



FAIR FEDERATION FOR AMERICAN IMMIGRATION REFORM

Immigration REPORT

OCTOBER 2012

Inside . . .

FIRST DEFERRED ACTION
APPLICATIONS APPROVED
PAGE 2

ILLEGAL ALIEN ADDRESSES
DEMOCRATIC CONVENTION...
DURING PRIME TIME
PAGE 2

"RECORD" DEPORTATION LEVEL
CLAIMS MAY NOT BE ON THE LEVEL
PAGE 3

PARTY PLATFORM STATEMENTS ON
IMMIGRATION
PAGE 4

LEGAL WRANGLING OVER SB 1070
CONTINUES
PAGE 5

CALIFORNIA LEGISLATURE PROTECTS
CRIMINAL ALIENS
PAGE 5

KEY PROVISIONS OF ALABAMA
IMMIGRATION LAW UPHELD
PAGE 6



25 MASSACHUSETTS AVENUE, NW
SUITE 330
WASHINGTON, DC 20001
(202) 328 7004
INFO@FAIRUS.ORG
WWW.FAIRUS.ORG

Kobach Goes to Court to Stop Illegal Implementation of Amnesty

A group of U.S. Immigration and Customs Enforcement (ICE) officers, represented by Kris Kobach, filed a lawsuit last month against Department of Homeland Security Secretary Janet Napolitano and ICE Director John Morton claiming that the policy directive issued by the Secretary on June 15 forces them to violate their oaths as law enforcement officers as well as federal law. Federal law requires that when officers encounter any alien who "is not clearly and beyond doubt entitled to be admitted" to the United States, it is their obligation that "the alien shall be detained...[for] a removal proceeding." Under the policy directive of this administration, these law enforcement officers are instructed to ignore their legal obligation.

In filing the suit, the officers are also challenging the entire legal basis on which the Obama administration is granting de facto amnesty to broad classes of illegal aliens, by granting them deferred action and authorization to work. Aside from merely being

bad policy, the use of deferred action to grant administrative amnesty to millions of illegal aliens raises important constitutional issues that must be considered by the courts. Specifically the suit charges that:

- Napolitano's directive violates federal law because there is no statutory basis for deferred action.
- There is no legal basis for the blanket issuance of work authorization to deferred action beneficiaries.
- Napolitano's deferred action directive amounts to a legislative act, which is the sole authority of Congress under our Constitution. Congress specifically defined the broad-based concept of "Temporary Protected Status" as the sole statutory basis for class-based humanitarian parole.
- By granting deferred action and refusing to enforce laws against entire classes of illegal aliens, the Executive Branch is violating its oath to faithfully execute the law.

CONTINUED on page 6

Mad Rush for Backdoor Amnesty Applications

The Department of Homeland Security (DHS) reported that 72,000 applications were filed during the first three weeks after the Department began accepting requests for deferred action. Under the deferred action program being implemented by the Obama administration, illegal aliens under the age of 31 who claim to have entered the country before age 16 could be eligible to remain in the U.S. legally and gain work authorization.

As many as 1.76 million illegal aliens are believed to be potentially eligible for this backdoor amnesty program, but its susceptibility to fraud could push the number significantly higher. New York immigration attorney Allan Wernick believes that the current pace of applications can be attributed to the time it takes

potential applicants to gather (or perhaps produce) supporting documents. In addition, Wernick believes that many are waiting for support organizations to gear up assistance programs for those filing applications.



HUNDREDS GATHER AT CASA DE MARYLAND SEEKING INFORMATION ABOUT DEFERRED ACTION AND TO SUBMIT APPLICATIONS.

Concerns raised by FAIR and others that DHS would rubber-stamp approvals for deferred action applicants was confirmed by the Department's announcement that the first wave of approvals had already been issued just three weeks into the process. According to internal documents, the necessary time to conduct full background checks and collect biometric data is between four and six months.

DHS documents also confirmed that American taxpayers could foot a significant portion of the bill for this unauthorized amnesty program. The Department estimates that the fees it expects to collect from applicants for deferred action will be insufficient to cover the actual costs of implementing the program. The shortfall is estimated to be between \$17 million and \$101 million.

Illegal Alien Addresses Democratic National Convention

The Democratic Party platform states that, "President Obama and the Democrats fought for the DREAM Act" and that his administration is providing "temporary relief" for those who would have qualified for amnesty in the form of deferred action. As if to place an exclamation point on their support for the DREAM Act, the party leadership invited an illegal alien to address the convention during prime time.

In her address, Benita Veliz argued that it is unfair to deport illegal aliens and urged enactment of a full-scale amnesty. In addition to Ms. Veliz's speech, the administration elected not to initiate deportation proceedings against ten illegal aliens who were arrested while protesting outside the Charlotte convention hall. It is clear the party knew that they were inviting an immigration law-breaker to their convention and to the podium. That was precisely the reason she was invited.

Immigration REPORT

Board of Directors

Nancy Anthony	Donald A. Collins, Jr.
Sharon Barnes	Sarah G. Epstein
Douglas E. Caton	Frank Morris
William W. Chip	Roy Porter
Pat Choate	Alan Weeden

Staff

Dan Stein	Julie Kirchner	Ira Mehlman
President	Executive Director	Senior Editor

FAIR Immigration Report

(ISSN 1067-3337) is published 10 times a year by the Federation for American Immigration Reform a non-profit membership organization.

FAIR 25 Massachusetts Ave., NW • Ste. 330 • Washington, DC 20001
(202) 328-7004 • info@fairus.org • www.fairus.org

Administration Cooking the Books on Deportations, Charges Chairman Smith

The Obama administration's consistent response to charges that it is weak on immigration enforcement is to cite the "record" number of deportations that have taken place on their watch. According to Immigration and Customs Enforcement (ICE) documents reviewed by the House Judiciary Committee, these "record" deportations may have been achieved through some creative accounting and creative imaginations.

Instead of outpacing the deportation numbers of previous administrations as President Obama claims,

the U.S. by repatriating them to a location away from where they entered. Normally, Mexicans apprehended by the Border Patrol and returned to Mexico are not counted as deportations. The inclusion of removals under the ATEP program padded ICE's statistics by about 100,000 deportations over the past two years, found the Committee's analysis.

According to the Committee's findings, the deportation totals would drop significantly if the ATEP figures were not included. The "2011

listed as individuals ICE arrested, nor are they counted among ATEP removals. Thus, it is unclear if these deportations actually occurred.

Even as the president has been claiming strict enforcement of immigration laws, FAIR has also called into question the accuracy of those claims. In the past, FAIR has noted discrepancies in the data put out by DHS and has pointed out that in many cases the administration was claiming credit for deporting people who were already in the deportation pipeline when they took office, while



IT SEEMS LIKE PRESIDENT OBAMA IS TRYING TO TRICK THE AMERICAN PEOPLE INTO THINKING HE IS ENFORCING OUR IMMIGRATION LAWS.

—REP. LAMAR SMITH (R-TEX.)

these ICE documents reveal that if the previous practice for reporting deportations were followed, deportation levels since 2009 are actually down nearly 20 percent. Judiciary Committee Chairman Lamar Smith (R-Texas) charged that ICE has been counting aliens who are apprehended by the Border Patrol in one location and transported and returned to Mexico at a different location as deportations. The Alien Transfer Exit Program (ATEP) is designed to discourage apprehended illegal border crossers from attempting to return to

removal total would drop from approximately 397,000 to roughly 360,000, and the 2012 removal total would drop from about 334,000 to around 263,000 (annualized this is estimated to be a drop from about 400,000 to 315,000)," stated the Committee's press release.

In addition to the inclusion of the ATEP numbers to inflate the deportation statistics, the Committee also uncovered an additional 40,000 deportations in ICE's 2012 statistics that were not accounted for. These claimed deportations are neither

initiating fewer deportation proceedings on their own.

"It seems like President Obama is trying to trick the American people into thinking he is enforcing our immigration laws," Rep. Smith accused. The Obama administration has attempted to justify its exercise of "discretion" in order to not take action against illegal aliens who have not committed other crimes by claiming that it is stepping-up deportations of criminal aliens. The findings of the House Judiciary Committee place even these claims in doubt.



In Their Own Words: What the Democratic and Republican Platforms Say About Immigration

FAIR is a non-partisan organization that does not endorse or oppose candidates or political parties.

Democratic National Platform

AMNESTY FOR ILLEGAL ALIENS

Democrats are strongly committed to enacting comprehensive immigration reform that supports our economic goals and reflects our values as both a nation of laws and a nation of immigrants...Democrats know there is broad consensus to repair that system and strengthen our economy, and that the country urgently needs comprehensive immigration reform that brings undocumented immigrants out of the shadows and requires them to get right with the law, learn English, and pay taxes in order to get on a path to earn citizenship. We need an immigration reform that creates a system for allocating visas that meets our economic needs, keeps families together, and enforces the law.

DREAM ACT AMNESTY

President Obama and the Democrats fought for the DREAM Act, legislation ensuring that young people who want to contribute fully to our society and serve our country are able to become legal residents and ultimately citizens. Although this bill has a long history of bipartisan support, Republicans decided to play politics with it rather than do the right thing. So the Obama administration provided temporary relief for youth who came to the United States as children, through no fault of their own, grew up as Americans and are poised to make a real contribution to our country.

ADMISSION OF SKILLED IMMIGRANTS

[W]e will work to make it possible for foreign students earning advanced degrees in science, technology, engineering, and mathematics to stay and help create jobs here at home.

Republican National Platform

ILLEGAL IMMIGRATION

Illegal immigration undermines those benefits and affects U.S. workers. In an age of terrorism, drug cartels, human trafficking, and criminal gangs, the presence of millions of unidentified persons in this country poses grave risks to the safety and the sovereignty of the United States.

AMNESTY FOR ILLEGAL ALIENS

In this country, the rule of law guarantees equal treatment to every individual, including more than one million immigrants to whom we grant permanent residence every year. That is why we oppose any form of amnesty for those who, by intentionally violating the law, disadvantage those who have obeyed it. Granting amnesty only rewards and encourages more law breaking.

FEDERAL-STATE ENFORCEMENT PARTNERSHIPS

[A] Republican Administration and Congress will partner with local governments through cooperative enforcement agreements in Section 287g of the Immigration and Nationality Act... State efforts to reduce illegal immigration must be encouraged, not attacked. The pending Department of Justice lawsuits against Arizona, Alabama, South Carolina, and Utah must be dismissed immediately.

GUEST WORKERS AND SELECTION OF LEGAL IMMIGRANTS

We can accelerate the process of restoring our domestic economy-and reclaiming this country's traditional position of dominance in international trade by a policy of strategic immigration, granting more work visas to holders of advanced degrees in science, technology, engineering, and math from other nations...[F]oreign students who graduate from an American university with an advanced degree in science, technology, engineering or math should be encouraged to remain here and contribute to economic prosperity and job creation.

STUNNER: Judge Blocks Anti-Smuggling Provision of Arizona's SB 1070

One would think that combating human smuggling would be one of the highest priorities of immigrant advocacy groups. Not so. Apparently, preventing enforcement of U.S. immigration laws is. If you thought the U.S. Supreme Court's ruling last June was the final word on Arizona's SB 1070, that too is wrong — not as long as lavishly funded advocacy groups are able to litigate endlessly.

In September, a coalition of groups, led by the American Civil

Liberties Union (ACLU) and the Mexican American Legal Defense and Education Fund (MALDEF) were back in court asking a federal judge to enjoin the anti-smuggling provision of SB 1070. Section 5 of that law prohibits individuals from knowingly transporting or harboring illegal aliens within the state, or inducing illegal aliens to enter or live in the state.

Not coincidentally, the ACLU and MALDEF were back in the court of Federal District Judge

IN THEIR SUIT, ACLU AND MALDEF CONTENDED THAT SECTION 5 IS PREEMPTED BY FEDERAL LAW. JUDGE BOLTON ACCEPTED THIS ARGUMENT, EVEN THOUGH FEDERAL LAW EXPRESSLY AUTHORIZES STATE LAW ENFORCEMENT OFFICIALS TO ARREST INDIVIDUALS FOR ALIEN SMUGGLING.

Susan Bolton, who enjoined all of SB 1070 when it was first enacted in 2010. Once again, Judge Bolton

CONTINUED on page 7

California Legislature Passes Bill to Shield Criminal Aliens

In recent years, as California has struggled through one fiscal crisis after another, the state legislature has continued to grant new services and benefits to illegal aliens. But in late August, in its zeal to protect the interests of illegal aliens, the legislature moved beyond mere fiscal irresponsibility to social irresponsibility in approving overwhelmingly a bill that would shield criminal aliens from deportation.

AB 1081, also known as the Trust Act, would prohibit state and local law enforcement from honoring Immigration and Customs Enforcement (ICE) requests to detain illegal aliens who have been arrested for other crimes in California unless certain criteria were met. This

UNDER AB 1081, LAW ENFORCEMENT IN CALIFORNIA WOULD BE REQUIRED TO IGNORE ICE DETAINERS UNLESS:

- The individual has been convicted of a serious or violent felony according to a criminal background check or documentation provided to the law enforcement official by ICE or is currently in custody for a charge of a serious or violent felony by a district attorney; AND
- The continued detention of the individual on the basis of the detainer would not violate any federal, state, or local law or policy.

Even if those conditions were met, AB 1081 would still allow law enforcement the discretion to disregard an ICE detainer request.

CONTINUED on page 7

11th Circuit Court of Appeals Upholds Key Provisions of Alabama's HB 56, Blocks Others from Taking Effect

The 11th Circuit Court of Appeals cleared the way for Alabama to implement the core provisions of its immigration enforcement law, HB 56, but enjoined other provisions from taking effect. The 11th Circuit's ruling appears to take into account the decisions handed down by the Supreme Court in June in its ruling on Arizona's SB 1070.

The court enjoined key provisions of Alabama's law, most notably Section 28, which requires school districts to collect immigration status data about students enrolling in schools. Under this provision, illegal aliens would still have received a taxpayer-funded K-12 education, but would have provided the state with valuable information about the number of illegal aliens in its schools and how much it was costing taxpayers.

The 11th Circuit also rejected other provisions, including ones that would have barred illegal aliens from soliciting employment, imposed state penalties for concealing, harboring, or transporting illegal aliens, and prohibited employers from including on their state tax filings wages paid to illegal workers.

Gov. Robert Bentley responded to the decision saying, "The essence of Alabama's immigration law has been upheld." FAIR and the Immigration Reform Law Institute worked closely with Alabama lawmakers in drafting HB 56 and filed amicus briefs before the court defending the state's right to assist the federal government in enforcing U.S. immigration laws.

Neither the plaintiffs, which include the U.S. Department of Justice and an assortment of illegal alien rights groups, nor the State of Ala-

bama have indicated if they will appeal the 11th Circuit's ruling.

HB 56 PROVISIONS UPHELD

Section 12(a)

Requires state and local law enforcement officers, during a lawful stop, detention, or arrest, to check the immigration status of an individual they reasonably believe is unlawfully in the United States.

Section 18

Requires all drivers to present their driver's licenses to a proper state official upon request and, if not, requires the official to make a reasonable effort within 48 hours to determine the individual's immigration status.

Section 30

Bars illegal aliens from obtaining driver's, business and professional licenses.

ICE OFFICERS SUE DHS *continued*

- In granting deferred action and work authorization to a class of illegal aliens, the Executive Branch has bypassed the formal rulemaking process and is in violation of the Administrative Procedures Act.

In raising these constitutional issues, the ICE agents are applying pressure on Congress to reassert the Legislative Branch's constitutional

role in immigration policy. Congress possesses the power to define the limits of executive discretion and require the administration to enforce our immigration laws as written. They have the power to bar the administration from using funds intended to enforce our immigration laws for the purpose of implementing an amnesty for people who

broke our laws.

While some members of Congress have vocally challenged the Obama administration's authority to grant deferred action to entire classes of illegal aliens, Congress has not taken any significant steps to make sure that the immigration laws it has enacted are carried out by the Executive Branch.

SB 1070 ANTI SMUGGLING *continued*

accommodated these advocacy groups and issued an injunction barring the state from implementing Section 5.

The judge issued this ruling notwithstanding the fact that another court had rejected the U.S. Department of Justice's (DOJ) effort to have this provision blocked. DOJ argued unsuccessfully in court that Section 5 was an impermissible regulation of immigration and interfered with in-

terstate commerce. In their suit, ACLU and MALDEF contended that Section 5 is preempted by federal law. Judge Bolton accepted this argument, even though federal law expressly authorizes state law enforcement officials to arrest individuals for alien smuggling.

Judge Bolton held that Arizona nevertheless is not permitted to pass a law on the subject. Moreover, she ar-

gued, while federal law permits state officials to arrest for alien smuggling, it does not permit the state to prosecute such offenses.

Arizona must now decide whether it wants to spend even more taxpayer money to appeal Judge Bolton's latest ruling before the 9th Circuit Court of Appeals.

CALIFORNIA'S AB 1081 *continued*

means that the police would release deportable illegal aliens back on the streets. By mid-September, Gov. Jerry Brown had still not indicated if he would sign or veto the measure by the September 30 deadline. In the absence of any action by the governor, the bill would become law without his signature.

AB 1081 drew sharp criticism from the California Sheriffs' Association, which urged Gov. Brown to veto the bill. "The sheriffs of this state are actively, unalterably and vehemently opposed," to releasing criminal aliens back onto the streets, the Association stated. Some sheriffs openly vowed that they would defy AB 1081. Los Angeles County Sheriff Lee Baca, whose county provides sanctuary to illegal aliens, said his department would "adhere to federal law...[and] still honor ICE holds."



AB 1081 DREW SHARP CRITICISM FROM THE CALIFORNIA SHERIFFS' ASSOCIATION, WHICH URGED GOV. BROWN TO VETO THE BILL. "THE SHERIFFS OF THIS STATE ARE ACTIVELY, UNALTERABLY AND VEHEMENTLY OPPOSED," TO RELEASING CRIMINAL ALIENS BACK ONTO THE STREETS, THE ASSOCIATION STATED.

The bill may even go too far for the Obama administration, which is attempting to limit deportations to serious criminal aliens. In a letter to FAIR's executive director, Julie Kirchner, responding to concerns about jurisdictions that refuse to honor such detainers, ICE Director John Morton made a veiled threat that such jurisdictions may be denied federal reimbursement for the incarceration of illegal aliens. It is "fundamentally inconsistent" for jurisdictions that are "thwarting ICE's efforts to remove" criminal aliens to expect the federal government to compensate them for incarceration costs, Morton stated in his letter. For cash-strapped California, withholding of federal funds could cost the state close to \$100 million a year.

FAIR will report on Gov. Brown's decision in the next issue of the Immigration Report.

☐ \$1,000 ☐ \$500 ☐ \$250 ☐ \$100 ☐ \$50
☐ \$25 ☐ Other \$ _____

I am making my donation by check
payable to FAIR, or credit card (check one):

☐ Visa ☐ Mastercard ☐ Amex ☐ Discover

Cardholder's Name

Card Number

Expiration Date Signature

☐ With this donation, I would like to become a
Cornerstone Contributor (see adjacent panel for details)

WE ALSO WELCOME YOUR DONATIONS ON OUR SECURE SERVER
www.fairus.org/DONATE
(enter code NL1210).

☐ I have included at least \$25 for a Gift Membership

Gift recipient's name and address

**Stay Informed. Get Involved.
Make a Difference!**

Sign up today to receive
FAIR's Legislative Updates online!

(please provide your email address)



FAIR is a member of the Better Business Bureau's Wise Giving Alliance and is one of a select few non profit organizations that meet their high standards of operation, spending, truthfulness, and disclosure in fundraising.



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 its peers in its efforts to manage and grow its finances in the most fiscally responsible way possible

FAIR is a 501(c)(3) organization. All contributions are tax-deductible.

NL1210

Attention All Federal Government Employees

All federal employees, civilian and military, can help in the fight for sound immigration policies by supporting FAIR in the 2012 Combined Federal Campaign (CFC).

As America approaches a defining moment in its immigration saga, your pledge to FAIR in the 2012 CFC is needed now more than ever. The immigration issue has never been bigger or hotter — and that means the challenges we face, as well as the opportunities, are greater than ever.

Look for FAIR under our full name,
Federation for American Immigration Reform
CFC number 11696
in your CFC brochure.

For further information, or to learn how you can help out, please email or call our CFC coordinator, Marjorie Wilkinson at Margie@fairus.org 877-627-3247.



Cornerstone Contributors are the building blocks of FAIR's citizen-supported foundation. Time and time again, through their continuing support they have become key officers in our battle to end the destructive mass immigration that is debilitating our great nation.

As a *Cornerstone Contributor*, you pledge to give a specific monthly contribution to FAIR. This donation, electronically transferred conveniently each month from your credit card or checking account, enables FAIR to count on you to help support our ongoing immigration reform efforts.

To become a member, check the box on the adjacent form, clip and mail to FAIR or contact Melissa Bradley-Wilson at (202) 328-7004 or missy@fairus.org; or sign up online at www.fairus.org.