



FAIR FEDERATION FOR AMERICAN IMMIGRATION REFORM

Immigration REPORT

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Inside . . .

FAIR Op-ed: Illegal
Immigration Crisis is Real
PAGE 2

Obama Administration
Considers Back Door
Amnesty
PAGE 3

Additional Border Security
Funding Approved
PAGE 3

Around the Country
PAGE 4

ICE Union Votes
"No Confidence" in
Agency Leaders
PAGE 4

Birthright Citizenship
Hotly Debated
PAGE 5

Key Provisions of Arizona Immigration Law Go Into Effect

*Judge's Ruling Blocks Other Provisions;
State Vows to Appeal*

Large portions of Arizona's landmark law to discourage illegal immigration went into effect on schedule on July 29. However, Federal District Judge Susan Bolton temporarily blocked other key provisions of SB 1070 from being implemented as scheduled. State officials, led by Gov. Jan Brewer, have filed an appeal seeking to have Judge Bolton's injunction lifted. A hearing before the 9th Circuit Court of Appeals is set for Nov. 1.

Though widely hailed by advocates for illegal aliens as a victory for their side, Judge Bolton's decision refused to enjoin the entire law, clearing the way for many important provisions of SB 1070 to be implemented. The judge also rejected the Obama administration's claim that immigration enforcement is solely the responsibility of the federal government, explicitly acknowledging that state and local governments have a crucial role to play.

Among the key provisions of SB 1070 that went into effect on July 29 were:

- The ban on sanctuary cities and policies that limit enforcement of federal immigration laws;
- The right of residents to sue any state official or agency for adopting policies that restrict the enforcement of federal immigration laws;
- The creation of a crime for stopping a motor vehicle to pick up day laborers if it blocks traffic; and

EVEN BEFORE THE LAW
TOOK EFFECT, THERE WERE
NUMEROUS MEDIA REPORTS
THAT ILLEGAL ALIENS HAD
GOTTEN THE MESSAGE AND
MANY WERE LEAVING
ARIZONA.

CONTINUED on page 6

The Crisis is Real

Opposing view: Get-tough laws show you don't need amnesty to fix broken system

BY FAIR PRESIDENT, DANIEL STEIN

Published July 30, 2010 • USA Today

There is a concerted effort on the part of advocates for illegal aliens to dismiss the widespread public outrage over unchecked illegal immigration as irrational. The illegal immigration crisis is not a myth, and the American people have not succumbed to mass hysteria. The problems are real: They affect Americans' lives, jobs and pocketbooks, while the Obama administration intentionally refuses to enforce most immigration laws. These realities are precisely why Arizona enacted SB 1070.

According to a new study by FAIR, illegal immigration now costs U.S. taxpayers \$113 billion a year – about \$1,117 for every native-headed household. Arizona, which like most states is facing a severe fiscal crisis, spends \$2.5 billion a year on illegal aliens. In addition, lawful residents see a daily impact on schools, hospitals and, yes, crime as a consequence of the federal government's refusal to enforce immigration laws.

Fixing our broken immigration system is an urgent priority. True reform must begin with the recognition that the American people are the most important stakeholders in U.S. immigration policy. However, the "cure" that President Obama insists upon – mass amnesty for millions of illegal aliens – would further undermine the interests of ordinary Americans.

Ironically, before it even went into effect, SB 1070 proved illegal immigration can be addressed without mass amnesty. Since Arizona first began getting tough on illegal immigration in 2004, the federal government estimates that the number of illegal aliens in the state has declined by some 100,000. Since Gov. Jan Brewer signed SB 1070 in April, there have been countless reports of illegal aliens packing up and leaving Arizona in large numbers. Replicated at the national level, a serious enforcement policy would inexorably lead to significant reductions in the illegal population.

Americans who demand enforcement of immigration laws are responding to reality. Rather, it is the people who insist that we again grant amnesty to illegal aliens in exchange for government promises of future enforcement – and expect different results – who believe in myths.

Immigration
EDITORIAL

Immigration REPORT

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Obama Administration Considers Administrative Amnesty

Faced with broad public opposition to amnesty for illegal aliens, and a daunting task of shepherding an amnesty bill through Congress, the Obama administration is exploring other avenues to achieve their desired goal. A leaked U.S. Citizenship and Immigration Services (USCIS) memo, entitled “Administrative Alternatives to Comprehensive Immigration Reform,” reveals that the Obama

administration is contemplating an end-run around Congress.

The detailed memo lists numerous options that the executive branch can use to allow illegal aliens to remain legally in the United States. Options discussed in the USCIS memo include:

- Not issuing Notices to Appear (NTAs) to illegal aliens

CONTINUED on page 7

Congress Approves \$600 Million Border Security Bill

Demonstrating how vulnerable congressional Democrats and the Obama administration believe they are for failing to enforce immigration laws, the Senate took the unusual step of reconvening during the August recess to approve a \$600 million border security package. The Senate adopted the language of the House bill, H.R. 6080, by unanimous consent, and President Obama wasted no time in signing the measure into law on August 13.

The money will pay for an additional 1,000 Border Patrol agents, 250 Customs and Border Protection officers, unmanned drone aircraft, and other law enforcement priorities. The additional resources for the border are most welcome as the nation continues to deal with rampant illegal immigration and growing violence along the southern border. However, statements from the White House and leading congressional Democrats reveal that

election year politics had more to do with the bill's passage than genuine concern about illegal immigration or border security.

With a Zogby Interactive poll showing that just 23 percent of likely voters approve of the president's handling of immigration issues, and other polls showing that the public lacks

confidence in the administration's enforcement record, the \$600 million bill is designed to change public perception. President Obama and congressional Democrats were quick to declare that the border security issue had been dealt with and that passage of the bill should clear the way for amnesty legislation.

The president argued that in negotiating with Republicans on immigration, “I repeatedly heard them say that once we showed we were serious about passing border security legislation, they would begin working with us” on a bill that includes a sweeping amnesty. That sentiment was echoed by Sen. Charles Schumer (D-N.Y.), chairman of the Immigration Sub-



...PASSING A \$600 MILLION BILL DEMONSTRATES A CYNICAL ATTITUDE ON THE PART OF THE ADMINISTRATION AND CONGRESSIONAL LEADERS, WHO CONTINUE TO BELIEVE THAT THROWING MONEY AT A CRISIS WILL CONVINCE THE AMERICAN PUBLIC THAT THE PROBLEM HAS BEEN ADDRESSED.

CONTINUED on page 7

NEBRASKA

In July, residents of Fremont, Nebraska, defied local government officials and threats of a lawsuit, and approved a ballot initiative designed to discourage illegal immigration. The law was supposed to go into effect on July 29, but the city council temporarily delayed implementation to consider how it would respond to possible litigation. True to their word, the American Civil Liberties Union (ACLU) and the Mexican American Legal Defense and Educational Fund (MALDEF) filed suit against the city. However, U.S. District Court Judge Laurie Smith Camp refused to issue a temporary restraining order that would prevent the law from taking effect after the Fremont city council removes its self-imposed roadblock. Judge Smith Camp urged that the issue be settled in a state court. Bowing to public pressure, the city council agreed to have Kris Kobach, counsel to the Immigration Reform Law Institute, FAIR's legal affiliate, represent the city in court.

FLORIDA

State-based immigration enforcement measures continue to enjoy broad popular support. According to a Rasmussen poll, 62 percent of Florida voters support a law similar to the one enacted in Arizona. The state's attorney general, Bill McCollum, who is also a candidate for governor, endorsed legislation that would (1) require police to verify the immigration status of people they reasonably suspect of being in the country illegally; (2) require businesses to use E-Verify; and (3) mandate that judges consider immigration status when setting bail for those charged with crimes. The authors of the Florida bill state that they have modified the Arizona law in a way that will make it more likely to withstand legal challenges by illegal advocacy groups or the federal government.

VIRGINIA

In a legal opinion written by state Attorney General Ken Cuccinelli, Virginia police officers have the authority to verify the immigration status of people they lawfully stop or arrest. "Virginia law enforcement officers have the authority to make the same inquiries as those contemplated by the new Arizona law," Cuccinelli wrote. Side-stepping an objection to the Arizona law raised by U.S. District Court Judge Susan Bolton, Cuccinelli emphasized, "We are not mandating to our law enforcement that they make these inquiries on every stop." Cuccinelli stated that he favors implementing enforcement policies similar to those adopted in Arizona.

ICE Union Casts a Vote of "No Confidence" in Agency's Leadership

The National Immigration and Customs Enforcement Council (NICEC), the union representing 7,000 officers and employees of the Immigration and Customs Enforcement's (ICE) Office of Enforcement and Removals Operations (ERO), publicly rebuked the political appointees who run ICE. The union, by unanimous vote on June 11, expressed no confidence in ICE Director

John Morton and Assistant Director of the ICE Office of Detention Policy and Planning, Phyllis Coven, and called for their removal.

In a scathing public statement, the union charged that Morton and Coven "have abandoned the Agency's core mission of enforcing United States Immigration Laws and providing for public safety." The union members further

stated that ICE leaders "have instead directed their attention to campaigning for programs and policies related to amnesty and the creation of a special detention system for foreign nationals that exceeds the care and services provided to United States citizens similarly incarcerated."

NICEC accuses ICE officials of concealing the scope and severity of the illegal immigration crisis from the American

Birthright Citizenship Emerges as Hot Issue

Currently, any baby born on U.S. territory, with the exception of children of foreign diplomats, is recognized as a U.S. citizen. It is a policy that is based on a flawed interpretation of the 14th Amendment, and one which results in an estimated 363,000 “anchor babies” born in this country every year — some 8 percent of all births in the United States. The term “anchor baby” refers to the fact that, unlike the parent, the child may not be deported and, eventually, will become eligible to sponsor other family members to legally immigrate.

For the first time, there is serious discussion of the need to end this abuse. Russell Pearce, the state senator who authored Arizona’s landmark SB 1070 law, has stated his intent to introduce legislation that would deny Arizona birth certificates to the children of non-permanent legal residents — a move designed to force the courts to examine the concept of automatic birthright citizenship. Debate really heated up in July when leading congressional Republicans called for redefining birthright citizenship so it applies to only the children of citizens and legal permanent residents.

FAIR has long held that the citizenship clause of the 14th Amendment does not guarantee citizenship to the children of illegal aliens and that the practice should be changed. That is a view that is supported by many constitutional scholars. The 14th Amendment was ratified in 1868, primarily with an eye toward ensuring that the

emancipated slaves were recognized as citizens after the Civil War.

Section 1 of the 14th Amendment states that “All persons born or naturalized in the United States, *and subject to the jurisdiction thereof*, are citizens of the United States...” The question of what it means to be subject to the jurisdiction of the United States is key to determining whether the U.S.-born children of illegal aliens and other non-residents are citizens. It is a question that was addressed by the author of the citizenship clause, Rep. John Bingham, a leading member of Congress at the time.

IN ADDITION TO DEVALUING THE CONCEPT OF CITIZENSHIP, THE ANCHOR BABY PROBLEM COSTS U.S. TAXPAYERS BILLIONS OF DOLLARS EACH YEAR.

Defining what he and the other framers of the amendment intended, Bingham stated explicitly, “every human being born within the jurisdiction of the United States of parents not owing allegiance to any foreign sovereignty is...a natural born citizen.” By the definition of the author of the citizenship clause, the children of illegal aliens and other non-permanent legal residents do not fall under the jurisdiction of the United States and, therefore, should not be recognized as citizens.

In addition to devaluing the concept of citizenship, the anchor baby problem costs U.S. taxpayers billions of dollars each year. FAIR’s comprehensive

study, *The Fiscal Burden of Illegal Immigration on United States Taxpayers*, released in June, details how entitlement programs used by the citizen children of illegal aliens strain government budgets at all levels.

FAIR welcomes this opportunity for a constructive discussion about how to end the unwarranted practice of conferring citizenship on the children of people who have no legal right to be in this country and on people who today are arriving in this country expressly to give birth to a U.S. citizen child.



ARIZONA LAW IN EFFECT *continued*

- The creation of a crime for transporting or harboring illegal aliens or inducing illegal aliens to come to or live in Arizona.

The implementation of each of these provisions will further Arizona's ability to achieve SB 1070's stated goal of attrition through enforcement. Even before the law took effect, there were numerous media reports that illegal aliens had gotten the message and many were leaving Arizona.

Unfortunately, there were other important sections of the law that Judge Bolton prevented from taking effect, most notably Section 2 of the law which requires police officers to inquire about immigration status when they reasonably suspect that an individual is illegally present in the United States.

FAIR believes that Judge Bolton's decision was flawed and could be overturned upon review by a higher court. In her ruling, the judge accepted the Justice Department's argument that the law's requirement to check immigration status would create more work for the federal government and direct resources away from "federal enforcement priorities." However, the decision ignores a 1996 statute which mandates that the federal government respond to all requests to verify "the citizenship or immigration status of any individual" from federal, state, or local law enforcement officers — clearly spelling out its intent that the federal government not passively resist

the enforcement of immigration laws.

Significantly, the judge's ruling applies only to the *requirement* that police inquire about immigration status if they reasonably suspect that an individual is an illegal alien. Police still have the *discretion* to ask about immigration status and seek verification when they have reasonable suspicion that an individual is violating federal immigration laws.

The July 28 ruling also blocked other important provisions of SB 1070 from going into effect:

- The creation of a state misdemeanor for violating the federal law that requires aliens to apply for and carry registration papers;
- The creation of a crime for an illegal alien to solicit, apply for, or perform work; and
- The authorization of a warrantless arrest of a person when there is probable cause to believe the individual has committed an offense that triggers removal from the U.S.

Judge Bolton's ruling is also seen as a road map for other states considering similar immigration enforcement legislation, or even for Arizona to amend the provisions of SB 1070 she blocked from implementation. States now have legal precedent for enacting provisions identical to the ones that have already taken effect, while small modifications to the provisions that were enjoined could clear the way for their implementation.

NO CONFIDENCE

continued

people. At the same time, claims the union, the agency has exaggerated the successes of enforcement programs, like the Secure Communities Program, even as criminal aliens are released back into local communities.

The union's statement affirms frequent assertions by FAIR that the Obama administration is refusing to enforce laws against non-criminal illegal aliens. NICEC officials charge that their agents are prohibited from making arrests of illegal aliens who are not already incarcerated for other offenses. These restrictions on their activities amount to "amnesty through policy," states NICEC.

In spite of administration claims of vigorous immigration enforcement, NICEC alleges that only a small number of ICE agents are actively engaged in enforcement, while hundreds of officers perform no enforcement duties at all.

While immigration enforcement and the security of the American people are being neglected, NICEC charges that ICE leaders are "providing resort-like living conditions to criminal aliens."

The NICEC vote of no confidence and the detailed charges against ICE's leadership provide corroboration by insiders that the Obama administration is bent on dismantling our immigration enforcement capability and pursuing wholesale amnesty, even as it reassures the American people that it is serious about combating illegal immigration.

AMNESTY *continued*

who have been apprehended “where no relief [for an illegal alien] exists in removal.” NTAs are used to initiate the deportation process.

- Granting “deferred enforcement” to illegal aliens already in deportation proceedings, permitting “individuals for whom relief may become available in the future to live and work in the U.S. without fear of removal.” Such “relief” would include amnesty.
- Broad expansion of humanitarian parole. Humanitarian parole may be granted on a case-by-case basis where deportation could result in extreme hardship. Illegal aliens granted humanitarian parole would not be required to return to their home countries to be processed.
- Allowing illegal aliens who have left the country, but who have applied

MANY OF THE IDEAS PROPOSED IN THE MEMO ARE ALREADY BEING CARRIED OUT BY THE ADMINISTRATION ON A SMALLER SCALE AS THEY ATTEMPT TO AVOID ENFORCEMENT OF MOST IMMIGRATION LAWS.

to return legally, to avoid existing bans on reentry. The memo suggests that “reexamining past interpretations of terms such as ‘departure’ could lead to a different outcome.”

The memo drew a sharp reaction from some congressional leaders. Sen. Charles Grassley (R-Iowa) expressed “concerns that the administration will go to great lengths to circumvent Congress and unilaterally execute a backdoor amnesty plan.” Rep. Lamar Smith (R-Tex.), the ranking member of the House Judiciary Committee, charged that the administration is “conspiring to implement amnesty without congressional action.” While

the executive branch has some discretionary authority in carrying out immigration policies, the legislative branch is constitutionally charged with the authority to make immigration policies.

FAIR also noted that many of the ideas proposed in the memo are already being carried out by the administration on a smaller scale as they attempt to avoid enforcement of most immigration laws. FAIR has frequently charged that in its outright refusal to enforce immigration laws, the administration is abusing its discretionary authority.

BORDER BILL *continued*

committee. “It furthers the ability to get comprehensive reform done,” Schumer said.

FAIR, along with many critics of the administration’s well-documented policy of non-enforcement of most immigration laws, was quick to point out that the additional funds for border security, while helpful, do not even begin to address the full scope of the immigration crisis. Border security is only one component of an immigration enforcement strategy.

The additional resources for border security do not negate the fact that the Obama administration has gutted virtually all interior enforcement — worksite enforcement, apprehension, detention and removal of noncriminal illegal aliens and constrained the use of the highly successful

287 (g) program, to name just a few. Moreover, it is questionable how the additional resources will be deployed. In a statement expressing “no confidence” in the Immigration and Customs Enforcement (ICE) leadership, rank-and-file officers complain that they are prevented from doing their jobs.

The mere act of passing a \$600 million authorization bill in no way solves the illegal immigration problem, nor does it clear the way for a massive illegal alien amnesty. Rather it demonstrates a cynical attitude on the part of the administration and congressional leaders, who continue to believe that throwing money at a crisis will convince the American public that the problem has been addressed.

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

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