



# CONSTITUTIONAL ACTION REPORT

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HOWARD PHILLIPS, PRESIDENT

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## **Obama Administration Leads U.S. Toward an Illegal Policy of Open Borders**

Each President, when sworn into office, promises to “preserve, protect, and defend the Constitution of the United States of America.” Article II, Section 3 of the Constitution assigns the President responsibility to “take Care that the Laws be faithfully executed . . . .” For three years now, Barack Obama has failed to enforce the nation’s laws in regard to illegal immigration. Anyone hoping that eight years of lax enforcement by the Bush Administration would be followed by a change for the better has instead seen matters go from bad to worse.

If Congress took seriously its own Constitutional responsibilities, it would already have impeached, convicted, and removed Obama and key subordinates such as Secretary of Homeland Security Janet Napolitano.

### **Obama Is Not Enforcing Existing Law**

The first assignment for enforcing the immigration laws is to secure the borders, reducing illegal immigration to a minimum. However, last year administration officials leaked their plan to reduce the number of National Guardsmen assigned to help guard the Mexican border,<sup>1</sup> and Obama’s 2013 budget proposes to reduce spending on border security by \$191 million.<sup>2</sup> Obama’s lack of interest in extending the border fence is shown not only by the lack of construction, but by the fact that the Department of Homeland Security (DHS) website has not updated its “Southwest Border Fence” section since August 2009, and still refers to the failed SBInet as one of the fencing options.<sup>3</sup>

Obama has also supported legislation to reward those who break the law by entering the United States illegally. He has renewed his 2008 promise to support what is euphemistically called “comprehensive immigration reform”, which means amnesty.<sup>4</sup> He has endorsed the DREAM Act, which would provide a more limited amnesty.<sup>5</sup>

Congress refused to pass amnesty legislation, and Obama reacted by taking matters into his own hands. Rather than enforce the law, he has granted what amounts to amnesty for most of the illegal aliens in the United States. He did this last summer by changing U.S. policy so that instead of deporting those illegal aliens who are captured, only those who have committed serious crimes would be sent home. Those whose only known crime is violation of the immigration laws are given a free pass, and treated as if they were here legally. Illinois Senator Dick Durbin was assured that all 300,000 pending deportation cases would be reviewed and “these

<sup>1</sup>Dinan, Stephen, “Obama to Slash National Guard Force on US-Mexico Border”, *The Washington Times*, Dec. 12, 2011.

<sup>2</sup> *Fiscal Year 2103 Budget of the U.S. Government* (Office of Management and Budget, 2012) pg. 118

<sup>3</sup> [http://www.dhs.gov/files/programs/gc\\_1207842692831.shtm](http://www.dhs.gov/files/programs/gc_1207842692831.shtm) as of February 23, 2012.

<sup>4</sup> NPR, July 25, 2011 at <http://www.npr.org/2011/07/25/138617937/obama-steps-up-campaign-to-win-over-latino-voters>

<sup>5</sup> FOX News Latino, February 23, 2012, <http://latino.foxnews.com/latino/politics/2012/02/23/obama-pushes-congress-to-make-dream-act-priority-in-2012/>

cases will be closed except in extraordinary circumstances, in which case the reviewing attorney must receive the approval of a supervisor to move forward. Individuals whose cases are closed will be able to apply for certain immigration benefits, including work authorization.”<sup>5</sup> Obama’s 2013 budget reaffirms his commitment to this policy, saying that DHS will focus on deporting “criminal aliens” instead of “low risk individuals.”<sup>6</sup>

With the Federal government failing to do its job in regard to illegal immigration, states have begun to try to fill the enforcement gap. Arizona and Alabama enacted strict laws that could be expected to significantly reduce the number of illegals. The reaction of the Obama administration has demonstrated that they are not merely unwilling to enforce the law, but are determined that no one else shall enforce it. Obama’s Justice Department has filed suit against both states, claiming that the Federal government had sole jurisdiction.<sup>7</sup>

Earlier in Obama’s term, he moved to weaken the 287(g) program, which delegates to state and local law enforcement officers some authority to enforce Federal immigration laws, but only after being trained by DHS. In July, 2009, 287(g) was “reformed” by requiring officers to focus their attention on illegal aliens committing other criminal acts, rather than putting the priority on finding as many as possible who deserved to be deported. The “reform” also required that all complaints against officers acting under 287(g) be forwarded to DHS for its review,<sup>8</sup> and Secretary Napolitano assured pro-amnesty groups that she looked forward to revoking some 287(g) agreements.<sup>9</sup> While the Bush administration had arranged 60 such enforcement partnerships, only eight were added in Obama’s first nineteen months, and none since then.<sup>10</sup> In Obama’s proposed 2013 budget, DHS announced its plan to phase out 287(g) in favor of a more limited alternative program.<sup>11</sup>

## The Democratic Plan for Illegal Aliens

Obama’s approach to border security, amnesty, and deportation makes complete sense to anyone familiar with the hopes and plans of Democratic strategists. The idea of using a rapidly-growing bloc of Hispanic voters to create a long-term Leftist Democratic majority has been openly discussed. Two of its best-known advocates, Ruy Teixeira and John Halpin, have written extensively on the prospect. In their recent study, *The Path to 270*, they say that “the heart of the Obama coalition is the minority vote.” Pointing out that the 2010 census shows the Hispanic population growing 43 times faster than whites, they predict that minorities will increase as a proportion of voters even faster than as a proportion of the population.<sup>12</sup>

Many Americans remember how the Clinton administration rushed to grant citizenship prior to the 2000 election in the hopes of giving then-Vice President Gore the votes he would need to defeat George W. Bush.<sup>13</sup>

<sup>5</sup> “Durbin Lauds Obama Administration Announcement on DREAM Act Deportation”, news release on August 18, 2011 at <http://durbin.senate.gov/public/index.cfm/pressreleases?ID=46e027e8-fe46-4b62-93e2-7b4c4ea48d2b>.

<sup>6</sup> *Fiscal Year 2013 Budget*, pg. 120.

<sup>7</sup> “Justice Department Files Suit Against Arizona Immigration Law,” FOX News, July 6, 2010, at <http://www.foxnews.com/politics/2010/07/06/justice-department-file-suit-arizona-early-tuesday/> and “Alabama Immigration Law: Obama Administration Files Lawsuit to Block Measure”, Aug. 1, 2011, *Huffington Post* at [http://www.huffingtonpost.com/2011/08/01/alabama-immigration-law-lawsuit\\_n\\_915460.html](http://www.huffingtonpost.com/2011/08/01/alabama-immigration-law-lawsuit_n_915460.html)

<sup>8</sup> *Fact Sheet: Updated Facts on ICE’s 287(g) Program*, Department of Homeland Security, <http://www.ice.gov/news/library/factsheets/287g-reform.htm> as of March 1, 2012.

<sup>9</sup> Stern, Ray, “Obama Wants 287(g) Agencies to Be Held Accountable for Actions: Napolitano Wants Status of Some Agencies Revoked”, *Phoenix New Times*, August 20, 2009 at [http://blogs.phoenixnewtimes.com/valleyfever/2009/08/obama\\_wants\\_287g\\_agencies\\_to\\_b.php](http://blogs.phoenixnewtimes.com/valleyfever/2009/08/obama_wants_287g_agencies_to_b.php) as of March 1, 2012.

<sup>10</sup> *Fact Sheet: Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act*, Department of Homeland Security, <http://www.ice.gov/news/library/factsheets/287g.htm> as of March 1, 2012.

<sup>11</sup> Gomez, Alan, “Immigration Enforcement Program to Be Shut Down”, *USA Today*, Feb. 17, 2012 at <http://www.usatoday.com/news/nation/story/2012-02-17/immigration-enforcement-program/53134284/1>

<sup>12</sup> Teixeira, Ruy and Halpin, John, “The Path to 270: Demographics versus Economics in the 2102 Presidential Election” (Center for American Progress, 2011), pg. 10.

<sup>13</sup> “Clinton-Gore Immigration Naturalization Push Helps Gore”, *NewsMax*, Nov. 7, 2000 at <http://archive.newsmax.com/archives/articles/2000/11/6/205824.shtml>

The official U.S. government statistics on immigration show that naturalizations increased from 463,060 in 1998 to 839,944 in 1999 and 888,788 in 2000 before dropping to 608,204 in 2001.<sup>14</sup> No one should be surprised that the US Citizenship and Immigration Services (USCIS) hopes to speed up the process of becoming a citizen, promising it will “modernize and improve the naturalization process and would like to decrease the time it takes to an average of 6 months after the Form N-400 is filed.”<sup>15</sup> Obama’s recently proposed budget includes a 42% increase in funding for USCIS, while cutting \$193 million from Immigration and Customs Enforcement.

## Americans Pay the Heavy Cost of Illegal Immigration

The American taxpayer bears the burden of illegal immigration. Steven Camarota of the Center for Immigration Studies concluded in 2004 that because most illegal immigrants have little education, they cost the Federal government \$10.3 billion per year more than the taxes collected from them.<sup>16</sup> Camarota noted that other studies have also found poorly-educated immigrants to be a financial drain on government, although the studies did not agree exactly how much it cost the taxpayers.<sup>17</sup>

Camarota looked only at the impact on the Federal government, but Robert Rector of the Heritage Foundation testified before Congress in 2007 that the net cost to state and local governments of low-skill immigrants in 2004 was more than \$49 billion.<sup>18</sup> Rector estimated that granting amnesty to illegal immigrants would, over their lifetimes, cost \$2.5 trillion at all levels of government.<sup>19</sup>

More recently, the Federation for American Immigration Reform (FAIR) found that illegal immigration is now costing American taxpayers \$113 billion per year. Education, at \$52 billion, was the largest component of that cost.<sup>20</sup>

Unfortunately, the cost of illegal immigration includes far more than money. Americans find themselves subjected to a crime rate that is boosted by the presence of illegal aliens. No better example could be found than Kesler Dufrene, who was convicted of burglary in Florida in 2006 and sentenced to five years, with deportation to follow his release. However, the Obama administration decided to delay his deportation and turn him loose. Soon after, Dufrene murdered three people. Fortunately, he deprived the Obama administration of another chance at releasing him when he committed suicide rather than surrender to the police.<sup>21</sup>

Salvador Portillo-Saravia should have been deported when he was arrested on a charge of drunkenness. Unfortunately, DHS had failed to put his fingerprints on file after an earlier deportation, so he was not identified as an illegal alien and was released. A month later, he raped an 8-year old girl.<sup>22</sup>

Carlos Martinelly Montano was arrested and sentenced to deportation, but was released and given a work permit. Two years later, his deportation still on hold, his drunken driving killed an innocent victim.<sup>23</sup>

<sup>14</sup> *2003 Yearbook of Immigration Statistics* (Department of Homeland Security, Office of Immigration Statistics, 2004), Table 33.

<sup>15</sup> *A Guide to Naturalization* (U.S. Citizenship and Immigration Services, revised December 2011), pg. 10.

<sup>16</sup> Camarota, Steven, “Immigration’s Impact on Public Coasters in the United States”, Fraser Institute at [http://www.cis.org/articles/2009/MassImmigration\\_ch2.pdf](http://www.cis.org/articles/2009/MassImmigration_ch2.pdf), pg. 37.

<sup>17</sup> *Ibid.*, pg. 35-36.

<sup>18</sup> Rector, Robert, “The Fiscal Cost of Low-skill Immigrants to State and Local Taxpayers”, May 27, 2007 testimony before the House Judiciary Committee at <http://www.heritage.org/research/testimony/the-fiscal-cost-of-low-skill-immigrants-to-state-and-local-taxpayers>

<sup>19</sup> *Ibid.*

<sup>20</sup> “The Fiscal Burden of Illegal Immigration on United States Taxpayers”, Federation for American Immigration Reform, at [http://www.fairus.org/site/News2/977633106?page=NewsArticle&id=23190&security=1601&news\\_iv\\_ctrl=1761](http://www.fairus.org/site/News2/977633106?page=NewsArticle&id=23190&security=1601&news_iv_ctrl=1761)

<sup>21</sup> Ovalle, David, “Immigration Authorities Released Man Who went on to Kill 3 in North Miami”, *The Miami Herald*, January 22, 2012 at <http://www.miamiherald.com/2012/01/22/v-fullstory/2602909/immigration-authorities-released.html>

<sup>22</sup> “Examples of Serious Illegal Alien Crimes”, Federation for American Immigration Reform at [http://www.fairus.org/site/News2?page=NewsArticle&id=16660&security=1601&news\\_iv\\_ctrl=1010](http://www.fairus.org/site/News2?page=NewsArticle&id=16660&security=1601&news_iv_ctrl=1010) as of March 1, 2012.

<sup>23</sup> *Ibid* and Stewart, Amanda, “Carolos Martinelly Sentenced in Nun’s Death”, *Inside NOVA*, March 1, 2012 at <http://www2.insidenova.com/news/2012/feb/03/9/carlos-martinelly-sentenced-crash-killed-nuns-ar-1661635/>

There will be more such examples as long as the Federal government winks at massive illegal immigration.

### Will the American People Be Heard in Washington?

There is no lack of public support for government action against illegal aliens. Attempts in 2006 and 2007 to pass an amnesty bill, with strong support from Democratic liberals and Republican big business interests, failed when Congress was flooded with phone calls and emails opposing the bills.

A February, 2012 poll by Quinnipiac found public support for Arizona's law running at 2-1.<sup>24</sup> Even a PBS online poll showed 68% for deportations rather than amnesty.<sup>25</sup>

Mass deportations have been carried out in the past. During the Depression, perhaps as many as 400,000 Mexicans were forced to return home in order to make jobs available for American citizens.<sup>26</sup> President Eisenhower's "Operation Wetback" was the climax of stepped-up enforcement in the early to mid-1950. According to historian James T. Patterson, "estimates conclude that as many as 3.8 million Mexicans were rounded up and sent away between 1950 and 1955."<sup>27</sup>

The Federal government has primary responsibility for fighting illegal immigration, according to the U.S. Constitution. Congress has passed laws to deal with the problem. Two questions remain.

Will Barack Obama enforce the law, as required by the Constitution?

Will Americans insist on having a President pledged to enforcement beginning on January 20, 2013?

## A CONSTITUTIONAL BUDGET

The major cause of our nation's large deficit and the accumulated national debt has been the willingness of Congress to enact lavish spending programs that exceed the Constitutional functions of the Federal government. One of TCCF's ongoing programs is to examine portions of the Federal budget to determine which programs are unconstitutional.

Anyone who would like a copy of the 2012 analysis of the Departments of Agriculture, Education, Labor, and Housing and Urban Development can obtain one for free by contacting TCCF. Call us at 703-281-6782, email to [info@ConservativeUSA.org](mailto:info@ConservativeUSA.org), FAX to 703-281-4108, or write to 450 Maple Avenue East, Suite 309, Vienna, Virginia 22180.

We are performing a Constitutional analysis on more departments of President Obama's proposed FY 2013 budget, and will announce those in a later issue of the **CONSTITUTIONAL ACTION REPORT**.

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<sup>24</sup> PollingReport.com at <http://www.pollingreport.com/immigration.htm> as of March 1, 2012.

<sup>25</sup> Poll: Illegal Immigration at <http://www.pbs.org/wnet/need-to-know/uncategorized/poll-illegal-immigration/12425/#ViewPollResults> as of March 1, 2012.

<sup>26</sup> Koch, Wendy, "U.S. Urged to Apologize for 1930's Deportations", *USA Today*, April 5, 2006 at [http://www.usatoday.com/news/nation/2006-04-04-1930s-deportees-cover\\_x.htm](http://www.usatoday.com/news/nation/2006-04-04-1930s-deportees-cover_x.htm)

<sup>27</sup> Patterson, James T., *Grand Expectations: The United States, 1945-1974* (Oxford University Press, 1996), pg. 379-80.