



FAIR

FEDERATION FOR AMERICAN IMMIGRATION REFORM

Immigration REPORT

NOVEMBER 2010

Inside . . .

Senators Accuse
Administration of
"Complete Disregard" for
Immigration Law

PAGE 2

Administration's Enforcement
Claims Challenged by
Congressional Researchers

PAGE 2

New York Governor May
Offer Pardons to
Criminal Aliens

PAGE 3

State Plan to Challenge
Birthright Citizenship in 2011

PAGE 3

Around the Country

PAGE 4

Georgia Bars Illegal Aliens
from State Universities

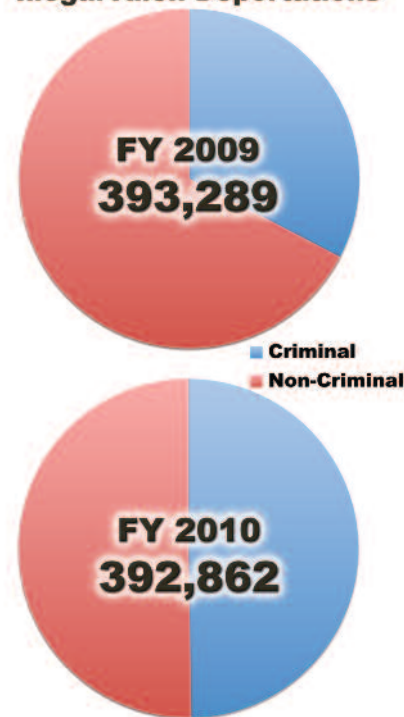
PAGE 5

Administration Record on Deportations: Long on Rhetoric, Short on Results

Demonstrating just how defensive they are about their record on immigration enforcement, the Obama administration mounted a full-scale public relations offensive to accompany release of FY 2010 data about deportations and removals. Homeland Security Secretary Janet Napolitano personally took charge of a media campaign touting what she described as "another record-breaking year of record criminal alien removals."

In total, the DHS deported 392,862 aliens in FY 2010, which ended on September 30. Of those deported, some 195,000 had criminal records, up from about 132,000 the previous year. While no one would quibble with placing a priority on removing criminal aliens from the United States, the FY 2010 data reveal disturb-

Illegal Alien Deportations



CONTINUED on page 6

EDITOR'S NOTE: The November *Immigration Report* was completed prior to the midterm elections. The December-January edition will include a full analysis about how the elections will affect immigration policy in the 112th Congress.

Senate Republicans Charge Administration with Selective Enforcement of Immigration Laws

Earlier this year, a Department of Homeland Security (DHS) memo indicated that the Obama administration was preparing to dismiss thousands of cases against illegal aliens who could be subject to deportation. That policy is already in effect, according to a letter sent by the seven Republican members of the Senate Judiciary Committee to DHS Secretary Janet Napolitano.

Consistent with the Obama administration's policy of non-enforcement of immigration laws, cases against aliens already in deportation proceedings are being dismissed even without requests from the aliens or their lawyers. The most visible manifestation of this policy has occurred in Houston, where the number of dis-

missed immigration cases rose from 27 in July to 271 in August. Immigration attorneys in other cities report similar increases in unexpected dismissals of cases against their clients.

The Oct. 21 letter states, "It appears that your department is enforcing the law based on criteria it arbitrarily chose, with complete disregard for the enforcement laws created by Congress." In addition, Republican members of the Judiciary Committee charge that the administration policy has resulted in dismissal of deportation cases against criminal aliens. "Numerous criminal aliens are being released into society and are having proceedings terminated simply because ICE has decided that such cases do not fit within the Department's

chosen enforcement priorities," wrote the senators. Beyond the cases being dismissed by DHS, the policy is likely to discourage ICE officers from initiating new cases against deportable aliens, the senators warned.

Wholesale dismissal of cases already in process provides graphic evidence of the administration's intent to defy Congress and implement what amounts to a backdoor amnesty. Having failed, so far, in their quest to grant a formal amnesty to illegal aliens, the administration has been exercising executive powers in an unprecedented fashion to ensure that all but the most violent and dangerous illegal aliens are allowed to remain in the country.

Congressional Research Service Questions Administration's Immigration Enforcement Claims

In an effort to promote amnesty for illegal aliens, the Obama administration has been portraying itself as vigorously enforcing U.S. immigration laws. The clear objective of the administration is to convince the American people that it is effectively dealing with illegal immigration and that it is time to move forward with amnesty.

FAIR has repeatedly disputed those claims and has documented the administration's unrelenting effort to dismantle effective immigration enforce-



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CONTINUED on page 7

New York Blatantly Infringes on Federal Immigration Authority; Obama Administration Not Likely to Sue

If any further evidence was needed that the U.S. Department of Justice's (DOJ) suit to prevent full implementation of Arizona's immigration enforcement law was about politics, rather than a principled defense of the federal government's authority over immigration policy, it is

WHEN THE GOVERNOR OF NEW YORK ANNOUNCED PUBLICLY THAT HE INTENDED TO ISSUE PARDONS TO CONVICTED CRIMINALS IN ORDER TO THWART THEIR REMOVAL UNDER FEDERAL IMMIGRATION LAWS, THERE WAS NEITHER CONDEMNATION NOR THE THREAT OF A LAWSUIT FROM THE ADMINISTRATION.

made apparent by the Obama administration's silence on the actions of the governor of New York.

In May, Gov. David A. Paterson appointed a special clemency panel to review petitions for an executive pardon for noncitizens who have been convicted of a crime in New York. The stated purpose of the panel is to identify and expedite pardons for immigrants whose convictions make them eligible for deportation. Under federal law, immigrants who are convicted of a variety of criminal offenses face deportation from the United States.

In an effort to prevent aliens convicted of crimes from being subject to deportation as a result of their offenses, the five-member clemency panel has been assigned the task

CONTINUED on page 4

Fourteen States May Challenge Birthright Citizenship in 2011

State and local governments are increasingly filling the void left by the federal government's refusal to enforce immigration laws or institute meaningful reforms that protect the interests of the American people. Over the past several years, state and local governments have enacted laws, or passed voter initiatives, aimed at discouraging illegal immigration by preventing illegal aliens from residing, working, collecting benefits, or getting driver's licenses.

The next big issue, long ignored by the federal government, is the misinterpretation of the citizenship clause

of the 14th Amendment. Because these children are recognized as citizens, state and local governments are compelled to provide them billions of dollars in services and means-tested benefits.

State legislators in as many as 14 states appear ready to challenge the current application of the citizenship clause by enacting legislation that would deny birth certificates to children born to illegal aliens. In October, State Legislators for Legal Immigration, an umbrella group of pro-immigration reform state legislators from across the country, announced a mul-

tistate effort to pass legislation that would force the issue of birthright citizenship into the courts.

FAIR, along with many constitutional scholars, has long contended that neither the intent nor the letter of the 14th Amendment conveys automatic citizenship on the children of illegal aliens. FAIR would welcome the passage of state legislation dealing with birthright citizenship for illegal aliens, allowing the opportunity for the courts to rule on the true intent of the 14th Amendment.



SOUTH CAROLINA

Undeterred by the efforts of the federal government and immigration advocacy groups to discourage local governments from adopting policies to discourage illegal immigration, the town of Summerville, South Carolina, approved an ordinance requiring local businesses to verify the immigration status of the people they hire. The Summerville Town Council approved the ordinance by a 5-1 vote on October 13. Under the ordinance, the town can fine or revoke operating licenses for businesses that fail to comply.

UTAH

Currently, Utah issues driver's privilege cards to individuals who cannot prove they are legally present in the country. The driver's privilege card makes it easier for illegal aliens to live and get around in Utah, but differs from a normal Utah driver's license that can be used for identification purposes. State Representative Stephen Sandstrom has introduced legislation that would require Utah police to verify immigration status "upon reasonable suspicion the person is an illegal immigrant." According to advocates for illegal aliens, the driver's privilege card itself would be grounds for reasonable suspicion since nearly all holders of the card are illegal aliens.

WASHINGTON

While most states are moving in the direction of becoming less accommodating to illegal aliens, Washington continues to buck the trend. State policies assure illegal aliens of driver's licenses (where, taking advantage of the Motor Voter law there is little to prevent illegal aliens from registering to vote). Emboldened by these policies, one Washington-based illegal alien rights group openly encouraged illegal aliens to get involved in the recent political campaign. According to reports in the Washington Post and the Seattle Weekly, the organization One America recruited illegal aliens to go door-to-door on behalf of Sen. Patty Murray. There is no evidence that Sen. Murray's campaign encouraged electioneering by illegal aliens, but there was also no effort on the part of the campaign to disavow it.

NEW YORK *continued*

of reviewing cases and recommending noncitizens for a pardon from the governor. The scandal-plagued Paterson, who assumed office when Eliot Spitzer resigned in 2008, is expected to issue the pardons before he leaves office at the end of the year.

The lack of any reaction from the DOJ to this effort to subvert U.S. immigration laws stands in stark contrast to its response to Arizona's efforts to enforce federal laws. From the day S.B. 1070 was signed into law by Gov. Jan Brewer, President Obama and key members of his administration publicly charged that it was an unconstitutional infringement on the federal government's authority over immigration policy. Yet, when the governor of New York

announced publicly that he intended to issue pardons to convicted criminals in order to thwart their removal under federal immigration laws, there was neither condemnation nor the threat of a lawsuit from the administration.

The contrast between the Obama administration's response to policies in Arizona and New York clearly illustrate FAIR's charge that the DOJ lawsuit against the Arizona law was motivated purely by the administration's political objectives, not constitutional issues. In New York, the DOJ is refusing to defend the constitutional authority of Congress to set the criteria for offenses that make a noncitizen subject to deportation, and to have those policies enforced.

Georgia Bars Illegal Aliens from State Colleges and Universities

By a 14-2 vote on October 13, the Georgia Board of Regents decided to bar illegal aliens from attending the state's five most prestigious public colleges and universities. Under the new policy, which will take effect beginning in the 2011-12 academic year, the five institutions of higher education will check the legal residency status of all applicants. Georgia joins South Carolina as only the second state to deny admission to illegal aliens.



The new policy established by the Board of Regents will protect coveted seats at the five institutions, which include the University of Georgia and Georgia Tech, for citizens and other legal U.S. residents. At a time when public universities are the only affordable options for many middle class students, and states are struggling to maintain adequate funding for higher education, the Board of Regents properly placed their interests first.

The effort to bar illegal aliens from state colleges and universities was spearheaded by immigration reform activists in Georgia, many of whom have worked closely with FAIR. The Board of Regents decision provides another example of constructive state-based action in the face of the federal government's refusal to enforce immigration laws. State lawmakers are expected to introduce legislation in 2011 that would extend the ban to all public colleges in Georgia.

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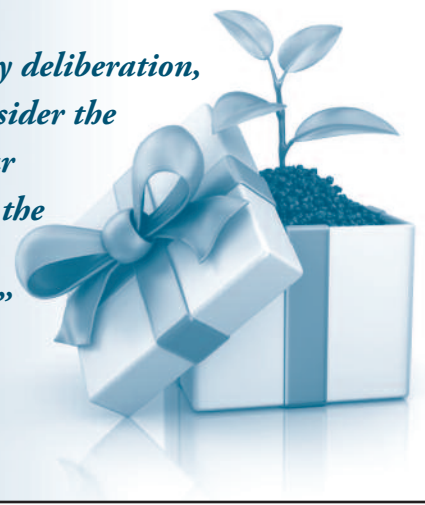
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The name **Seventh Generation Society is taken from the great law of the Iroquois Indian Confederacy:*

"In our every deliberation, we must consider the impact of our decisions on the next seven generations."



DEPORTATION NUMBERS *continued*

THE CURRENT LEVELS OF DEPORTATION, FOR WHICH SECRETARY NAPOLITANO IS CLAIMING CREDIT, ARE INFLATED BY CASES INITIATED BY THE PREVIOUS ADMINISTRATION.

DHS Secretary, Janet Napolitano

ing evidence of the administration's refusal to enforce laws against illegal aliens who have not committed serious offenses once inside the country.

In 2010, about 58,000 fewer noncriminal aliens were deported than in 2009. Even more significantly, the number of new cases initiated since the Obama administration took office has fallen dramatically. In the critical area of worksite enforcement, administrative arrests have fallen by 77 percent, criminal arrests are down 60 percent, indictments are down 64 percent, and convictions have fallen 68 percent since 2008. Moreover, these data do not reflect the impact of more recent DHS policies that are resulting in a growing number of dismissals of existing deportation cases.

While taking credit for maintaining relatively high numbers of deportations, the Obama administration is hoping that nobody takes note of the fact that they are initiating very few new cases. As a result, deportation numbers are certain to plummet in coming years as the administration assiduously avoids apprehending illegal aliens who have not committed major crimes and releasing others who have fallen into their hands.

Moreover, the current levels of deportation, for which Secretary Napolitano is claiming credit, are inflated by cases initiated by the previous administration. Even many of the criminal aliens who were deported in FY 2010 were

likely individuals whose deportation proceedings were initiated in previous years and whose prison sentences were completed during the most recent fiscal year. These deportations also are bolstered by the increased enforcement efforts of local jurisdictions, such as the 287(g) program, which the Obama administration has moved to curtail.

Far from being an indication of the Obama administration's commitment to immigration enforcement, the FY 2010 data confirm that, except for enforcing immigration laws against violent criminals, the administration is systematically abandoning enforcement against all other categories of immigration lawbreakers. The net result is that once the pipeline of noncriminal deportation cases is emptied — either because the aliens were removed from the country, or because DHS just dismissed the case — such deportations will all but disappear.

FAIR does not contest the administration's stated objective of prioritizing the removal of criminal aliens. However, removal of criminal aliens — most of whom are already in state or federal prisons — should not come at the exclusion of other deportations. The drop-off in enforcement against noncriminal aliens has less to do with the administration's focus on criminals and more to do with their political objective of allowing noncriminal aliens to remain in this country as they promote a sweeping amnesty that would give legal status to those illegal aliens.

CRS ENFORCEMENT REPORT *continued*

ONE AREA IN WHICH FAIR HAS BEEN HIGHLY CRITICAL INVOLVES THE ELIMINATION OF MEANINGFUL WORKSITE ENFORCEMENT AIMED AT PUNISHING EMPLOYERS WHO HIRE ILLEGAL ALIENS AND REMOVING ILLEGAL WORKERS FROM THE COUNTRY.

ment. One area in which FAIR has been highly critical involves the elimination of meaningful worksite enforcement aimed at punishing employers who hire illegal aliens and removing illegal workers from the country. Worksite enforcement, increased late in the Bush administration, has been replaced with paperwork audits of employers' records. Under the Obama policy, employers avoid any serious consequences for having hired illegal aliens if they fire their illegal workers, while the workers themselves are allowed to remain in the country and seek employment elsewhere.

FAIR's skepticism of the administration's record on immigration enforcement is shared by the nonpartisan Congressional Research Service (CRS). CRS examined the results of paperwork audits and found sharp declines in key areas of enforcement. **According to the report, *Immigration-Related Worksite Enforcement: Performance Measures*, enforcement of immigration laws has dropped significantly in many key areas during the Obama administration's first year in office.**

The lone bright spot was in the area of fines collected from employers convicted of employing illegal aliens. The collections increased between 2008 and 2009, but still amounted to just \$722,000. In all, a mere 52 employers nationwide were fined in 2009, which, according to CRS, "represents less than .001% of U.S. employers."

Immigration-Related Worksite Enforcement: Performance Measures

Table 2. Final Orders and Administrative Fine Collections, FY2003-FY2009

Fiscal Year	Number of Final Orders Issued	Administrative Fines Collected
2003	52	\$167,000
2004	19	\$87,700
2005	18	\$27,500
2006	0	\$0
2007	2	\$0
2008	18	\$26,500
2009	52	\$722,000

Source: CRS presentation of data from U.S. Department of Homeland Security, Immigration and Customs Enforcement, July 1, 2008 (FY2008-FY2009) and April 22, 2010 (FY2009-FY2010).

Note: Administrative fines may be collected in the same fiscal year that the associated final order is issued, or in one or more subsequent years.

Administrative and Criminal Arrests

Administrative and criminal arrests are other measures of worksite enforcement activity. Administrative arrests are the civil violations of the INA, such as being illegally present in the United States. Only a noncitizen can be the subject of an administrative arrest, which represents an initial step in the process of removing an alien from the United States. It seems reasonable to assume that most individuals arrested on administrative charges are non-manual employees, many of whom are undocumented immigrants. Criminal arrests include arrests for illegal hiring as well as the identity theft, money laundering, and other criminal violations. Citizens and noncitizens can be the subject of criminal arrests, as can non-manual employees, managerial employees, and employers.

Table 3. Administrative and Criminal Arrests in Worksite Enforcement Operations, FY2003-FY2009

Fiscal Year	Number of Individuals Arrested on Administrative Charges	Number of Individuals Arrested on Criminal Charges
2003	402	72
2004	485	145
2005	1,716	176
2006	3,657	716
2007	4,077	863
2008	5,184	1,452
2009	1,647	496

Source: CRS presentation of data from written statement of the Honorable Michael Chertoff, Secretary, U.S. Department of Homeland Security, for the U.S. House Judiciary Committee, February 28, 2009 (FY2008-FY2009), and April 22, 2010 (FY2009-FY2010).

Note: The same individual may be the subject of an administrative arrest and a criminal arrest; thus, there may be double counting of some individuals.

Congressional Research Service

Worksite Enforcement Operations 2008 to 2009

► Administrative and Criminal Arrests

- Administrative arrests declined 68%
- Criminal arrests declined 59%

► Criminal Indictments and Convictions

- Criminal indictments declined 59%
- Criminal convictions declined 62%

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