

Immigration REPORT

2019 Border Apprehensions Establish Sustained Border Chaos

Fiscal Year 2019 ended on September 30, and the Customs and Border Protection (CBP) agency released the final tally for border apprehension a few weeks later. The total number of apprehensions for the year were a dismal 977,509, levels not seen since FY2006. This total includes those who were caught attempting to cross the border illegally, as well as individuals who attempted to enter the country lawfully at a port of entry but were deemed inadmissible. Beyond the rather staggering annual total, the FY 2019 data shows both good and bad news.

First, the good news: After peaking at 144,116 apprehensions in May, the number of people caught attempting to enter the country illegally steadily declined for the rest of the fiscal year. By September, apprehensions had declined to “just” 52,546. Viewed in context, the September 2019 apprehension numbers are still higher than any September in recent years. They may be “low” compared to May, but they are still very high by historical standards.

In a chart published by CBP comparing FY 2019 to the five previous fiscal years (which included the border surges during the Obama administration), last year’s monthly apprehension figures were only exceeded twice. Thus, of the past 72 monthly totals, only

two of them topped the monthly apprehension rates for FY 2019.

The bad news is more succinct. Unless the monthly apprehension rates continue to plummet, we have established a new normal for illegal immigration, and it is much higher than the “old” normal. Given Congress’s refusal to fix the pull factors that have been driving the surge of illegal immigration – gaping loopholes in our asylum laws, unrealistic judicially imposed limits on family detention, the lack of effective border fencing in many parts of the border, a proliferation of sanctuary jurisdictions, and others – the border is likely to remain chaotic.

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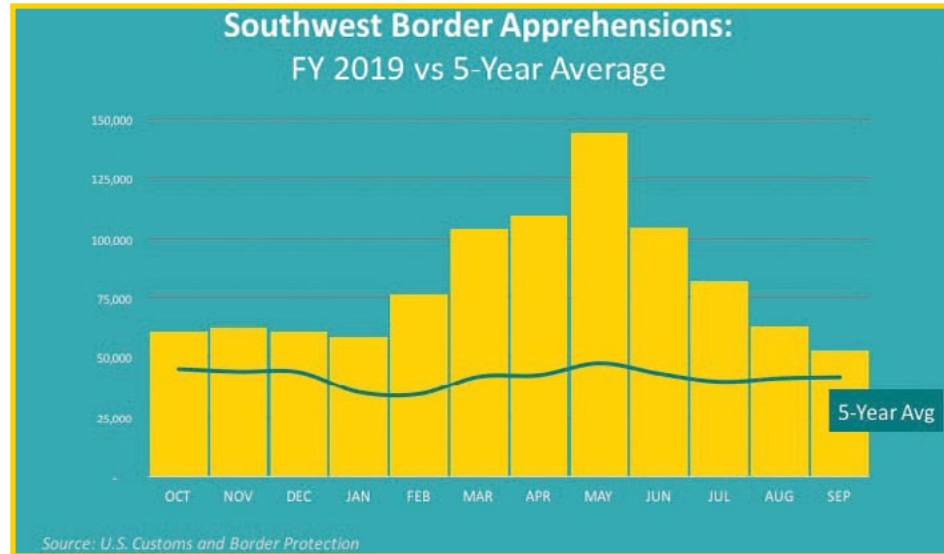
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Border Apprehensions

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Important information that is missing from the apprehension figures are also troubling. CBP estimates that about 150,000 people entered the country illegally, either without being observed or caught. Moreover, unlike the previous high-water mark for border apprehensions, set in FY 2006, a majority of those now apprehended are released into the United States because they are pursuing frivolous asylum claims, or are minors who cannot be promptly returned home.

Actions by the administration contributed to the 60 percent drop-off in border apprehensions between May and September, proving that the border is controllable if lawmakers want to end the chaos. The Trump administration instituted the Migrant Protection Protocols (MPP), which requires asylum seekers to wait in Mexico until they receive a hearing to determine if they have a valid asylum case to pursue. The administration also moved to block migrants who have passed through one or more safe countries before arriving at our border from entering the



U.S. To counteract Congress's inaction on funding a border security barrier, the administration has tapped into available Department of Defense funds to construct additional miles of border fencing.

The new normal for border incursions has implications beyond concerns about large-scale illegal immigration. The border surge, which forced CBP to reassign Border Patrol agents to deal with the record number of migrants, opened the door for criminals to capitalize on the chaos

FY 2019 saw record seizures of dangerous narcotics entering the country. CBP seized more than 89,000 pounds of cocaine, 68,000 pounds of meth, 5,400 pounds of heroin, and 2,545 pounds of fentanyl last year. Cocaine seizures were also up by 73 percent over FY

2018. Moreover, as FAIR heard firsthand from CBP officials and border sheriffs, during visits to high traffic areas of the border, many more shipments of lethal drugs slipped into the country undetected because the people who are supposed to be protecting the border were processing migrants for release.

Likewise, record numbers of migrants surging across the border was a boon to criminal aliens. CBP arrested about a thousand gang members attempting to enter the U.S., but acknowledge that many more entered without detection, or were not identified as gang members and subsequently released.

In short, the new normal is neither normal, nor acceptable to most Americans. ■

Supreme Court to Rule on Key Immigration Cases in New Term

The U.S. Supreme Court got back to work as usual the first Monday in October. On the docket for the 2019-2020 term are some crucial immigration cases – nine in all. While all cases before the Supreme Court carry enormous weight, there are three in particular that bear watching.

The first will determine the authority of President Trump to cancel Deferred Action for Childhood Arrivals (DACA), a program established by President Obama in 2012 with nothing more than a policy memo. The second will determine whether states have the authority to prosecute illegal aliens for identity theft if the purpose of that theft is to evade federal immigration laws. The third addresses the government's authority to prevent people from abusing our asylum system.

DACA

In September 2017, the Trump administration announced its intent to cancel the DACA program that shields illegal aliens who claim to have entered the country as minors from removal, and grants them authorization to work in the United States (even though federal law prohibits the employment of illegal aliens). Some 800,000 illegal aliens currently enjoy DACA protection. The administration's 2017 decision to phase out the program was the fulfillment of one of the promises Mr. Trump made during his 2016 campaign.

Despite the fact that President Obama had no statutory authority to exempt an entire class of illegal aliens from compliance with our immigration laws, and on numerous occasions conceded that these protections might be rescinded by subsequent administrations, advocates for the illegal aliens immediately filed suit to prevent President Trump from ending DACA. In three separate cases, plaintiffs found activist judges in California, New York, and the District of Columbia, who issued injunctions barring the Trump administration from ending DACA.

The Supreme Court will focus on the question of whether the Trump administration has the authority

to end DACA, not on whether DACA itself is constitutional. In 2016, the high court upheld a Fifth Circuit Court of Appeals ruling that two subsequent Obama amnesty programs were unconstitutional.

The Trump administration is arguing that the lower courts lacked authority to block the decision to cancel DACA because the president's decision is not reviewable by the courts. The executive decision is the kind of "quintessential action" that is "committed to an agency's absolute discretion," contends the Justice Department. While not directly addressing the constitutionality of DACA, the administration in its filings before the Supreme Court did assert that, in light of the Court's 2016 decision, it did not "want to retain a policy whose legality was, at a minimum, highly questionable."

FAIR, through its legal affiliate, the Immigration Reform Law Institute, filed an amicus brief supporting the Trump administration's authority to reverse a policy implemented by a preceding administration. FAIR has long argued that it was President Obama who acted unconstitutionally when he established DACA in 2012 (after previously admitting that he did not have the constitutional authority to do so).

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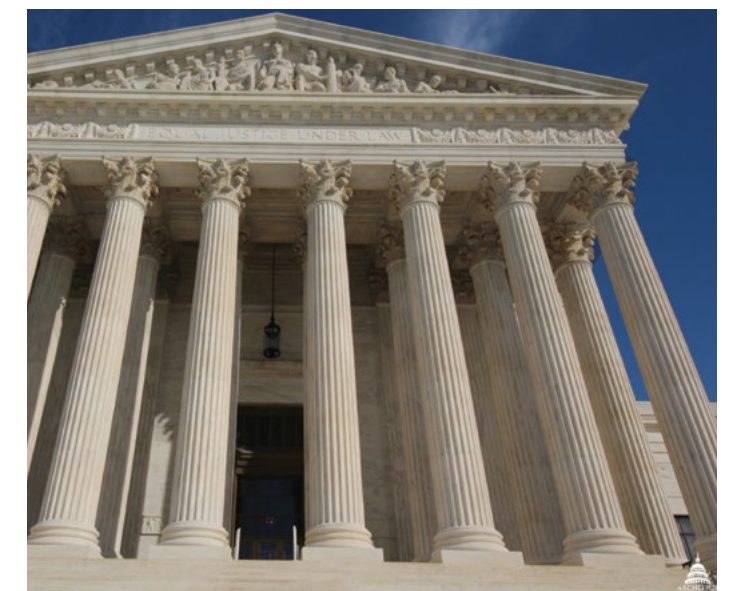


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Immigration

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Oral arguments in the DACA case were heard by the Court on November 12, after the deadline for the current edition of the FAIR newsletter. A decision in the case is expected in late spring or early summer.

KANSAS V. GARCIA

A second important immigration-related case was heard by the Court in mid-October. *Kansas v. Garcia* tests whether the state had the authority to prosecute three illegal aliens who fraudulently used stolen Social Security numbers (SSNs) in order to work in the United States illegally with identity theft. The plaintiffs claim that since the intent of the illegal aliens was to violate a federal law that bars them from working in the United States, Kansas lacked the authority to even look into their immigration status, much less prosecute them. In 2017, the Kansas Supreme Court sided with the plaintiffs and voided their convictions.

Identity theft is a serious offense that can wreak havoc and inflict severe financial damage on victims. As many as 60 million Americans are believed to have been victims of identity theft. Though not all identity theft involves immigration-related offenses, the fraudulent use of other people's Social Security numbers is significant.

A routine traffic stop, in which a police officer ran a check on

Ramiro Garcia, led Kansas authorities to the restaurant where he and the other plaintiffs worked and an examination of their I-9 forms, resulting in discovery of their use of stolen SSNs. Lawyers for the illegal alien claim that Kansas authorities were prohibited from examining the I-9 forms that are used to satisfy federal requirements that employers review employees' work eligibility documents.

“What is the conflict? The federal government doesn't say [that prosecuting immigration law violators for identity theft] is contrary to our enforcement priorities,”
-Justice Samuel Alito

In oral arguments, the Court's four liberal justices and Trump appointee Brett Kavanaugh questioned whether Kansas' decision to prosecute the three illegal aliens was a backdoor effort to prevent illegal aliens from working and residing in the state. It was a line of questioning that was challenged by Justice Samuel Alito, who wondered why, even if that were Kansas' intent, it would be a problem. “What is the conflict? The federal government doesn't say [that prosecuting immigration law violators for identity theft] is contrary to our enforcement priorities,” Alito asserted.

In response, attorneys representing Kansas argued that protecting citizens from identity theft is an affirmative obligation of the state, regardless of the intent of the people committing the theft.

A ruling in *Kansas v. Garcia* is also expected next summer.

DHS V. THURAISSIGIAM

In a case that is especially pertinent given current levels of asylum fraud, *DHS v. Thuraissigiam* will test whether the Department of Homeland Security can expeditiously remove people who cannot even meet the already very low bar for establishing a “credible fear” claim. Vijayakumar Thuraissigiam is a Sri Lankan national who was arrested immediately after entering the country illegally from Mexico. Upon arrest, Thuraissigiam asked for asylum. An asylum officer ruled that he did not meet the credible fear threshold, and ordered his removal, a decision that was upheld by a supervising officer and an immigration judge.

Thuraissigiam sued, claiming his removal order violated his constitutional rights. The Ninth Circuit Court of Appeals found that his expedited removal order violated the constitutional Suspension Clause, and that he was being denied “meaningful opportunity” to make a case to remain. As has often been the case, the Ninth Circuit ignored well-established legal precedent in its decision. As the nonpartisan Congressional Research Service noted, the Supreme Court has repeatedly held that the government has the authority to bar entry to foreign nationals “without affording them the due process protections that traditionally apply to persons physically present in the United States.” ■

News from our State and Local Operations



CALIFORNIA

In October, Gov. Gavin Newsom signed bills that will allow illegal aliens to serve on state boards and commissions, and another to bar ICE from making arrests in California courthouses. Senate Bill 225 will give non-citizens, including illegal aliens, the right to serve on policymaking boards and commissions that will affect the lives of everyone in the state. It was a bill that was too radical even for his predecessor, Jerry Brown, who vetoed similar legislation last year, saying, “existing law — which requires citizenship for these forms of public service — is the better path.” In his signing statement, Newsom asserted that citizenship, or even compliance with federal immigration laws, should not be a barrier to being placed in a position of public trust. The governor of a state that literally cannot keep the lights on added, without irony, “California doesn't succeed in spite of our diversity — our state succeeds because of it.” The second bill signed by Newsom, AB 668, aims to bar federal immigration authorities from arresting illegal aliens in California courthouses — another bill previously vetoed by Brown. It is highly questionable whether California has the legal authority to bar federal law enforcement officials from public buildings like courthouses, but that hardly matters when it comes to California's zeal for shielding illegal aliens.

NEW JERSEY

In response to state Attorney General Gurbir Grewal's desire to turn New Jersey into a full-fledged sanctuary state by prohibiting all local jurisdictions from participating in the federal 287(g) program, officials in Cape May and Monmouth Counties have filed a lawsuit claiming the attorney general acted illegally. The 287(g) program was established by Congress in 1996 to allow local law enforcement departments to voluntarily receive training on how to lawfully identify and detain illegal aliens. The lawsuit, filed on October 15, alleges that Grewal's actions violate the Supremacy Clause of the U.S. Constitution; that the AG's directive violates a federal law that prohibits state and local governments from barring law enforcement cooperation with immigration authorities; and is a violation of New Jersey's own Administrative Procedure Act. Since 287(g) was first implemented, it has resulted in thousands of criminal aliens being identified by participating law enforcement agencies, and removing them from the country.

PENNSYLVANIA

Contrary to the image of illegal aliens as mostly farm workers, the construction industries are the largest employers of illegal workers in the United States. In response, the Pennsylvania Legislature enacted House Bill 1170, requiring all construction companies to use E-Verify for new hires to determine whether the applicants are authorized to work in the United States. Employers who hire unauthorized workers will be forced to fire them. Pennsylvania is a state where labor unions remain strong. As such, HB 1170 was sponsored by a Democratic lawmaker, John Galloway of Bucks County, who pushed E-Verify for all construction companies because “bad acting employers have cut costs by...hiring undocumented workers.” Galloway also noted that, “Employers are hurting the construction industry by driving down wages, creating an unlevel playing field for other employers and depriving the government of revenue that would be used to fund programs like unemployment compensation.” Pennsylvania's Democratic governor, Tom Wolf, did not sign the bill, but neither did he veto it. As a result of his inaction, the bill became law by default. ■

UN Report Confirms Massive Worldwide Asylum Abuse



Image Credit: Flickr by U.S. Customs and Border Protection

The United Nations is hardly a source you would expect to make the assertion that large numbers of asylum-seekers are, in fact, economic migrants in search of greener pastures in developed nations. However, a new report by the United Nations Development Program (UNDP) comes to just that conclusion after an extensive study of African migrants who made the perilous Mediterranean crossing and settled in Europe.

In a report titled, *Scaling Fences*, UNDP researchers interviewed nearly 2,000 migrants from 39 African nations who are living in 13 EU nations. Based on the accounts of the migrants, UNDP reports that the motivation for making the journey across the Mediterranean was “not for asylum or protection-related reasons,” although most of the people arriving on European shores requested asylum. Nor was the impetus a search for jobs, per se. “Around 58 per cent were either employed or in school at the time of their departure, with the majority of those working, earning competitive wages,” states the report.

In reality what the migrants were seeking were better wages, which they believed would be available to them if they could reach Europe. Not mentioned in the report, but no doubt another important factor that drove the 2015 surge (and continues to attract dangerous trans-Mediterranean migration), was German Chancellor Angela Merkel’s misleading declaration that Europe’s doors were open to anyone who wanted to enter an asylum claim.

In many ways, the UNDP report affirms an ironic, but well-established phenomenon that economic development in sending countries, and the rise of large segments of their populations from extreme poverty to relative poverty (i.e. relative to the prosperity of the countries migrants are attempting to reach) can lead to an exodus of those who have managed to climb out of destitution. Large-scale migration is often a consequence of progress-impeding corruption and malfeasance on the part of the governments of sending nations, or understandable impatience on the part of young people in those countries to allow the long arc of economic development to play out. The exodus of educated, upwardly mobile migrants, and the growing reliance of those left behind on remittances, further impedes the economic development and government reforms that are necessary to make those countries attractive places to live.

The UNDP report should also serve as cautionary tale to our own government. The phenomenon of large-scale migration in our own hemisphere – and the tendency of well-intended people to view dangerous treks as a sign of extreme desperation – is not always what it may appear to be. And, as Europe has taken steps to stem the flow of people across the Mediterranean, Merkel-like policies that allow people to exploit our asylum laws are already showing signs of convincing migrants to cross the Atlantic and join the flow of Central American migrants seeking a short cut to greater economic prosperity. ■

The Next Agenda for Sanctuary Jurisdictions: Stopping the Federal Government from Detaining Illegal Aliens

The number of sanctuary jurisdictions in the United States has been proliferating, despite being clearly illegal under federal law. There are now 564 such jurisdictions, including entire states, according to research by FAIR. In these so-called sanctuary jurisdictions, local governments and law enforcement refuse to cooperate with Immigration and Customs Enforcement (ICE) requests to turn over criminal aliens who are in their custody, except in extenuating circumstances.

Thwarting the removal of foreign criminals from the United States is not enough for some of the most fervent sanctuary jurisdictions. Three recent state bills to restrict private prisons from housing illegal aliens constitute a new step by open-borders advocates to thwart enforcement of our immigration laws and shield illegal aliens from deportation.

Illinois effectively banned all private immigration detention in June. When he signed House Bill 2040, Governor J.B. Pritzker made no secret of the fact that one goal of the bill was to oppose President Trump’s immigration policies. He hailed the measure as part of making the Illinois a “firewall” against the president’s attempts to enforce the law.

In September the California legislature passed Assembly Bill 32,

imposing a ban on private prisons. Governor Gavin Newsom signed the legislation on October 11, proclaiming that “[t]hese for-profit prisons do not reflect our



Image Credit: Flickr by US ICE

values[.]” Under AB 32, no new private detention contracts can be signed, or old ones renewed, after January 1, 2020, and all private facilities will have to completely wind up their operations by 2028.

New York hasn’t gone quite as far as the other two states yet. It banned private prison facilities from contracting with the state and with local governments in 2007, but hasn’t banned private detention facilities that contract exclusively with federal authorities. However, a bill passed the New York State Senate recently to prohibit banks chartered in the state from financing private prisons. Given just how

many financial institutions are based in New York, this could mean politicians may export their extreme open-borders policies all across the country, by cutting off access to credit by private contractors.

Other jurisdictions, such as the sanctuary hotbed of Denver, Colorado, are imposing secondary boycotts by refusing to issue government contracts to companies that run private immigration detention facilities elsewhere in the country.

The services offered by private prison contractors are much needed nowadays as President Trump seeks to finally end the practice of “catch-and-release,” which allows illegal aliens to disappear into the interior of the United States.

As former Acting ICE Director Tom Homan said when he ran the agency, “our most expensive detention beds were in facilities that ICE owned. Using outside contractors that run detention facilities as their core business function not only saves millions [of] dollars in taxpayer funds [and] help to keep our communities safe and literally save lives.”

Of course, wasting taxpayers’ money and saving lives is the last thing on the political agendas of the folks who run things in sanctuary states, counties, and cities. ■

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