



# Immigration REPORT

## Congressional Budget Office Makes the Case for Merit-Based Immigration

Decades of family chain legal immigration and large-scale illegal immigration are taking their toll on government budgets, American workers, and U.S. taxpayers, finds a report by the Congressional Budget Office (CBO). The nonpartisan agency working within the Legislative Branch does not make policy recommendations, but it does analyze the impact of laws and policies on the federal budget.

Without specifically saying that our current immigration policies are a failure, the four-page report issued by the CBO just after the start of the year comes to some pretty damning conclusions about the impact of current immigration policies. The report, *The Foreign-Born Population and Its Effects on the U.S. Economy and the Federal Budget—An Overview*, makes it clear that our immigration policies bear little relation to the economic interests of the nation in the 21st century.

The report confirms FAIR’s long-held position that an immigration policy that is dominated by endless chains of extended family migrants that are broken up as a result of immigration is not only pointless (each extended family that is reunited breaks up other extended families), it is also harmful to the nation. At a point in history where education and job skills are

essential to financial success in the United States, the CBO analysis finds that immigrants living in the United States are disproportionately under-educated and low-skilled.

While foreign-born residents now comprise about 14 percent of the U.S. population, they account for more than 40 percent of adults who have less than a high school diploma. (Immigrants are also over-represented at the other end of the education and skill spectrum, but not nearly as disproportionate.

[see CONGRESSIONAL BUDGET | page 2](#)

### Inside. . .

CBO Report Continues .....	2
Low-Skill Guest Workers.....	3
Family Separation Ruling .....	4
State and Local Operations.....	5
Declines in Legal Immigration.....	6
Border Wall Construction.....	6

## Congressional Budget

from page 1

Foreign-born residents account for about 20 percent of those with graduate degrees.)

Predictably, adults who have not completed high school will be relegated to the bottom rungs of the economic ladder, and they (and their children) will likely be dependent upon a range of means-tested government programs. At the federal level alone, legal immigrants are eligible for expensive benefit programs such as, Medicare, Medicaid, refundable tax credits, Obamacare subsidies, Supplemental Security Income, and SNAP (food stamps), to name a few. And these do not include state and local benefit programs, where most of the costs are incurred. Moreover, many illegal aliens benefit from these programs as well through their U.S.-born children.

Immigration, whether legal or illegal, expands the labor force and changes its composition, leading to increases in total economic output—though not necessarily to increases in output per capita.

While the general taxpaying public must foot the bill for ill-conceived immigration policies, the CBO notes that there are more direct losers. The most vulnerable of our native-born population – namely similarly skilled Americans workers – are hurt the most. “Consequently, immigration has exerted downward pressure on the wages of relatively low-skilled workers who are already in the country, regardless

of their birthplace,” concludes the CBO. Anyone who follows the immigration issue closely already knows this, but the generally impartial CBO confirming these conclusions will make it more difficult for apologists for the status quo to dispute these conclusions.

CBO also dismisses as a half-truth one of the most common defenses of current immigration policies, that immigration expands our GDP. “Immigration, whether legal or illegal, expands the labor force and changes its composition, leading to increases in total economic output—though not necessarily to increases in output per capita.” A growing GDP and a growing per capita GDP are not the same thing, no matter how hard advocates for the current policies try to blur that important distinction.

FAIR has long supported reforming our immigration policies to make them leaner and more merit-based. To that end, FAIR is supporting the Reforming American Immigration for Strong Employment (RAISE) Act, S. 354, sponsored by Senators Tom Cotton (R-Ark.) and David Perdue (R-Ga.). The RAISE Act would prioritize the admission of immigrants whose skills are most in demand. In doing so, it is projected to cut immigration admissions – bloated by growing backlogs of extended family members – by about half. The bill would also prioritize admission of nuclear family members, i.e. spouses and unmarried minor children, and eliminate immigration entitlements for more distant relatives.

The hyper-partisan atmosphere of Washington and entrenched special interests that benefit from our failed immigration policies have stymied consideration of the RAISE Act. However, the findings of the CBO reopen the case for a merit-based overhaul of our immigration policy – if not in this session of Congress, than the next. ■

## Congress Leaves DHS a Blank Check on Low-Skill Guest Workers and DHS Will Likely Use It

Just as new data reveal that the benefits of a tight labor market are beginning to trickle down in the form of rising wages for the workers who need it most, Congress abdicated its responsibility for limiting the number of low-skilled foreign guest workers to the Executive Branch. A provision of the Further Consolidated Appropriations Act, HR 1865, the bill passed by Congress in December to fund the federal government for the remainder of the fiscal year, grants the Department of Homeland Security (DHS) the discretionary authority to double the number of H-2B visas it issues.

The official cap of H-2B visas for low-skilled non-agricultural guest workers is 69,000 a year. However, under a provision that was first implemented (at the behest of business interests) in 2017, DHS has the ability to essentially double that cap. If history is any guide, DHS will exercise much of that discretion. In FY 2019, DHS used the discretion afforded to them to issue about 30,000 additional visas above the technical cap.

With the appointment of Chad Wolf, who formerly worked as a lobbyist for businesses pushing for increased access to higher skilled H-1B guest workers, as acting secretary of DHS there is someone at the helm of the department who is likely to be more sympathetic to the demands of business than to American workers. Absent a directive from the White House not to exceed the H-2B cap, it is reasonable to assume that the technical cap on H-2B visas will be exceeded once again in FY 2020. No such directive from the Oval Office has been issued by the president in previous years.

FAIR has firmly supported reductions in guest workers, and even the elimination of certain programs. In a letter to Acting Secretary Wolf, FAIR’s president Dan Stein reminded him of the adverse impact that loosely regulated guest worker programs have on U.S. workers. “Since President Trump took office in January 2017, Congress has repeatedly given the Secretary of the Department of Homeland Security



Image Credit: istock

(DHS) the authority to raise the H-2B cap. Each time, former Secretaries John Kelly, Kirstjen Nielsen, and Kevin McAleenan did so. FAIR values the primacy of the American worker, and stands for the proposition that the H-2B program – like all guest worker programs – should only be a last resort labor option when it’s proven that no local workers are available,” wrote Stein. “We urge you to remember that Congress capped the H-2B program for a reason, and your discretion should be rigorously defended as grounded in actual labor force needs.”

The excessive issuance of guest worker visas, regardless of the skill levels of the workers, also violates the spirit of President Trump’s 2017 “Buy American, Hire American” Executive Order. Mr. Trump campaigned on a pledge to shield American workers from policies that allow employers to bypass them in favor of low wage, or more beholden, guest workers or illegal aliens. As president, he will likely be campaigning for reelection under the same pledge. Ensuring that the H-2B visa cap is not exceeded, just because Congress abdicated its responsibility on the matter, would go a long way toward demonstrating good faith to American workers. ■

**Immigration**  
REPORT

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## Federal Judge Rules that Administration Has Authority to Separate Adults and Minors at the Border When Needed

U.S. District Court Judge Dana Sabraw ruled on January 13 that the Trump administration is acting within its authority when it separates adults and children who are apprehended at the border. The ruling was in response to a lawsuit brought by the American Civil Liberties Union (ACLU) alleging that the administration is violating Judge Sabraw's 2018 ruling, which ordered a halt to the routine practice of separating adults and children at the border. The ACLU filed suit in July 2019, claiming that 911 children had been separated from their parents since the judge's initial ruling.

Judge Sabraw indicated that the government has the authority to

separate adults and children when circumstances dictate that it is the prudent thing to do. Sabraw acknowledged that the courts are not in a position to second-guess government decisions that may be made on the bases of a variety of circumstances, including the safety of the children, the fitness of the parents, health issues, or questions about whether the adults truly are the parents of the children in their custody.

"It is an invitation that is potentially massive in scope, invades an area that is particularly within the province of the Executive Branch to secure the Nation's border, and goes beyond this Court's class certification and preliminary

injunction orders, which were focused on the Administration's practice of separating families at the border for the purpose of deterring immigration, and failing to reunify those families," Sabraw wrote in a 26-page decision.

The larger issues that have resulted in the separation of adults and children will remain unresolved until Congress exercises its responsibility to fix broken policies that have led to the exploitation of children. These include closing loopholes in our asylum laws that invite widespread abuse, and congressional action to overrule another federal judge's decision that limits detention of family units to just 20 days. ■



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

## News from our State and Local Operations

### KENTUCKY

A low bill number generally indicates high priority. If that rule holds true, the highest priority for the Kentucky State Senate in 2020 is passage of a bill that would outlaw sanctuary jurisdictions in the state. Senate Bill 1 (SB 1), from Sen. Danny Carroll (R-Paducah) bans any policy by police or public agencies (including public colleges and universities) that are aimed at protecting illegal aliens in the state. It also requires almost all public employees in the state to use "their best efforts" to support enforcement of federal immigration law. In addition to its priority number, SB 1 enjoys the backing of Senate President Robert Stivers who stated publicly that it is receiving top priority because it addresses the threat of illegal aliens engaging in drug trafficking and draining public resources. Stivers noted that the presence of Mexican drug cartels in Kentucky poses an an imminent threat to public safety. Even absent of other criminal behavior by illegal aliens, Stivers asserted the public interest in banning sanctuary policies. "There are individuals coming into our country that are using our resources, our educational systems and our health care systems that are not contributing in any way," Stivers said. "So how do we deprive our citizens and individuals who have immigrated here

legally ... for people who have not followed the law and on many occasions are illegal to the extent that they are breaking the law and helping in the trafficking of drugs?" Louisville, Kentucky's largest city, though not officially a sanctuary city, bears all the hallmarks of one. There is no word at this point about whether Kentucky's newly-elected Democratic governor, Andy Beshear, would sign the bill should it be approved by both houses of the Legislature.

### IDAHO

Idaho may be a deep Red State, but it is also one where cheap labor agriculture interests wield enormous influence in state politics. Responding to pressure from these agricultural interests, Republican State Senator Jim Guthrie has introduced legislation to grant driver's licenses to illegal aliens. Guthrie justified his bill as a nod to pragmatism, citing what he claims is a shortage of agricultural workers and the imperative to ensure road safety. Of course, better wages and enforcement of existing motor vehicle codes might also do the trick, but those are less desirable to Big Agriculture. The bill has the enthusiastic support of the Idaho Dairyman's Association, which is taking a lead role on promoting it. The association's president, Bob Naerebout, said, "We're very pleased (Guthrie) is working on it, and we're pleased he's in-



cluded us." Naerebout also said that his organization is working to ensure that there is language in the bill that gives illegal aliens the assurance that none of the information they provide to the DMV will be shared with federal immigration enforcement agencies. Sanctuary state, anyone? ■

### INDIANA

Legislation to grant driver's licenses to illegal aliens is also on the agenda of the Indiana Legislature. State Rep. Chris Campbell (D-West Lafayette) has introduced a 77-page bill that would allow illegal aliens to be licensed to drive. Like similar laws and legislation in other states, Rep. Campbell justifies her bill as being beneficial to the economy and a road safety issue. "This bill was brought to me by community members. As a legislator, it is up to me to represent my community," she said, without explicitly mentioning who the "community" is that she is representing. Moreover, since it does not require 77 pages of legislative language just to grant illegal aliens permission to drive, one can reasonably assume that it also includes a lot of other protections for illegal aliens. ■

## New Data Show Small Declines in Legal Immigration

Newly released Department of Homeland Security data show modest declines in the admission of legal immigrants to the United States between 2016 and 2018. The drop of about 7 percent, or nearly 87,000 people, is the first noticeable decline in high levels of immigration in recent decades.

The most notable area of decline has been in the admission of family members. Family-based immigration has long represented the largest segment of the immigration flow, with chain migration of extended family members contributing to sustained upward pressure on new admissions. Admissions of immediate family members of U.S. citizens – spouses, children and parents – fell by more than 15 percent during this period.

Several factors have contributed to the slightly declining numbers. Among these are tighter restrictions and closer scrutiny of immigrants from countries deemed to pose a risk of terrorism. Another factor cited is an increase in the number of immigration applicants deemed to be ineligible for admission under Section 221(g) of the Immigration and Nationality Act.

The number of applicants ruled to be ineligible jumped from 254,478 in FY 2017 to 341,128 in FY

2018. This appears to be a reversal of policies by the Obama administration under which employees of U.S. Citizenship and Immigration Services (USCIS) were being pressured to rubber-stamp approvals of applications for people even if there were concerns about fraud or eligibility.

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Admissions could drop even further if new policy initiatives announced by the Trump administration are allowed to take effect. The administration's goal is to restrict entry of immigrants who lack health insurance (and therefore pose a significant potential liability to taxpayers), and to institute a more realistic interpretation of longstanding bars against the admission of people who are likely to become public charges. Both of these administration efforts are currently tied up in legal battles.

## Appeals Court Clears Additional \$3.5 Billion for Border Wall Construction

In early January, a three-judge panel of the Fifth Circuit Court of Appeals removed the latest roadblock to the Trump administration's efforts to secure the border. By a 2-1 majority, the Appeals Court granted the administration's request to lift a lower court's injunction barring the president from using about \$3.5 billion in Defense Department (DOD) money to secure the border by constructing additional fencing. The Fifth Circuit panel did not rule on the merits of the original lawsuit aimed at stopping the transfer of funds. Rather, it allows the administration to move

forward with border wall construction while the case makes its way through the judicial process.

The Fifth Circuit cited a July 2019 ruling by the U.S. Supreme Court, which held that the president had the authority to transfer money earmarked for military construction projects for border wall construction. That 5-4 Supreme Court decision reversed a ruling by the Ninth Circuit upholding an injunction imposed by a federal district judge in California.

[see BORDER WALL| page 7](#)



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

## Border Wall

[from page 6](#)

Buoyed by these important legal victories, the Trump administration quickly announced plans to tap an additional \$3.7 billion from the Pentagon budget for additional border wall construction. The combined \$7.2 billion is expected to fund construction of about 885 miles of new border wall by the spring of 2022. A little more than 100 miles of new fencing has been constructed by the current administration. However, with legal challenges to the project having been fought off, Acting DHS Secretary Chad Wolf expects construction to speed up significantly. “I can tell you that we remain confident that we are on track to 400, 450 miles that are either completed or under construction by the end of 2020,” Wolf said during a visit to the border in Yuma, Arizona.

While still inadequate to deal with the crisis along the southern border, the additional border security fencing is vital to protecting national security (which is why tapping Pentagon funds is legitimate) and deterring large-scale illegal immigration, drug smuggling and other illegal activities. The DOD dollars will

be augmented by the nearly \$1.4 billion Congress appropriated for border wall construction in December. In all, the money appropriated by Congress and the money used from the defense budget will bring total spending on the border wall to about \$18.4 billion under President Trump.

Almost as important as granting the administration's request to lift the lower court's injunction, the Fifth Circuit questioned the legal standing of the plaintiffs to bring the lawsuit in the first place. “The Government is entitled to the same relief here for, among other reasons, the substantial likelihood that Appellees lack Article III standing,” noted the ruling.

Of course the primary intent of the lawsuits filed in California and Texas was to stall the administration's efforts to construct additional miles of secure border fencing. Rather, the strategy of the lavishly-funded mass immigration lobby has always been to run the clock in the hope that the next election would bring them an administration more in line with their ideological viewpoints. Throughout his first three years in office, President Trump has consistently prevailed on the merits in lawsuits aimed at blocking his immigration enforcement efforts, but at the cost of valuable time.

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FAIR's Seventh Generation Legacy Society is made up of FAIR supporters who ensure our work continues long into the future. For over 40 years we have been fighting for immigration policies that better serve the American people. We wouldn't be able to continue our work without the kind and generous individuals who include FAIR in their planned giving arrangements.

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