiciary Committee Chairman Miguel Diaz de la Portilla refused to take up any immigration enforcement bills this session. The *Miami-Dade Republican* declared, "None of the immigration bills are going to be heard," as he blocks this and other bills from being voted on by the Senate.

Executive Amnesty Beneficiaries Get Social Security, Medicare and Disability Benefits, Says Obama's Solicitor General

A legal brief submitted by White House Solicitor General Donald Verrilli, supporting the administration's efforts to move ahead with implementation of the president's executive amnesty programs, states that illegal aliens who are granted deferred action and work authorization would also be eligible for federal benefits such as Social Security, Medicare and disability payments.

In his brief, Verrilli rationalizes the issuance of work authorization to illegal aliens granted deferred action (even



Library of Congress Banishes “Illegal Aliens” from the Lexicon (Not the Country)

We know many in the media have yielded to political correctness and banned the use of the term “illegal aliens” to describe...well, illegal aliens. Now the august and supposedly apolitical Library of Congress has decided it will no longer use “illegal aliens” as a bibliographical term, even though it is a clear legal term that appears in federal statutes. The Library of Congress established the catalog subject heading in 1980.

The change was in response to a request from a group of Dartmouth College students, claiming the term “illegal alien” is offensive and racist.

It is neither offensive, nor racist. Throughout federal statutes, noncitizens are referred to as “aliens.” Noncitizens who have no legal authority to be in the United States, i.e. whose presence in the United States is illegal, are accurately referred to as “illegal aliens.”

Apparently accuracy, truthfulness and precision of language now take a back seat to hyper-political correctness, even at the Library of Congress—our national institution dedicated to truthfulness and accuracy in all endeavors.



“Under federal law, any non-U.S. citizen is an alien. Aliens who have entered the United States without permission, or who have violated the terms of their admission, are identified under the law as illegal aliens.

That is a fact, not an issue for debate.”

FROM THE
FAIR ISSUE BRIEF:
**“Illegal Alien”: The
Proper Terminology**
AVAILABLE AT FAIRUS.ORG

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TAXPAYER-FUNDED BENEFITS FOR EXECUTIVE AMNESTY RECIPIENTS *continued*

though federal statutes expressly prohibit their employment). “Without the ability to work lawfully, individuals with deferred action would have no way to lawfully make ends meet while present here,” he wrote. With authorization to work (often at the expense of Americans seeking employment), these illegal aliens would also qualify for “earned benefit programs.”

An illegal alien granted work authorization under DAPA or DACA “is not categorically barred, however, from participating in certain federal earned-benefit programs associ-

In addition to the damage inflicted on American workers, taxpayers and the Constitution, the administration’s executive amnesty program would further undermine the solvency of Social Security and Medicare that many American depend upon.

ated with lawfully working in the United States—the Social Security retirement and disability, Medicare, and railroad-worker programs—so long as the alien is ‘lawfully present in the United States as determined by [the Secretary of Homeland Security],” Verrilli asserted.

Thus, in addition to the damage inflicted on American workers, taxpayers and the Constitution, the administration’s executive amnesty program would further undermine the solvency of Social Security and Medicare that many American depend upon.

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Administration Responds to Border Surge... by Reducing Border Patrol Manpower

During the first four months of FY 2016 the number of illegal border crossing apprehensions increased by 25 percent over the same period a year ago, while the number of unaccompanied minors (UAMs) apprehended increased 102 percent. Faced with a growing border security crisis, the Obama administration has responded by calling for a reduction in the number of Border Patrol agents protecting our borders!

The administration's proposed FY 2017 budget seeks a reduction of 300 active duty Border Patrol agents. This proposed reduction comes on top of the adminis-

tration's failure to bring on an additional 1,500 Border Patrol agents mandated in 2010 legislation approved by Congress and signed by President Obama (just another in a seemingly endless list of immigration enforcement promises not kept).

The union representing Border Patrol agents joined with Pinal County, Arizona, Sheriff Paul Babeu to protest the administration's effort to further undermine immigration enforcement and ignore its constitutional obligation to protect the nation's security.

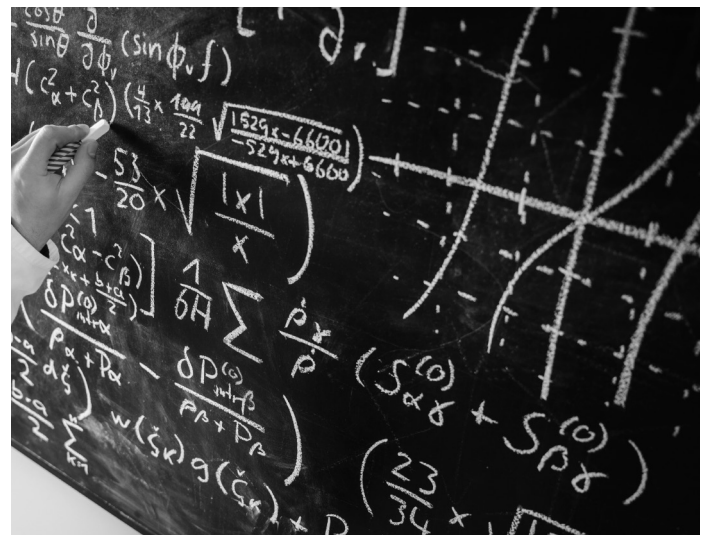
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DHS to American STEM Workers: Drop Dead

In March, the Department of Homeland Security (DHS) approved an administrative rule that essentially tells American STEM (science, technology, engineering and math) workers that their government does not care about them. A final rule issued by DHS last week makes it easier for the technology industry to utilize cheap foreign labor for STEM jobs under the Optional Practical Training (OPT) program, rather than hire American graduates. The rule increases, from one year to three years, the eligibility of foreign STEM degree-holders to remain in the country on student visas and work here after they graduate, despite the fact that there is no shortage of qualified American STEM workers.

OPT may be "practical" for foreign nationals who want to work in this country and for employers who want to save tens of thousands of dollars on wages and employer tax contributions. But for American STEM workers, particularly recent graduates, it is, for all practical purposes, a slap in the face by their government.

Adding to the actual and figurative insult, the final DHS rule came just seven months after a federal judge struck down a 2008 OPT extension for foreign STEM graduates that increased the authorized stay from 12



months to 29 months. FAIR's legal affiliate, the Immigration Reform Law Institute, sued the federal government on behalf of a coalition of American workers known as the Washington Alliance of Technology Workers (WashTech). That rule, extending OPT eligibility, was struck down by a federal judge last summer because DHS did not comply with the Administrative Procedure Act (APA) as it tried to implement it without attracting public attention.

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Charity Navigator has awarded FAIR four out of a possible four stars. In earning Charity Navigator's highest rating, FAIR has demonstrated exceptional financial health, outperforming most of our peers in our efforts to manage and grow our finances in the most fiscally responsible way possible.



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By identifying a charity you care about, like the Federation for American Immigration Reform, as a beneficiary, you could lower your tax liability for your loved ones and have an impact on fair immigration policies.

Your legacy is important and there are many ways you can support your interests and your loved ones. Ask your trusted tax advisor about how including FAIR as a beneficiary in your retirement plan can lessen the tax burden on your estate.

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