Supreme Court to Weigh In on Key Immigration Cases

The U.S. Supreme Court will decide some crucial immigration-related cases in the coming months that will have enormous ramifications for national security, the integrity of our political asylum process, and our representative democracy.

In October, the Court announced that it would rule on whether President Trump had the authority to use Department of Defense (DOD) funds for construction of a border security wall along our southern border; whether the Migrant Protection Protocols (MPP), which require would-be asylum seekers to remain in Mexico and present themselves at a legal port of entry is constitutional and; if known illegal aliens can be deducted from the Census count for the purpose of apportioning congressional representation.

BORDER WALL FUNDING

In July, the Supreme Court rejected efforts by the American Civil Liberties Union (ACLU) and other groups to prevent the administration's use of $2.5 billion in Pentagon funds for construction of border security fencing. The Trump administration has used un-earmarked DOD funds to make good on its promise to defend national security by adding 450 miles of new fencing along the border. However, in a never-ending legal battle over the wall that was authorized by Congress in 2007, the Ninth Circuit Court of Appeals blocked the use of an additional $3.6 billion for the project. That legal challenge was spearheaded by the Sierra Club, which claims that the border wall would have a harmful effect on wildlife along the border, while ignoring the devastating ecological impact of millions of people traipsing through wilderness areas, leaving millions of tons of debris in their wake.

MIGRANT PROTECTION PROTOCOLS

The Court also agreed to determine whether a 2019 agreement struck between the United States and Mexico, aimed at preventing people from crossing our borders illegally before asking for asylum is...
constititutional. The MPP were initiated in response to the surge of asylum-seekers, most of them fraudulent, who poured across the southern border in 2019. In addition to making a mockery of our humanitarian policies, the record surge of migrants facilitated by organized human smuggling rings, arguably placed migrants in greater danger than the conditions they were allegedly fleeing in their home countries. Under the MPPs, migrants retain the ability to seek political asylum in the U.S. either by presenting themselves at an American embassy or consulate, or in an orderly and regulated fashion at a legal port of entry. The Ninth Circuit ruled in February that that policy violates federal immigration statutes. The Supreme Court has allowed the MPPs to remain in effect pending a final ruling on their legality, which will come in this session of the Court.

ILLEGAL ALIENS AND THE CENSUS

Having been blocked from including a question about citizenship on the 2020 Census form, the Trump administration opted for a plan to subtract known illegal aliens from the final tally for the purpose of apportioning congressional representation for the coming decade. This plan would ensure that citizens and legal residents in some states do not lose representation and billions of federal dollars to illegal aliens in other states. In September, a three-judge panel of the Second Circuit Court of Appeals in New York blocked that effort. Arguments before the Supreme Court are scheduled for November 30.

The inclusion of illegal aliens in the Census for the purpose of apportioning congressional representation is also being challenged by Alabama, a state that will almost certainly lose a seat in the House of Representatives and, along with it, substantial federal funding, if illegal aliens are included.

Over the decades, FAIR has been at the forefront of efforts to block the inclusion of illegal aliens for apportionment. As early as the 1980 Census, FAIR initiated lawsuits aimed at securing full representation in Congress for American citizens. However, these cases were never considered on their merits because the courts ruled that the plaintiffs lacked legal standing to sue.
America Needs a Blueprint for Immigration Reform, No Matter Who Is In Office

As this issue of the FAIR newsletter goes to print, we do not know the outcome of the 2020 election – who will be in the White House for the next four years, nor which party will control Congress for the next two years. What we do know for certain is that regardless of who is in office, our immigration policies remain a mess and in dire need of an overhaul. The longstanding problems with our immigration policies are only exacerbated by the COVID-19 crisis, which appears not to be going away anytime soon.

In response to events and with an eye toward the future, FAIR has drawn up a comprehensive plan for how immigration policies can be reformed in the interest of the American people no matter who is in office. FAIR’s Immigration Reform Blueprint for the American Worker, released in October, provides a detailed plan for policy changes that advance the interests of American workers during our current economic and employment crisis, and beyond.

Regardless of who is in office, our immigration policies remain a mess and in dire need of an overhaul.

FAIR’s plan looks at three key areas of immigration policy that directly affect the welfare of American workers, and offers recommendations for how government action can help them get ahead:

- Stopping illegal immigration by turning off the jobs magnet will save taxpayers billions of dollars a year and create new jobs.
- Implementing a merit-based system of legal immigration will raise wages for all Americans and spur innovation that benefits our country as a whole.
- Reforming—and in some cases ending—guest worker programs will protect both blue- and white-collar workers from the adverse impact caused by cheap, foreign labor.

ADDRESSING THE EMPLOYMENT IMPACT OF ILLEGAL IMMIGRATION

Preventing millions of illegal aliens from claiming U.S. jobs begins with E-Verify. E-Verify is an electronically-based system that allows employers to authenticate the legal work eligibility of prospective applicants, the same way a merchant verifies a credit card purchase. First created by Congress in 1996, the optional program has a 99.7 percent accuracy rate, is free, and usually takes less than five seconds to complete.

The problem is that the use of E-Verify is not mandated by federal law – although it is required by some state and local laws with great effectiveness. Requiring that all businesses use E-Verify would end the supply of jobs filled by those who illegally cross our borders or overstay their visas in the hope of taking a job. Legislation in both the House and Senate was introduced in the 116th Congress that would have mandated universal use of E-Verify, but those bills stalled due to pressure from cheap labor interests and illegal alien advocacy groups. In light of the employment crisis resulting from the lingering COVID pandemic, the 117th Congress must make passage of similar legislation a priority in 2021.

MERIT-BASED LEGAL IMMIGRATION

For decades, massive flows of legal immigration disrupted what used to be a healthy balance between our nation’s supply of labor and the availability of jobs. This has resulted in periods of high unemployment and a long-term, downward spiral of wages. In 2018, the United States granted around 1.1 million individuals lawful permanent resident status, nearly enough people to populate a major city the size of Dallas.

The Reforming American Immigration for a Strong Economy (RAISE) Act, which was introduced in the 115th and 116th Congresses, would replace our current outdated, dysfunctional, and unfair immigration
system with one that serves American workers. The RAISE Act reduces overall levels of immigration and admits immigrants who have the education and skills to succeed in 21st century America.

Specifically, the bill ends chain migration by limiting family-based green card eligibility for the spouses and minor children of U.S. citizens and legal permanent residents. This reform alone will drastically reduce the flow of legal immigration into the United States from 1.1 million new legal permanent residents to 540,000 per year within a decade. Similar to the 1997 Bipartisan Jordan Commission’s recommendations, the RAISE Act also ends the visa lottery.

Passage of the RAISE Act should be a priority for the 117th Congress as the nation continues to grapple with the effect of the COVID crisis.

REFORMING GUEST WORKER PROGRAMS

The H-1B program was established in 1990 as a means for American businesses to bring people with unique skills and talents to work temporarily in this country. It has strayed far from its original intent. It has ballooned into a massive program that brings in foreign workers with skills that closely match those of U.S. workers, often replacing them, and is frequently seen by the “guest” workers as a stepping stone to permanent immigration. It has also turned into a cash cow for foreign-based labor contractors who snap up available visas and subcontract the workers to U.S. employers.

The widespread abuse of the H-1B program has created an adverse effect on the opportunities and wages of skilled American workers competing against lower-paid H-1B aliens. Research from the Economic Policy Institute finds that employers frequently pay H-1B workers significantly less than Americans performing the same roles.

Policies adopted by the Trump administration in response to the COVID crisis have addressed many of the abuses of the H-1B program. These include giving preference to the most qualified H-1B applicants instead of awarding visas by lottery; imposing more realistic “prevailing wage” standards to prevent employers from using H-1B workers to undermine the wages of their American counterparts; reducing the number of guest workers admitted during a time of economic crisis and; barring employers found to be abusing the program from participation.

These pro-American worker policies should be continued in 2021 and should be cemented in place through legislative reforms enacted by Congress to prevent the program from being abused in the future.

The H-2B supposedly works as a seasonal program, typically for jobs at hotels, resorts or seasonal seafood processing although the majority of workers are landscapers working on job sites in Texas and Florida – where landscaping is not a seasonal industry. Instead of hiring full-time Americans to work in these roles, employers routinely abuse the H-2B program to save money. Employers frequently hire H-2B workers at wages significantly lower than Americans in the same fields.

To rectify these abuses, FAIR’s blueprint recommends imposing a more realistic prevailing wage standard; disqualifying business that are not truly seasonal from eligibility; raising fees for employers to discourage frivolous use of the H-2B workers; setting firm limits on the number of H-2A visas available and; prosecuting employers who mistreat guest workers.

The reforms recommended in FAIR’s blueprint should enjoy bipartisan support, particularly at a time of high unemployment and economic uncertainty, but even when COVID is finally tamed. Regardless of which party is in charge in 2021 and beyond, protecting the interests of American workers should be at the top of their list of priorities.
Big Win for American Workers: New Rules Will Curb Flagrant Abuse of Guest Worker Programs

On October 6, the Department of Homeland Security (DHS) and the Department of Labor (DOL) unveiled two new interim final rules targeting the H-1B guestworker program. FAIR has long called for a complete overhaul of this deeply-flawed program and suggested these and other changes in the Immigration Reform Blueprint for the American Worker.

The purpose of the DHS rule is to close a number of well-known loopholes in the H-1B program. It establishes with greater clarity the definition of a “specialty worker” in the context of H-1B hiring, ensuring that only those essential to the U.S. economy will be able to come to the US under the program. The new DHS rule will affect about one-third of all H-1B petitions, according to senior department officials. The rule also addresses offsite employers, commonly referred to as body shops or shadow employers, who use the H-1B program to staff third-party worksites. Finally, the rule makes it easier for DHS to conduct greater worksite enforcement and removes authorization from employers unwilling to cooperate with investigators.

The DOL rule specifically targets the prevailing wage levels, which the agency uses when certifying applications. In the past, the prevailing wage levels were far too low, meaning that employers could hire H-1B workers instead of Americans and save significant amounts of money. The DOL rule will raise the cost of hiring an H-1B worker, significantly reducing the incentive to use the program as a replacement for Americans.

Among the key pro-American worker reforms that will go into effect as a result of these rule changes:

- A redefinition of “specialty occupation” that will ensure that H-1B workers who are admitted possess unique skills and qualifications that are not readily replicated by American workers.
- Dramatically curtail the “body shop” business model under which foreign labor contractors snap up tens of thousands of H-1B visas and then subcontract those workers to American employers. Under the new rules U.S. employers will have to petition for workers directly and demonstrate that there is an actual job that requires a uniquely qualified foreign worker.
- Enhance scrutiny of companies employing H-1B workers to ensure that guest workers are filling the roles for which they were petitioned. In addition, employers found to be abusing the program could be fined or barred from participation.
- Implement needed increases to the “prevailing wage” levels, making it more difficult for companies to undercut American workers.

Given what is likely to be a protracted period of high unemployment resulting from the COVID-19 crisis, reversing these rules will be difficult to justify no matter who is in office in 2021. Even an administration that generally supports large-scale immigration will find it difficult to justify reinstituting rules that allow American employers to bypass, or even replace, U.S. workers in favor of lower-wage guestworkers.

Image Credit: istock
News from our State and Local Operations

VIRGINIA

Virginia’s state legislature became the latest to pass a bill attempting to regulate the detention of illegal aliens while they await deportation, a matter exclusively for the federal government under the Constitution. Some states, like California and Illinois, have passed legislation that aims to ban both private facilities and those run by state or local governments from housing these immigration detainees under contract with Immigration and Customs Enforcement. Other states, like Colorado and now Virginia, have not banned them outright but could have a chilling effect on current or future contracts by imposing significant new regulatory burdens. Even though these facilities are subject to federal oversight the legislation would give state authorities broadly expanded grounds to impose their own standards and potentially shut facilities down. According to Tom Homan, former Acting Director of Immigration and Customs Enforcement, the legislation is a transparent excuse for Virginia authorities to meddle in federal matters and make it difficult to operate detention facilities. “[N]early all of ICE’s large contractor-run detention facilities have twice the number of health care staff as compared to other federal, state and local facilities,” Homan asserted.

PENNSYLVANIA

While several states have adopted sweeping sanctuary policies that protect illegal aliens, including criminals, from being handed over to Immigration and Customs Enforcement, an effort is afoot in Pennsylvania to outlaw sanctuary policies statewide. House Bill 2874, sponsored by Representative Ryan Warner was introduced on September 18 and already has 16 cosponsors. The bill would ban sanctuary policies by local governments and their agencies statewide; require honoring immigration detainers to hold suspected illegal aliens in custody up to 48 hours after their release on state criminal charges; require that ICE be allowed access to jails in order to conduct interviews of suspected illegal aliens; ban any restrictions on information-sharing and cooperation with ICE; cut off state funds for a year to any local government with a sanctuary policy; and make local governments with sanctuary policies civilly liable for monetary damages caused by illegal aliens committing crimes after being released from their custody due to those policies. No companion bill has been introduced yet in the State Senate and Governor Tom Wolf (D) has expressed “concerns” about anti-sanctuary legislation but he has never explicitly said he would veto such a bill if it were sent to him.

ILLINOIS

Illinois isn’t just broke; it is facing a gaping $7 billion state budget deficit and its tax base is rapidly shrinking. But none of that deterred the legislature from granting Medicaid-like coverage to illegal immigrants aged 65 and older. It was subsequently signed by Gov. J.B. Pritzker (D). The program seems “modest,” covering health care for some 900 elderly illegal aliens in the state with a price tag of $5 million a year. However, the extension of costly public benefits to illegal aliens follows a well-established pattern: Begin with a small and relatively sympathetic group of illegal aliens as a first step and expand it from there. Chicago’s Rush University of Medicine projects that the population of poor elderly immigrants, many of whom are in the country illegally, will expand rapidly in the next ten years. Additionally, having set a precedent for providing health coverage to one cohort of illegal aliens, activists and their allies in Springfield are likely to seek expansion of these benefits to other illegal aliens.
The Numbers are In: Illegal Immigration was Down Sharply, But Darker Clouds are On the Horizon

Given where we were in terms of surging illegal immigration at the end of FY 2019, FY 2020 saw a dramatic decrease in people entering the country illegally. For the fiscal year, which ended on September 30, the number of people apprehended along the southern border was 458,088, just about half of the 977,509 people who were caught at the border during the previous year.

The improvements were due to a number of policy moves and, of course, circumstances. After the unprecedented surge of illegal immigration during the spring and summer of 2019, the Trump administration took decisive steps to discourage illegal migrants and halt the abuse of our asylum policies.

The administration struck agreements with Central American governments to gain their cooperation in preventing large numbers of migrants from crossing their territories along their path to the U.S. border. These policies proved effective. As recently as October of 2020 the government of Guatemala turned back a caravan of between 3,000 and 4,000 Honduran migrants headed north.

The Trump administration also concluded an agreement with Mexico, known as the Migrant Protection Protocols (MPPs) under which third country migrants seeking to claim asylum in the United States are required to wait on the Mexican side of the border to present themselves at a legal port of entry, rather than crossing the border illegally. The MPPs curtailed much of the chaos of 2019 when migrants crossed illegally, knowing that there would likely not be detained, and then released into the interior of the country.

Another policy change that curtailed the rampant abuse of political asylum policies was one that required asylum seekers to request asylum in the first country they arrived in after leaving their homelands, rather than waiting until they arrived in the United States to ask for protection. This move proved enormously effective at discouraging economic migrants from making false claims of political persecution.

While FY 2020 was generally an improvement over recent years, it ended on a somewhat disturbing note. September, the final month of the fiscal year, saw a sudden increase in illegal border crossings. September apprehensions numbered more than 57,000 – the highest September total since 2006. These increased numbers were likely driven by the devastating economic impact of the COVID-19 crisis in countries to our south.

Unlike the surge of 2019, which was made up mostly of family units (and groups of people who claimed to be family units) seeking to take advantage of policies that allowed those accompanied by children to enter, the increased flow at the end of FY 2020 was driven by single men, mostly looking for work. Moreover, while the 2019 surge was driven largely by migration from Central America, the growing flow of economic migrants amid the COVID crisis included a much larger contingent of Mexican nationals.

Another key difference between the surge of migration in 2019 and 2020 is that those who crashed the border during FY 2019 were arriving during a period of near full employment, while those arriving now are competing with a lot of American workers who have lost jobs due to COVID-19.
I am making my donation by check payable to FAIR, or credit card (check one).

- Visa  - Mastercard  - AMEX  - Discover
- $1,000  - $500  - $250  - $100  - $50
- $25  - Other $_________________

Cardholder’s Name

Card Number

Expiration Date  Signature

- I would like to make this donation monthly and become a recurring Cornerstone Contributor.

WE ALSO WELCOME YOUR DONATIONS ON OUR SECURE SERVER
www.fairus.org/DONATE
(enter code NL2011 in payment details).

- I have included at least $25 for a Gift Membership.

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

Visit FAIRus.org for more information

---

Use Your AMEX Rewards Points & Support FAIR!

Are you an American Express cardholder? If so, donating to FAIR has never been easier with the Members Give program. You can donate in dollars or in points through American Express’s Membership Rewards Program. The best part, your donation is still tax deductible! When you donate using your American Express card you can even earn rewards points for every dollar you donate. This not only makes donating easy but beneficial to you.

THERE ARE MULTIPLE WAYS TO DONATE:
- Donate dollars with American Express card
- Redeem points to make a donation
- Set up recurring donations
- Spread your donation out over the year

To make a donation with your American Express card go https://www.fairus.org/donate/other-ways-support-fair and click on the link at the bottom for FAIR’s Members Give page. Without your support FAIR would not be able to continue fighting for true immigration reform that protects American interests.