



Immigration REPORT

Harris Hints Big Amnesty Bill Is On the Way

Even before formally assuming office, Vice President Kamala Harris indicated that high on the list of the new administration's priorities would be a sweeping illegal alien amnesty bill. In an interview with Univision a week before Inauguration Day, Harris hinted that the administration-backed bill could include immediate green cards for Deferred Action for Childhood Arrivals (DACA) beneficiaries and those with Temporary Protected Status (TPS).

Amnesty for just about every other illegal alien in the country would also be part of the legislation that the Biden administration will be pushing. Additionally, the timespan for illegal aliens who would receive amnesty under the administration's plan would be dramatically shortened from previous amnesty proposals. The failed 2013 Gang of Eight legislation would have put amnestied aliens on a 13-year track to full citizenship. Vice President Harris suggested that that process could be reduced to eight years. "It's a smarter and much more humane way of approaching immigration," she asserted.

The vice president also suggested that the new administration would "pack" the immigration courts with new judges, clearly with the intent of placing people who share the administration's mass immigration and anti-enforcement philosophy. While the Department of Justice is adding new immigration judges, President Biden's pick to head the Department

of Homeland Security, Alejandro Mayorkas, would bring the same philosophy to that agency. During his time heading U.S. Citizenship and Immigration Services in the Obama administration, Mayorkas issued a "get to yes" edict to agency personnel, instructing them to ignore evidence of fraud when people were applying for immigration benefits.

During her interview, Harris made no indication of whether the bill the administration is proposing would include new enforcement provisions. Previous amnesty bills – two that were considered by Congress during the George W. Bush administration and the Gang of Eight under President Obama – at least paid lip service to the need to step-up enforcement to prevent future waves of illegal immigration. The enforcement

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Amnesty Bill

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promises were likely empty ones – a prime reason why all of those bills failed – but Democrats back then at least felt the need to assure the American public that enforcement was a concern. Given the positions taken by President Biden during his campaign, and Democratic congressional leaders, it is unlikely that immigration enforcement will be part of the bill.

The vice president did not indicate if legal immigration would be part of the legislation the administration envisions. Again, based on positions the president and congressional Democrats have taken, legal immigration “reform” would probably entail significant increases in family- and employment-based green cards.

Even with control of both houses of Congress, enacting the sort of immigration legislation Vice President Harris hinted at would not be easy. Aside from other pressing national issues on the agenda, such as dealing with COVID and unemployment, any legislation would need to garner 60 votes in the Senate (unless Majority Leader Chuck Schumer changes



Image Credit: whitehouse.gov

existing Senate rules to allow bills to reach the floor with just a simple majority vote).

FAIR will also be working with allies in Congress to oppose any amnesty legislation, and will use media and social media to keep the American public informed about the damage that would be inflicted by the sort of legislation that the vice president previewed. We urge FAIR members to sign up for legislative alert at our website, www.fairus.org, so that you can make your voices heard when such legislation is introduced. ■



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New Prevailing Wage Rule for Foreign Workers Add Additional Layer of Protection For American Workers

Even as the Biden administration wrestles with the question of whether to extend restrictions on the admission of new foreign workers, the outgoing U.S. Secretary of Labor, Eugene Scalia, finalized new rules that offer some measure of protection for American workers when and if the new administration reopens the doors to large numbers of guest workers.

During his final days in office, Secretary Scalia issued a final rule which mandated a more realistic methodology for determining the wages that foreign workers must be paid. In order to prevent U.S. employers from undermining or displacing American workers, the Department of Labor (DOL) determines what the “prevailing wage” is for any particular job and requires that foreign workers be paid no less than that benchmark. Unfortunately, the prevailing wages have been subject to manipulation on the part of employers who simply want cheaper labor. Business interests, for decades, have pressured the government to keep the prevailing wage artificially low.

The final rule, issued on Jan. 12, will ensure that the prevailing wage be determined by more realistic methodology, thereby diminishing the incentive for companies to favor guest workers over American workers. The new prevailing wage rule will “address abuses in visa programs, and protect American workers from being undercut by cheaper foreign labor,” said Scalia. “These changes help ensure that these important foreign worker programs function as Congress intended, while securing American workers’ opportunities for stable, good-paying jobs. In response to the comments we received, the Department has adjusted the wages levels used in the Interim Final Rule to better reflect market wages and included provisions to smooth the transition to the new wage levels.”

Under the new rule, the DOL will have to consider the actual wages being earned by American workers working in jobs for which foreign workers are being

sought, rather than the vague and malleable prevailing wage that has allowed employers to short-circuit protections for U.S. workers. Employers must attest that they will pay nonimmigrant workers, during the period of authorized employment, the higher of the prevailing wage or the actual wage paid to other employees with similar experience and qualifications.

The new prevailing wage rule will “address abuses in visa programs and protect American workers from being undercut by cheaper foreign labor”

- Secretary Scalia

The new administration, of course, has the authority to promulgate its own rules. However, writing new rules takes time, and requires a period during which the DOL would have to consider public comments. At the very least it would be many months before the new protections for American workers could be stripped. More importantly, deliberately weakening protections for American workers in order to allow companies to hire cheaper foreign labor would come at a significant political cost for a new administration that is likely to be grappling with a lot of other difficult issues. Restoring the much abused policies that the new ended, during a period of high unemployment and economic uncertainty, would not be viewed favorably by organized labor, and would have to be defended publicly by the Biden administration – neither of which they are likely to want to do.

■

2020 New Construction Border Wall Contracts Will Make it Difficult for Biden to Halt Further Construction

The goal of completing construction of 450 miles of border security protection by the end of 2020 was met, reports the Customs and Border Protection (CBP) agency. The addition of new or improved fencing along the border, has been instrumental in slowing the flow of illegal migrants and contraband across the southern border.

President Biden has stated repeatedly that he intends to halt further construction of secure fencing, although he has stopped short of saying that he will remove existing barriers. However, Biden's efforts to stop all construction of the border wall are hampered by existing contracts for hundreds of more miles of fencing. Before leaving his position, Acting CBP Commissioner Mark Morgan announced that his agency had finalized contracts for new construction and the acquisition of privately held land along the border.



Image Credit: istock

Morgan asserted that canceling existing contracts could be problematic for the new administration. "They could terminate those contracts if they want to, but that's going to be a very lengthy, messy process. We're going to have to go into settlement agreements with each individual contractor," he said. Morgan noted that in some cases work has already begun and the

government will be obligated to pay the contractors for that work, regardless of whether the job is completed. Additionally, materials have already been produced for new construction. Fulfilling President Biden's pledge to completely halt border wall construction could cost the government (i.e. taxpayers) billions of dollars, with nothing to show for the expenditures.

The enormous costs associated with terminating existing contracts could also provide the new administration the cover it needs to walk-back campaign pledges the president made to energize his party's far left base. Even before assuming office, Biden publicly worried about the consequences of a new border surge that could be triggered by the belief that his administration will do nothing to prevent people from entering. With migrant caravans forming in Central America in anticipation of his inauguration, Biden voiced concern. "The last thing we need is to say we're going to stop immediately the, you know, the access to asylum the way it's being run now and end up with 2 million people on our border," he said in December.

Regardless of how fully (and at what cost) the Biden administration carries through on its pledge to end border wall construction, the completion of 450 miles of security barriers and the addition fencing that is already in the works represent a significant victory for the American people. It also brings to fruition a plan that was first laid out by FAIR more than 30 years ago with its publication of *Ten Steps to Securing America's Borders*. In that publication, FAIR introduced the idea of a border security barrier, including a scale model of the needed infrastructure. Many of the ideas contained in that 1989 publication have been incorporated into enhanced border security infrastructure now in place, especially the hundreds of miles of border areas that are now protected by new fencing.

Struggling U.S. Workers Get a Reprieve as Work Visa Restrictions are Extended Through March



Image Credit: istock

One of the first critical decisions that President Biden will have to make is whether to leave in place restrictions on the admission of new foreign workers implemented by his predecessor. The new president must deal with the ongoing consequence of the COVID crisis, which includes helping millions of American workers reclaim jobs as the economy (hopefully) recovers.

In an effort to protect U.S. workers, the Trump administration dramatically limited the issuances of temporary and permanent worker visas last summer. In late December, the outgoing administration extended those restrictions through the end of March. While that order was a welcome reprieve for American workers, there is no reason to expect that the labor market will be anywhere near recovered by the time March 31 rolls around.

The next move will be up to President Biden. On the one hand, the success of his presidency will likely depend on his ability to deal with unemployment. Maintaining existing restrictions on new foreign worker admissions could go a long way in achieving that objective. On the other hand, Biden will be under enormous pressure to lift those limits from the far left flank of his party that want no restrictions on immigration, and from the business lobby that is perpetually demanding access to lower wage foreign labor, regardless of circumstances.

However, polling conducted by USA Today/Ipsos and exit polling conducted by Zogby Analytics on behalf of FAIR, indicate that the American public sees things very differently. By large majorities, Americans want to see worker visa restrictions remain in place for the foreseeable future. Even among Democratic voters who make up the base of the president's support, favor maintaining current limits.

The rule that remains in place through March protects nearly all strata of American workers. Among the visas that are currently restricted are H-1B visas that admit higher skilled temporary workers (and work authorization for their spouses); H-2B "seasonal worker" visas (that really aren't all that seasonal) under which lower skill workers are admitted; and L-1 visas under which global corporations transfer workers in other countries to offices or facilities in the United States.

FAIR worked to get the previous administration to implement these foreign worker and fought them over their initial efforts which still left many American workers vulnerable. FAIR will continue that effort on behalf of American workers under the Biden administration, rallying public and congressional support for a long-term extension of these protections during a time of economic crisis.

What to Watch for In the First 100 Days of the Biden Administration



Image Credit: Flickr | Joe Biden

The first hundred days of a new administration is when new presidents traditionally like to make their biggest policy splashes, and we can expect that the Biden administration will have some big changes in store when they move into the West Wing. Immigration is sure to be on the list of the new president's policy moves. Will Biden's actual changes reflect an "America last" approach?

Even before taking office Biden was taking steps to dampen the expectations of mass immigration/open borders radicals who are demanding an immediate end to virtually all forms of immigration enforcement. Speaking to reporters before Christmas, the president-elect said, "The timeline to do it is so that we, in fact, make it better, not worse. I will do what I said. It's going to take, not day one, it's going to take probably the next six months to put into place." Perhaps backing away from his promised 100-day moratorium on immigration removals, Biden added that "guardrails" will need to be in place to prevent a border crisis that could result in "two million people on our border."

Vice President Kamala Harris has indicated that major legislation dealing with amnesty for illegal aliens will likely be introduced in the first hundred

days. However, any legislation is likely to face a long road block-filled path as it makes its way through the legislative process. However, the Biden administration will have plenty of opportunities to steer other policy matters from Day One. Among the key decisions President Biden will have to address:

- Notwithstanding Biden's talk of the need for guardrails, his resolve is almost sure to be tested. Organized migrant caravans are forming in Central America, aiming to reach the border by Inauguration Day. Possibly from Day 1, the new president will be forced to choose between keeping promises he made to open borders radicals, or heading off an immigration crisis amidst a national health (including new strains of COVID) and economic by maintaining existing agreements with Mexico and Central American governments.
- How will he handle "family units" at the border? Until policies were put in place in 2019, new migrants were arriving by the hundreds of thousands each month with kids in tow and using children as get out of jail free cards – with Border Patrol Agents discovering that in some cases, the "parents" weren't even related to their "children". Will Biden find himself hostage to his own campaign rhetoric, and essentially endorse the actual exploitation of children by releasing everyone who arrives with children, thereby encouraging more people to endanger kids? Or will he act responsibly to prevent the real abuse of children and face the wrath of his far left base?
- Will Biden maintain existing restrictions on new guest workers? Limiting admission of guest workers during an unemployment crisis enjoys broad public support. It is less popular (to put it mildly) with business interests that want more low-wage foreign labor, and open borders radicals who are increasingly influential in the Democratic Party.

The critical choices that President Biden makes in his first days in office will directly affect his ability to guide the nation through the health and economic crises he will inherit.

News from our State and Local Operations

MASSACHUSETTS

Pro-illegal alien activists attempted to hijack police reform legislation in Massachusetts to turn the state into a full-blown sanctuary jurisdiction. Thanks to the efforts of FAIR's State & Local Legislative Department, and Massachusetts-based activists, some of the most egregious provision of the bill were stripped from the final version that was signed into law by Gov. Charlie Baker (R) in December. The bill signed by the governor still undermines public safety and law enforcement's ability to cooperate with federal authorities to remove illegal aliens, and FAIR opposed the final version. Among the key immigration-related provisions of the legislation signed into law:

- The training of law enforcement officers in how to deal with criminal aliens would be directed by an independent commission, the majority of whom would be law enforcement professionals. Earlier versions of the bill (which Gov. Baker threatened to veto) would have been dominated by pro-illegal alien activists – tantamount to putting the foxes in charge of the henhouse.
- It gives open-borders groups appointments to several new or expanded statewide oversight boards and thus the ability to refashion police objectives to protect illegal aliens, including but not limited to punishing law enforcement and corrections officers who cooperate with federal immigration authorities.
- Federal immigration authorities would still have access to Registry of Motor Vehicles databases. However some restrictions and procedural hurdles remain.
- The bill will chill cooperation by Massachusetts law enforcement officers by making immigration status a basis for complaints about bias and misconduct on the part of officers.

Despite Governor Baker saying he was “committed to enhancing and improving public safety,” the legislation he signed seems likely to do the opposite, even with the changes he demanded.



COLORADO

In a big win for commonsense immigration enforcement, the Aurora city council, Colorado's third largest city, rejected proposals that would have blocked nearly all cooperation between city police and Immigration and Customs Enforcement (ICE), and a second proposal to have the city fund legal defense for deportable aliens. In December, the council defeated a bill that would have prevented all Aurora City officials, including police, from using funds and information to assist federal immigration officers unless a judicial warrant is presented by an ICE official. In addition, the sanctuary bill would have prevented federal immigration authorities from conducting business in any building or facility owned or leased by the city without a signed warrant.

The second bill, in the words of its sponsor Councilmember Crystal Murillo, would have “advance[d] the foundational ideal of this country that people have the right to legal counsel and that we’re protecting the sanctity of our families, children and communities.” The bill would have established a defense fund paid for by taxpayers. Despite Ms. Murillo’s contention, there is no right or “foundational ideal” that people have a right to publicly funded legal representation in civil matters.

Advocates for illegal aliens and their supporters on the city council have pledged to renew their efforts in 2021.

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