



FAIR FEDERATION FOR AMERICAN IMMIGRATION REFORM

Immigration

REPORT

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Obama Defies American People and Congress by Unilaterally Implementing Massive DREAM ACT Amnesty for Illegal Aliens

On June 15, the Obama administration announced that it would begin unilaterally implementing the DREAM Act amnesty even though Congress voted down the legislation as recently as December 2010. During a conference call with reporters, Homeland Security Secretary Janet Napolitano stated that, effective immediately, her Department

will stop deporting illegal aliens who meet the criteria for the DREAM Act and that such aliens will now be eligible for work authorization. President Obama later reiterated that decision in a Rose Garden statement, during which he called implementation of the DREAM Act amnesty “the right thing to do.”

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Split Decision: Supreme Court Upholds Core of Arizona’s SB 1070 but Strikes Down Other Provisions

The U.S. Supreme Court unanimously upheld the core provision of Arizona’s immigration enforcement law, S.B. 1070, that requires police to make an attempt to determine the immigration status of an individual during a lawful stop if the officer has reasonable suspicion that the person is an illegal alien. The ruling, handed

down on June 25, provides not only Arizona, but other states that wish to emulate S.B. 1070, an important tool to discourage illegal aliens from settling or remaining in their jurisdictions.

The majority opinion, written by Justice Anthony Kennedy, rejected the

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In an op-ed published in the June 18 edition of USA Today, FAIR president Dan Stein lays out the case against President Obama's backdoor amnesty for illegal aliens under the age of 30 who arrived younger than age 16.

BLOCK THIS DE FACTO AMNESTY

The problem with President Obama's announcement that he is granting what amounts to de facto amnesty to upwards of a million illegal aliens is not just that it was done for naked political reasons. The problem is that in taking this political step, the president is making an end-run around Congress, which has sole constitutional authority to make immigration policy, while at the same time harming the interests of millions of Americans.

In March 2011, the president stated definitively that he lacked the

authority to do precisely what he announced on Friday. "With respect to the notion that I can just suspend deportations through executive order, that's just not the case, because there are laws on the books that Congress has passed," Obama said. "For me to simply through executive order ignore those congressional mandates would not conform with my appropriate role as president."

Thus, his actions represent a challenge to the constitutional Separation of Powers doctrine and a dangerous precedent that is bound to be repeated by this and future presidents.

Obama has decided to implement a law Congress never approved, while effectively nullifying numerous laws Congress has enacted because he objects to them. Not only will an estimated 1.4 million illegal aliens be permitted to remain here, nearly all of them will be granted work authorization despite the

fact they are explicitly barred from working here under a 1986 law. Thus, America's estimated 23 million unemployed and underemployed workers will find themselves competing with those who benefited from Friday's amnesty.

While many Americans may understand the difficult circumstances of this group of illegal aliens, they also understand that it was their parents, not the American people or American law, who put them there. Moreover, once we establish a precedent that bringing children here illegally will be rewarded, we are certain to see millions more follow suit.

Congress must act decisively to block this unauthorized amnesty. It is lawmakers' obligation to protect the interests of the American people and to ensure that the president respects Congress' constitutional authority to make our laws.

Immigration REPORT

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Who and How Many Will Get Provisional Amnesty Under the Obama DREAM Act?

Exactly how many people would qualify for the provisional amnesty announced by the Obama administration on June 15 is not entirely clear. The White House initially estimated that some 800,000 illegal aliens would qualify for deferred action and work authorization under the president's plan. However, when asked directly by Wolf Blitzer on CNN, Homeland Security Secretary Janet Napolitano seemed less certain. "It's difficult to say... We will either find them or we're asking them to help us self-identify," she said.

The Pew Hispanic Center cited a figure of 1.4 million illegal aliens, nearly double the White House's initial estimate. Neither of these estimates factors in potential fraud and the likelihood that the Department of Homeland Security (DHS) will bend the rules to approve every questionable application.

Verifying that an illegal alien meets these requirements will be difficult.

Deferred Action Eligibility Requirements

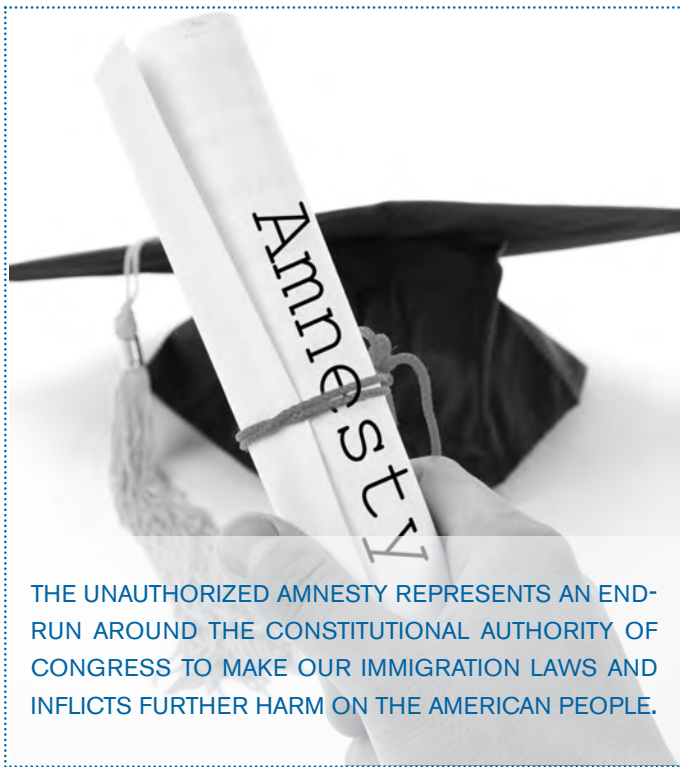
To be eligible for deferred action, an illegal alien must:

1. have entered the United States under the age of sixteen;
It is virtually impossible to prove or disprove at what age someone illegally entered the country. Forged documents can be easily used to demonstrate presence, even if the individual was not really here.
2. have continuously resided in the United States for at least five years preceding June 15, 2012 and are present in the United States on June 15, 2012;
Continuous presence in the United States actually allows for extended periods during which an applicant may have been absent from the country.
3. currently be in school, have graduated from high school, have obtained a GED certificate, or are honorably discharged veterans of the Coast Guard or Armed Forces of the United States;
Illegal aliens are ineligible for service in the military or Coast Guard.
4. have not been convicted of a felony offense, a significant misdemeanor offense, multiple misdemeanor offenses, or otherwise pose a threat to national security or public safety;
Individuals – especially juveniles – who have committed felonies may not have felony convictions on their records because of plea bargaining agreements. Also, people with as many as two misdemeanor convictions will be eligible for amnesty.
5. not be above the age of thirty.
It is likely that many people over the cutoff age of 30 will receive amnesty as well. Fraudulent birth certificates and other documents purporting to prove one's age can be easily procured.

In her CNN interview, Secretary Napolitano also indicated that the parents of those who will benefit from deferred action will not be removed from the country. "No. We will not do that," Napolitano responded to Blitzer's question about whether parents should be concerned about potential deportation. However, the parents will not be eligible for deferred action (and work authorization), she said. Thus, according to Napolitano, the administrative amnesty that is being justified on the grounds that the people benefiting were blameless in the initial decision to break the law will nevertheless also wind up benefiting the people who are responsible for having broken the law.

DREAM ACT AMNESTY *continued*

Under the administration's policy, illegal aliens under the age of 30 who can plausibly claim they arrived in the U.S. before the age of 16 would be granted "deferred action" on removal. Deferred action status is what DHS grants when it decides, in its own discretion, not to remove an illegal alien even though the alien is deportable. There is no statutory basis for deferred action status. Nearly all of the people likely to be granted deferred status under the policy — as many as 1.4 million, according to the Pew Hispanic Center — may apply for and are likely to receive work authorization, even though federal law explicitly bars illegal aliens from employment in the U.S.



THE UNAUTHORIZED AMNESTY REPRESENTS AN END-RUN AROUND THE CONSTITUTIONAL AUTHORITY OF CONGRESS TO MAKE OUR IMMIGRATION LAWS AND INFLECTS FURTHER HARM ON THE AMERICAN PEOPLE.

The decision by the Obama administration is widely viewed as an election year ploy to energize a small section of the president's political base in advance of his re-election bid. More importantly, however, the unauthorized amnesty represents an end-run around the constitutional authority of Congress to make our immigration laws and inflicts further harm on the American people.

The president's actions essentially void numerous laws that have been approved by Congress and implements the intent of legislation — the DREAM Act — that was rejected by Congress. In addition to being bad

policy and contrary to the will of the American people, the move threatens the integrity of the Separation of Powers doctrine, which created a system of checks and balances designed to prevent a president from acting unilaterally. At the same time, granting amnesty and work authorization to an estimated 1.4 million illegal aliens (assuming there is not massive fraud) will further harm some 23 million Americans who are currently unemployed or underemployed.

As recently as 2011, President Obama insisted (correctly) that he does not have the authority to do precisely what he announced on June 15. In an interview on Univision, the president stated, "With respect to the notion that I can just suspend deportations through executive order, that's just not the case, because there are laws on the books that Congress has passed... that for me to simply through executive order ignore those congressional mandates would not conform with my appropriate role as President."

How Congress will respond to this usurpation of its constitutional authority is still not clear. A group of 20 Republican senators sent a letter to President Obama seeking specific details and clarifications about how his amnesty program will be carried out, how fraud would be prevented, and how much the program would cost. The letter requested a response by July 3, but did not include any indication of what steps the senators might take if that information is not forthcoming.

Congress **does** have options available to block President Obama from carrying out his amnesty program. They can halt this unauthorized amnesty in its tracks by cutting off funding to carry it out. Congress has the oversight authority to ensure that monies it has appropriated for enforcement of U.S. immigration laws are not redirected to other purposes.

One member of Congress, Rep. Steve King (R-Iowa), also held out the possibility of filing a lawsuit to bar the administration from carrying out its amnesty program because the president lacks the constitutional authority to implement the plan. "I'm prepared to bring a suit and seek a court order to stop implementation of this policy," King said.



Obama Administration Acts to Nullify Any Benefit to Arizona from Supreme Court Ruling

The Obama administration responded swiftly to the ruling by the Supreme Court upholding the right of state and local police to detain suspected illegal aliens by terminating several long-standing agreements between Immigration and Customs Enforcement (ICE) and local jurisdictions in Arizona that identified, detained and turned over to ICE detained illegal aliens. Under a federal-state cooperation program, known as 287(g), police are trained to identify likely illegal aliens and are authorized to detain them on behalf of ICE. Within hours of the Court's ruling, the administration moved to render these agreements in Arizona moot by refusing to accept, under most circumstances, illegal aliens who are detained by Arizona law enforcement.

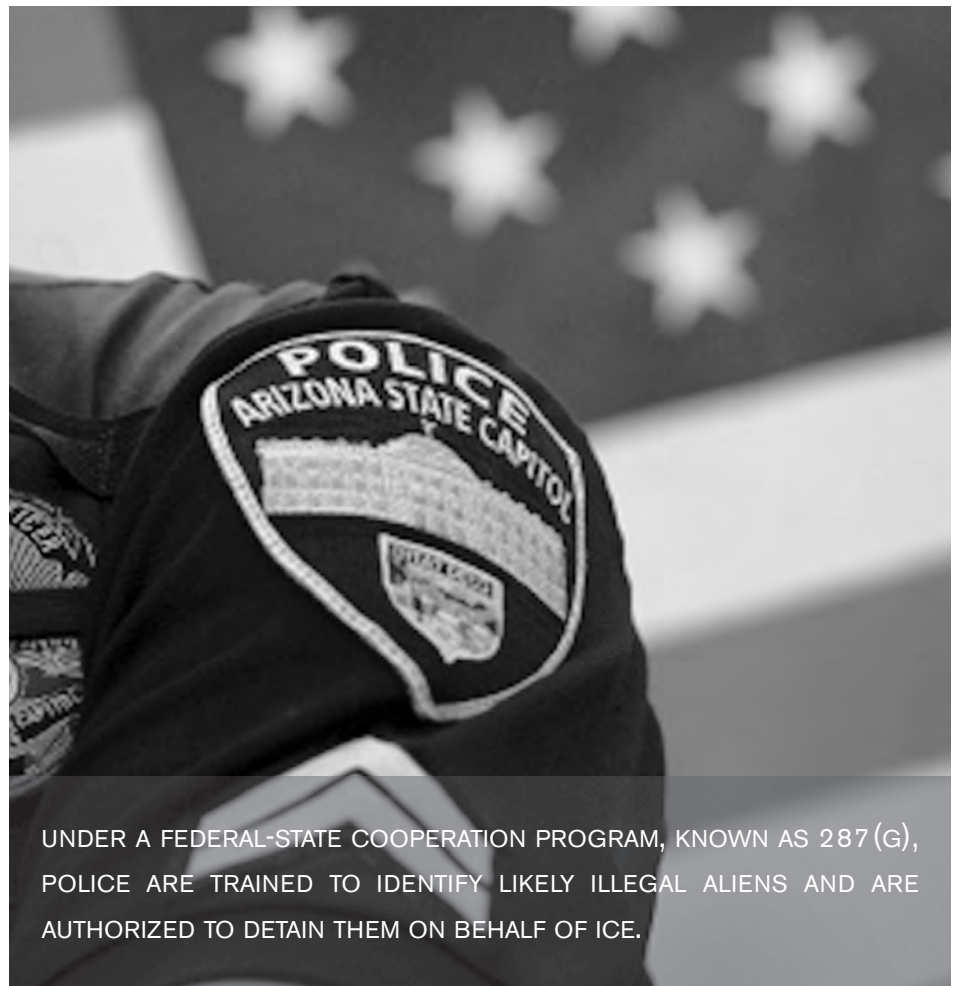
Emboldened by the Supreme Court's apparent acceptance of the administration's contention that it has virtually unlimited discretion not to enforce immigration laws, the move underscores just how far this administration is prepared to go to ensure that illegal aliens who do not meet its definition of "high priority" are not removed from the country and to thwart any state or local effort to protect citizens from the impact of illegal immigration.

In response, Arizona Governor Jan Brewer accused the Obama administration of being vindictive and

refusing to accept the Supreme Court's verdict. "[T]he disarmament of Arizona's 287(g) agreements is a new low, even for this administration," she said. Further indicating the administration's determination not to abide by the Court's ruling, the Department of Homeland Security (DHS) immediately established a hotline "for fielding inquiries about how people can report potential civil rights violations in Arizona." The move clearly indicates that the Obama administration,

working with the illegal alien advocacy network, is preparing for a new round of litigation to prevent Arizona from implementing the provision of S.B. 1070 that was upheld by the Supreme Court.

The administration's refusal to cooperate with states' efforts to enforce immigration laws appears not to be limited to Arizona. The day after it terminated its 287(g) agreement with Arizona, DHS turned down a request by the Virginia State Police to join the program.



UNDER A FEDERAL-STATE COOPERATION PROGRAM, KNOWN AS 287(G), POLICE ARE TRAINED TO IDENTIFY LIKELY ILLEGAL ALIENS AND ARE AUTHORIZED TO DETAIN THEM ON BEHALF OF ICE.

SCOTUS SB 1070 DECISION *continued*

Obama administration's contention that inquiries about immigration status interfere with its abilities to carry out its own immigration enforcement priorities. "Congress has done nothing to suggest it is inappropriate [for state officials] to communicate with ICE... Indeed," Kennedy stated, "[Congress] has encouraged the sharing of information about possible immigration violations."

This ruling adds another layer of deterrence to illegal immigration in Arizona. Completely lost in the coverage of the Court's decision is that other portions of S.B. 1070 were never enjoined by lower courts. Moreover, last year, the Court upheld Arizona's law requiring all employers to use the E-Verify system to check the work eligibility status of the people they hire. In 2004, Arizona voters overwhelmingly approved an initiative barring illegal aliens from accessing non-essential, non-emergency public benefits and services.

Unfortunately, the Court struck down by a 5-3 majority three other provisions of SB 1070, holding that those provisions were preempted by federal law. These provisions would have made it a violation of state law for an illegal alien to be in violation of the federal alien registration statutes; a misdemeanor offense for illegal aliens (who are barred from employment under federal law) to solicit employment; and allowed state and local police to execute a warrantless arrest if the officer has

probable cause to believe the individual had committed a removable offense.

Disturbingly, in the split decision authored by Kennedy, the Court's majority seems to have accepted the Department of Justice's argument that the Executive Branch has unfettered discretion not to fully enforce U.S. immigration laws. In essence, the ruling gives the Obama administration broad latitude to nullify laws enacted by Congress — the branch of government with exclusive authority to make laws — by refusing to enforce those laws.

Ball in Congress's Court

The Supreme Court's ruling places the onus squarely on the shoulders of Congress to reclaim its constitutional authority over immigration policy. Even though, as Justice Kennedy noted, Congress has on numerous occasions, "encouraged" state and local participation in immigration enforcement, it will now have to include express language in each provision to authorize participation of state and local governments.

In addition, Congress will need to clearly define the limits of executive discretion. While the Executive Branch has some inherent discretion in carrying out laws passed by Congress, the limits of that discretion remain vague. While every president has enjoyed the same discretionary authority as the Obama administration, the current administration has used (or abused) this authority to es-

entially rewrite numerous immigration laws without congressional consent.

Justice Antonin Scalia, in a scathing dissenting opinion, blasted the majority opinion for allowing the Obama administration to substitute its policies for laws enacted by Congress. Noting the president's recent administrative implementation of the DREAM Act, Scalia pointed to the administration's usurpation of congressional authority over immigration policy. "After this case was argued and while it was under consideration, the secretary of Homeland Security announced a program exempting from immigration enforcement some 1.4 million illegal immigrants," Scalia wrote.

Scalia also charged that the majority opinion granting the administration carte blanche not to enforce immigration laws leaves Arizona citizens "under siege," and "helpless under those evil effects of illegal immigration." Incredulously, Scalia wondered, "Are the sovereign states at the mercy of the federal executive's refusal to enforce the nation's immigration laws?"

The remedy now rests with Congress to reassert its authority and with the American people to make sure that those in office are committed to enforcing all immigration laws. A recent CBS/New York Times poll found that Americans support S.B. 1070 by a 63% to 33% margin and also indicated continued political support for meaningful immigration enforcement.



The Bulk of S.B. 1070 Remains After Supreme Court Ruling

The media and illegal alien advocates have tried to spin the Supreme Court's rejection of three key provisions of S.B. 1070 as a repudiation of Arizona and a clear signal to other states that they should not take steps to enforce laws against illegal immigration.

While the provisions that were struck down by the Court would have added still more deterrence to illegal immigration, what remains provides Arizona – and other states that want to take action – with a clear guideline for what are permissible as well as effective means to protect their citizens.

In addition to Section 2(B) – the provision unanimously upheld by the Court that allows state and local police to investigate immigration status upon reasonable suspicion that an individual is an illegal alien – the other important provisions that were not challenged and remain in effect include:

- **SECTION 1**

declares “attrition through enforcement” to be the policy of Arizona.

- **SECTION 2**

(A) prohibits sanctuary cities and counties.

(D) authorizes secure transport of suspected illegal aliens to federal custody.

(E) prohibits policies that prevent the sharing of information between agencies regarding immigration status.

(G) allows private citizens to bring lawsuits to force agencies to comply with S.B. 1070.

- **SECTION 9(A)**

requires employers to maintain records of work eligibility verifications using E-Verify.

- **SECTION 10**

authorizes the impoundment and forfeiture of vehicles used to transport illegal aliens.

- **SECTION 11**

establishes a Gang and Immigration Intelligence Team Enforcement Mission Fund.

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A Heartfelt Thank You...

to all federal and state government employees who helped in the FAIR fight for sensible immigration policies by making a pledge to FAIR in the Fall 2011 Combined Federal Campaign and related State campaigns!

Today, immigration, legal and illegal, is running at its highest level in history. This isn't the result of any reasoned immigration policy but rather the result of concessions made over the years to special interests that profit politically or financially from mass immigration. It is time to put the nation's best interests ahead of the special interests. To that end, we believe that:

- Every immigrant should be a legal immigrant
- Illegal immigration must not be rewarded
- There should be a comprehensive ceiling on immigration to be fixed in accordance with the economic, environmental, and societal goals and priorities of the United States.
- Assimilation, which has historically benefited both immigrants and the nation as a whole, must be encouraged.
- Immigration must not be allowed to displace American workers
- U.S. immigration policy should not discriminate for or against persons of a particular race, religion, culture, or national origin

We work toward these goals through programs of research, education, community outreach, and public policy advocacy. We could not do it without you.

FAIR will participate in the Combined Federal Campaign again this fall. I hope we will have your continued support!



Cornerstone Contributors are the building blocks of FAIR's citizen-supported foundation. Time and time again, through their continuing support they have become key officers in our battle to end the destructive mass immigration that is debilitating our great nation.

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