



FAIR FEDERATION FOR AMERICAN IMMIGRATION REFORM

Immigration

REPORT

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Napolitano Faces Tough Questions Over Administrative Amnesty Policy

It took two months, but Congress has finally begun to demand an explanation from the Obama administration about its plans to grant what amounts to administrative amnesty to millions of illegal aliens. Homeland Security Secretary Janet Napolitano faced questioning from both the Senate and House Judiciary Committees in October about the Obama administration's plan to allow millions of illegal aliens to remain in

the United States (and perhaps gain work authorization) through broad exercise of "prosecutorial discretion."

The Obama administration announced in August that it would cease to enforce immigration laws against what it termed "low-priority" offenders and concentrate its manpower and funding resources on removing "high-priority" criminal aliens. The administration laid out broad categories of illegal

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Federal Appeals Court Upholds Nearly All of Alabama Immigration Law

State and local governments seeking to enforce laws against illegal immigration scored a landmark victory on October 14 when the 11th Circuit Court of Appeals upheld Alabama's immigration enforcement law, H.B. 56, nearly in its entirety. With the exception of two provisions, the 11th Circuit Court — one step below the Supreme Court — ruled that Alabama has broad con-



OTHER STATES BURDENED BY THE FEDERAL GOVERNMENT'S REFUSAL TO ENFORCE U.S. IMMIGRATION LAWS NOW HAVE A JUDICIALLY TESTED TEMPLATE FOR TAKING ACTION ON THEIR OWN.

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FAIR Testifies Before Senate Immigration Subcommittee

FAIR's recent publication, "Illegal Immigration and Agribusiness," which debunks many claims that illegal labor is essential to the profitability of the U.S. agricultural industry, prompted an invitation to present testimony before the Senate Subcommittee on Immigration and Refugees. FAIR's Director of Research, Eric Ruark, presented evidence to the subcommittee that low wages offered by agricultural employers, not a scarcity of Americans willing to do the work, is the primary obstacle to filling farm jobs with legal U.S. workers.

Testifying at a hearing stacked with witnesses advocating for illegal aliens and agricultural interest groups, Ruark was the lone voice advocating better wages and working conditions for workers who plant and harvest America's food. Ruark argued that American agriculture could offer substantially improved wages to its workers and still maintain a healthy profit margin. In other instances, he told members of the

subcommittee, ready access to low-wage illegal labor presents an impediment to investment in labor-saving machinery and is actually hindering the long-term competitiveness of American agriculture.

With a few exceptions, Ruark's testimony was well received by members of both parties. Senators including Richard Blumenthal (D-Conn.) and John Cornyn (R-Tex.) agreed with key points of his testimony. FAIR has testified before Congress on more than a hundred occasions and the continued opportunities to appear before



ERIC RUARK
FAIR RESEARCH DIRECTOR

House and Senate committees demonstrates FAIR's effectiveness as an advocate for true immigration reform.

California Dream Act: Still More Benefits for Illegal Aliens

California, a state with a \$15 billion budget shortfall and an estimated \$20 billion in costs associated with illegal immigration, has finally decided it is time to do something. On October 8, Gov. Jerry Brown signed into law the California DREAM Act, A.B. 131, a bill that extends still more public benefits to illegal aliens. On top of an estimated \$88 million that California taxpayers already spend to pro-

vide in-state tuition subsidies to illegal aliens attending public colleges and universities, they will now be eligible for another \$88 million in state grants and loans as they pursue their education in state-run schools.

The enactment of the California DREAM Act comes at the culmination of a legislative session that saw the state make painful across-the-boards cuts in services and benefits, including

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Alabama Immigration Law Spreads Fear... Among Illegal Alien Advocacy Groups

Just a month after implementation of Alabama's immigration enforcement law, H.B. 56, it is too early to gauge how many illegal aliens have left the state or are planning to leave. But anecdotal evidence and the hysteria being whipped up by illegal alien advocacy groups and cheap labor interests indicate that the law is working exactly as intended: Illegal aliens are leaving Alabama.

The exodus of illegal aliens from Alabama vindicates FAIR's long-held contention that illegal immigration is a very manageable phenomenon. Advocates for illegal aliens have insisted that their presence here is an immutable fact and that our only options for dealing with illegal

immigration are mass deportations, or mass amnesty. FAIR has long argued that rational policies that send a clear message that illegal immigration will not be rewarded would result in fewer illegal aliens entering the country and more returning home on their own. The initial evidence from Alabama and partial implementation of Arizona's S.B. 1070 law demonstrate the effectiveness of the attrition through enforcement model.

Many illegal aliens who are leaving Alabama (like many who have left Arizona) are heading to other U.S. destinations where illegal immigration is tolerated, or even welcomed. But some are returning home. A recent report by

the Mexican think tank BBVA Bancomer Research estimates that some 100,000 illegal aliens and dependent family members left Arizona within a year of passage of S.B. 1070, and that some 23,000 returned to Mexico during just the first three months.

A similar commitment on the part of the federal government to enforce immigration laws would likely result in millions of illegal aliens leaving the United States of their own accord. For political interests that benefit from illegal immigration and businesses that profit from low-wage illegal alien labor, that is a scary thought.

■

President Obama Calls "Record" Deportations "A Little Deceptive"

For the last two and half years, the Obama administration has worked hard to convince the American public that it is diligently and forcefully enforcing U.S. immigration laws while reassuring advocates for illegal aliens (a core element of President Obama's political base) that illegal aliens have little to worry about unless they commit other crimes in the U.S. The latest salvo in the Obama

public relations effort came with the October release of FY 2011 (which ended on September 30) deportation data.

The message from the White House, and dutifully echoed in the media, is that deportations set a new record for the third year in a row. In reality, deportation levels have plateaued during the Obama administration. What has changed dramatically is the likelihood of being re-

moved from the country for "only" violating U.S. immigration laws. Under the current administration, deportations for immigration violations only have declined significantly and, as a result of policy changes announced in August, will plunge even more dramatically in coming years.

In FY 2009, 65.5 percent of people removed from the country were deported

ACROSS THE COUNTRY

Washington, D.C.

To the surprise of no one, the nation's capital has adopted one of the most far-reaching illegal alien sanctuary policies in the country. An executive order signed by Mayor Vincent C. Gray bars all city public safety agencies from inquiring about immigration status or from cooperating with Immigration and Customs Enforcement (ICE), unless it is part of a criminal investigation. Among other things, the executive order prohibits making individuals incarcerated by city police available for interviews with federal immigration authorities "without a criminal nexus." The city will also refuse to send lists of foreign-born inmates to the Department of Homeland Security and refuse to make arrests based on federal warrants if the individual in question has "only" violated U.S. immigration laws.

California

The Santa Clara County Board of Supervisors approved a measure barring the use of county funds to hold individuals wanted by federal authorities for immigration violations. Only individuals accused of serious and violent felonies will be held by the county. The October 18th decision was the culmination of "a year of work with a coalition of immigrants' rights advocates, members of the legal community and civil rights groups," AP reports. The move comes as retaliation by the county for what it considers to be forced participation in the Secure Communities program. Under Secure Communities, electronic fingerprint files of people arrested by state and local police are forwarded to federal law enforcement agencies. When ICE identifies someone who is wanted for immigration violations they issue a detainer asking local authorities to hold the individual – a request that Santa Clara County will now reject.

Oregon

The U.S. Department of Labor reports that \$7 million in federal stimulus money intended to put unemployed Oregonians back to work was instead used by contractors to pay 254 foreign workers. In spite of 11 percent unemployment in the state at the time the money was allocated in 2009, federal contractors claimed they could not find American workers to fill forestry jobs. The investigation was requested by Rep. Peter DeFazio (D-Ore.) who called the payment of foreign workers with money intended to help unemployed Americans, "obscene."

Rhode Island

The Rhode Island Board of Governors of Higher Education made an end run around the state legislature in late September in order to grant in-state tuition subsidies to illegal aliens. The move was praised by Gov. Lincoln Chafee, who has worked to overturn many state policies designed to discourage illegal immigration since taking office in January. Rhode Island, like most states, is grappling with severe budget shortfalls.

NAPOLITANO QUESTIONED *continued*

aliens who gain *de facto* amnesty from this policy and embarked on a review of 300,000 pending deportation cases to determine which ones to dismiss. All of these changes in policy and resource allocation were made without approval from Congress.

"There's funny business going on," Sen. Charles Grassley (R-Iowa), the ranking minority member of the Judiciary Committee, told Sec. Napolitano. In an earlier letter addressed to the secretary, 19 Republican senators charged that the administration's "policies appear to be a direct attempt to categorically legalize those who are unlawfully in the country."

Judiciary Committee Republicans complained about the administration's failure to provide details about how it intends to go about carrying out its plans, or explain the constitutional basis for making dramatic changes to immigration policy without approval from Congress. "We have many unanswered questions from this administration about their

prosecutorial discretion initiatives. We want answers. We want transparency and accountability. Constitutionally, [Congress must be] part of the process," Grassley stated.

Senators also grilled Napolitano about her department's suggestion that illegal aliens whose deportation cases are dropped would receive authorization to work in the United States. Napolitano lamely claimed that she had no authority over who receives work authorization and that it was a matter for the U.S. Citizenship and Immigration Services (USCIS) agency to make those determinations, apparently forgetting that USCIS is an agency within DHS.

A week later, Napolitano found herself in front of the House Judiciary Committee, where Republicans control the majority. At that hearing, Committee Chairman Lamar Smith (R-Tex.) bluntly accused the administration of withholding information from Congress about its backdoor amnesty plan and threatened to

begin issuing subpoenas unless they were more forthcoming.

Members of the committee challenged the administration's assertion that it has prosecutorial discretion in determining which cases to pursue and which to dismiss. Others asked the secretary to point to other instances in which law enforcement agencies refused to prosecute lawbreakers merely because someone had a pregnant spouse, or was pursuing an education. Napolitano either refused to answer questions that were posed to her or provided evasive answers.

While the hearings before Congress have not succeeded in derailing the administration's unconstitutional backdoor amnesty plan, they do indicate that Congress will not sit by quietly while the administration tramples on its constitutional authority. It can be expected that these are the first of many questions that Sec. Napolitano and other administration officials will be forced to address.

"THERE'S FUNNY BUSINESS GOING ON," SEN. CHARLES GRASSLEY (R-IOWA), THE RANKING MINORITY MEMBER OF THE JUDICIARY COMMITTEE, TOLD SEC. NAPOLITANO...WE HAVE MANY UNANSWERED QUESTIONS FROM THIS ADMINISTRATION ABOUT THEIR PROSECUTORIAL DISCRETION INITIATIVES. WE WANT ANSWERS. WE WANT TRANSPARENCY AND ACCOUNTABILITY."



ALABAMA LAW UPHELD *continued*

stitutional authority to enforce immigration laws enacted by Congress. The implications of this favorable ruling on H.B. 56 extend far beyond Alabama. Other states burdened by the federal government's refusal to enforce U.S. immigration laws now have a judicially tested template for taking action on their own.

The Obama administration sued Alabama to prevent the state from enforcing federal immigration laws, just as it sued Arizona in 2010. In late September, Federal Judge Sharon Lovelace Blackburn ruled against the U.S. Department of Justice (DOJ), allowing nearly all of the Alabama law to take effect. DOJ immediately appealed the decision before the 11th Circuit, which upheld the earlier opinion but did not offer an explanation for its ruling. However, the decision appears to build upon a Supreme Court ruling earlier this year which strongly asserted that states have constitutional authority to carry out federal immigration laws.

The 11th Circuit's ruling in Alabama stands in sharp contrast to a decision handed down last year by the 9th Circuit involving Arizona's immigration law, S.B. 1070. In Arizona, the 9th Circuit enjoined some key provisions that are nearly identical to provisions in the Alabama law upheld by the 11th Circuit. The conflicting circuit court rulings increase the likelihood that the U.S. Supreme Court will review these cases and issue a definitive ruling that can be applied nationally.

Of the provisions in H.B. 56 challenged by the DOJ, the 11th Circuit let the following stand:

- Section 12, which requires local law enforcement to make a reasonable attempt to check immigration status during a lawful stop, "when practicable," when there is reasonable suspicion the individual is an illegal alien.
- Section 18, which requires local law enforcement to make a reasonable effort to verify the immigration status of a person who is arrested for driving without a license.
- Section 27, which bars the enforcement of contracts entered into when one party knows the other is an illegal alien.
- Section 30, which provides that it is a felony for illegal aliens to enter into a "business transaction" with the state or political subdivisions.

Two provisions, Section 10, which makes it a state misdemeanor for an alien to fail to carry his or her alien registration documents, and Section 28, which requires schools to gather immigration status information from students upon enrollment, were blocked by the 11th Circuit. However, despite the injunction of these two provisions, the ruling represents a critical victory for the immigration reform movement. FAIR and the Immigration Reform Law Institute worked closely with Alabama lawmakers to craft legislative language that conforms with federal laws, clearing the way for other states to adopt similar policies.

■

DREAM ACT *continued*

to higher education. It also passed over the objection of "80 to 90 percent of Californians," according to polling cited by Assemblyman Tim Donnelly.

This latest disregard for public opinion (not to mention an assault on common sense) may finally have pushed voters past their limit of toleration. In response to Gov. Brown's signing

A.B. 131, Assemblyman Donnelly launched a petition drive to put an initiative to repeal the California DREAM Act on the ballot. While collecting the necessary signatures poses a significant and expensive hurdle, California voters have a history of approving measures aimed at restricting unnecessary benefits to illegal aliens.

■

What Our Members Are Telling Us

FAIR values keeping in touch with the concerns of our 250,000 members and supporters whose interests we represent. Our broad and diverse membership base cuts across political, ideological and demographic lines, and the reasons that people become involved with this issue are about as varied as our members themselves.

In recent months we have asked our members to identify those aspects of the immigration issue that concern them the most and what motivated them to become advocates for true immigration reform. We thank you for keeping us informed about what concerns you and we pledge to devote our energies to addressing those concerns as the nation's leading and most prominent immigration reform organization.

Here are a few of the issues that **you**, our members, voted as your most important:

- Gain Control of the U.S.-Mexican Border
- Take U.S. Funding From Sanctuary Cities
- Fight All Proposals for Amnesty for Illegal Aliens
- Educate Americans on Real Costs of Illegal Immigration
- Push for Stronger Enforcement of U.S. Immigration Laws by States

RECORD DEPORTATIONS *continued*

for immigration violations alone. Two years later, that percentage had dropped to 45.5 percent and the administration is in the process of reviewing some 300,000 pending deportation cases with an eye toward dismissing those that do not include criminal violations. While no one would object to prioritizing the removal of people who also pose a danger to American society, the Obama administration is moving inexorably in the direction of abandoning enforcement against non-criminal illegal aliens.

But even the current levels of non-criminal deportations do not reflect the full impact of the administration's efforts

to allow illegal aliens to remain in the United States. Who says so? President Obama himself does. Seeking to reassure his political base, the president told a group of illegal alien activists in September, "The statistics are actually a little deceptive because what we've been doing is...apprehending folks at the borders and sending them back. That is counted as a deportation, even though they may have only been held for a day or 48 hours, sent back, that's counted as a deportation." In keeping with stated policy goals, the administration is taking great pains to ensure that illegal aliens who have lived in this country for any length of time are

not subject to deportation.

Other steps designed to protect illegal aliens without serious criminal violations include redesigning the Secure Communities program to minimize the possibility that illegal aliens apprehended by local police for minor violations do not wind up in deportation proceedings. At the same time, the administration is pursuing aggressive lawsuits against state governments that attempt to fill the enforcement void left by the federal government, and continues to hold out the carrot of amnesty for millions of illegal aliens.

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OUR GOALS ARE THE SAME AS YOURS

- END ILLEGAL IMMIGRATION
- RESTORE COMMON SENSE TO IMMIGRATION POLICIES
- ENFORCE IMMIGRATION LAWS
- STOP TERRORISTS AT OUR BORDERS
- FIND A BALANCE BETWEEN PEOPLE AND RESOURCES

The immigration issue has never been bigger or hotter – and that means the challenges we face – and the opportunities – are greater than ever. As America approaches a defining moment in its immigration history, your pledge to FAIR in the 2011 Combined Federal Campaign is needed now more than ever. Look for FAIR under our full name in your CFC brochure.



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