



## Immigration Laws the Administration Is NOT Enforcing

☒ It is unlawful to knowingly hire, recruit, or refer for a fee an alien who is not authorized to work in the United States, and it is unlawful to hire any individual without verifying the employment authorization of that individual, either through the I-9 process alone or combined with the Employment Eligibility Verification (EEV) program (formerly called the Basic Pilot). §274A\*

\* *While it often is difficult to establish that an employer knew an employee was illegal, it is not difficult to establish that an employer failed to complete the I-9 process; it is also not difficult to encourage employers to use the Basic Pilot to verify work eligibility.*

☒ Each Department of the Federal Government is required to participate in a pilot program to verify the employment eligibility of its employees and to comply with the terms and conditions of such participation. §402

\* *The 1996 law created three different pilot programs from which government agencies could choose; when two of them were allowed to lapse and only one, the Basic Pilot, was extended, agencies using one of the lapsed pilots simply stopped participating rather than sign up for the remaining one.*

☒ The President is required to make interoperable all security databases relevant to making determinations of admissibility under section 212 of the Immigration and Nationality Act.

◆ Information in this data system must be readily and easily accessible—

- ◆ to any consular officer responsible for the issuance of visas;
- ◆ to any Federal official responsible for determining an alien's admissibility to or deportability from the United States; and
- ◆ to any Federal law enforcement or intelligence officer determined by regulation to be responsible for the investigation or identification of aliens. §202 of the *Enhanced Border Security and Visa Entry Reform Act of 2002 (P.L. 107-173)*

\* *While significant progress has been made in making terrorism-related information available to DHS inspectors responsible for determining admissibility, there is still no single, integrated system that links all security-related databases.*

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\* All section (§) citations refer to the Immigration and Nationality Act (8 U.S.C.), unless otherwise stated.

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- ☒ The Department of Homeland Security (DHS) is required to integrate all databases and data systems that process or contain information on aliens. §202 of the *Enhanced Border Security and Visa Entry Reform Act of 2002* (P.L. 107-173)
  - ★ *DHS still uses multiple databases to process and store information about aliens, and there is no way to retrieve reliably all information about an alien through a single query.*
- ☒ DHS is required to process all aliens through US-VISIT (the automated entry-exit control system) so as to “collect a record of departure for every alien departing the United States and match the records of departure with the record of the alien’s arrival in the United States.” (emphasis added) §110 of the *Illegal Immigration Reform and Immigrant Responsibility Act of 1996* (P.L. 104-208)
  - ★ *Only about 20 percent of nonimmigrants are being process through the entry part of US-VISIT; the other 80 percent of nonimmigrants and all immigrants (lawful permanent residents) have been exempted from the system by the Administration; in December of 2006, DHS announced that it did not intend to implement the exit portion of the system because it would be too complicated.*
- ☒ Aliens who commit fraud, use false or altered documents, or make misrepresentations on applications for immigration benefits—including extensions of stay, lawful permanent residence, and naturalization—are ineligible for those benefits. §§212, 237, 340
  - ★ *Out of a total of 7.3 million applications for immigration benefits processed in 2005, U.S. Citizenship and Immigration Services denied only 19,000 as involving fraud. Adjudicators believe that a significant share of the remaining 800,000 denials that year involved fraud, but it was easier to deny them on other grounds. Applicants who are denied for reasons other than fraud, however, are free to apply again and again until they are successful, whereas those denied for fraud are prohibited from re-filing.*
- ☒ The Secretary of DHS is authorized to expand expedited removal procedures to apply to any or all aliens who have not been admitted or paroled into the United States and who have not affirmatively shown to the satisfaction of an immigration officer that they have been physically present in the United States continuously for two years immediately prior to this determination. §235
  - ★ *In late 2005, Secretary Chertoff used this authority to expand expedited removal to apply to non-Mexicans apprehended within 100 miles of the U.S.-Mexico border who cannot prove that they have been continuously present for 14 days. The fact that our Federal court system is clogged with appeals of removal orders -- the number of cases filed in Federal court rose from just over 2,000 in 1994 to more than 14,500 in 2004 – and the fact that the illegal alien population in the United States continues to grow would suggest that expedited removal needs to be expanded to the full extent authorized by law.*
- ☒ States and localities may not adopt policies, formal or informal, that prohibit employees from communicating with DHS regarding the immigration status of individuals (sanctuary policies). §642 of the *Illegal Immigration Reform and Immigrant Responsibility Act of 1996* (P.L. 104-208)
  - ★ *Neither of the two sanctuary states—Maine and New Mexico—nor any of the multitude of sanctuary cities has been challenged by DHS or DOJ for violating this provision. Soon after this law passed, the City of New York challenged this provision in court at the direction of then-Mayor Giuliani and the court upheld the law and ordered the City to*

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*rescind its sanctuary policy; instead, Mayor Giuliani modified the sanctuary policy slightly, but the Federal Government has not challenged it.*

- ☒ DHS and the State Department are required to ensure that all visas and other travel and entry documents issued after October 26, 2004, are machine-readable and tamper-resistant and use biometric identifiers. §303 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (P.L. 107-173)
  - \* *DHS still issues easily counterfeited temporary cards until a more secure card is mailed to the alien.*
- ☒ By no later than October 26, 2004, DHS was required to install at all ports of entry to the United States machine readers to allow biometric comparison and authentication of all visas and other travel and entry documents issued to aliens, and of U.S. passports. §303 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (P.L. 107-173)
  - \* *The machine readers were installed in the secondary inspections area rather than in primary inspections, and biometrics are compared and authenticated for only about 20 percent of entrants to the United States..*
- ☒ An alien with a border crossing identification card (i.e., a laser visa) is not permitted to cross into the United States unless the biometric identifier contained on the card is matched against the appropriate biometric characteristic of the alien. §104 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208)
  - \* *The Administration exempted most border crossing card holders from participation in US-VISIT, so biometrics are not being verified routinely; instead, border crossing cards are merely inspected visually.*
- ☒ The law mandates detention of removable aliens from the time they are issued a final order of removal until the alien is actually removed or until 90 days have passed if the alien cannot be removed within that period. §241
  - \* *An estimated 90 percent of non-detained aliens abscond after being issued an order of removal. While the Administration says it has ended "catch and release," the number of alien absconders currently stands at more than 600,000, and it continues to grow. Clearly, not all aliens are being detained pending removal.*
- ☒ DHS is required to detain until their removal from the United States all aggravated felons and other aliens who are inadmissible or removable due to serious criminal convictions. §236
  - \* *Limited detention space, mismanagement of available resources, and lack of communication between state/local authorities and federal immigration authorities result in criminal aliens routinely being released from detention prior to removal; more than 80,000 criminal aliens are free in American communities.*
- ☒ DHS is required to respond to an inquiry by a Federal, State, or local government agency seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law. §642 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208)
  - \* *Then-INS created the Law Enforcement Support Center (LESC), which is available 24/7 to state and local police seeking information on alienage and citizenship, to satisfy this requirement; however, state and local police who contact ICE about illegal aliens they have taken into custody are routinely instructed to simply release the aliens, unless they have been convicted of a non-immigration crime.*

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- ☒ Sponsors of family-based immigrants are required to execute a legally binding affidavit of support in which the sponsor “agrees to provide support to maintain the sponsored alien at an annual income that is not less than 125 percent of the Federal poverty line” until the sponsored alien naturalizes or has been employed in the United States long enough to qualify for Social Security benefits (40 quarters or 10 years). §213A
- ☒ Any alien seeking admission to the United States or a change of status who is likely to become a public charge or who is a public charge is excludable if seeking admission, or removable if already here and seeking adjustment of status. §§212, 237
  - \* *DHS has yet to come up with a definition of “public charge” to implement this provision, despite the fact that it was enacted in 1996.*
- ☒ Upon notification that a sponsored alien has received any means-tested public benefit, the entity (nongovernmental, Federal, State or local) that provided the benefit shall request full reimbursement by the sponsor. §213A
  - \* *Only one lawsuit seeking reimbursement has been filed, and it was filed by private citizens trying to force the Los Angeles public hospital system to seek reimbursement from sponsors; the case was dismissed on technical, not substantive, grounds.*
- ☒ Public institutions of higher education may not offer in-state tuition to illegal aliens unless they also offer it to every citizen of the United States. §505 of the *Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208)*
  - \* *Neither DHS nor the Justice Department has challenged any of the ten states that have passed laws that violate this law, despite the fact that Federal law clearly supersedes state law in the area of immigration.*
- ☒ Marriage fraud, used in the past by at least nine terrorists to prolong their stay in the United States, is a deportable offense. §237
  - \* *ICE has announced that single-instance marriage fraud is a low priority and so will not be investigated or prosecuted.*
- ☒ Any individual or entity that “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law” is guilty of a felony punishable by imprisonment. §274
  - \* *A strong case could be made that localities that are using taxpayer funds to build and promote day-labor sites for aliens they know to be illegal, and government entities like the Illinois Housing Development Authority, which has set aside taxpayer funds to provide mortgages to illegal aliens, are “encourag[ing illegal aliens] to reside in the United States.” The same case can be made against banks that accept consular ID cards to open accounts or allow illegal aliens to use individual taxpayer ID numbers to get home loans.*
- ☒ Domestic violence, false claims to US citizenship and voting illegally are deportable offenses. §237
  - \* *Illegal aliens who are victims of domestic violence can obtain green cards through the Violence Against Women Act, but the abuser is rarely prosecuted and even more rarely deported; as happened in New York City with Mayor*

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*Giuliani's "broken-window policing," stepped up enforcement of these "low priority" violations would begin to reassert the rule of law in our immigration system.*

- ☒ Aliens who have resided illegally in the United States for more than six months but less than one year are barred from re-entry for three years; aliens who have resided illegally in the United States for more than one year are barred from re-entry for ten years. §212
  - \* *Only about 12,000 aliens were subjected to these bars on re-entry during the first four years after this provision took effect; it is estimated that the bars could have been applied to up to 2.5 million aliens during that period.*
- ☒ Upon notification by DHS or the AG that a foreign government refuses or unreasonably delays the return a national of that country who is ordered removed from the United States, the State Department is required to suspend the issuance of immigrant and/or nonimmigrant visas to nationals of that country. §243
  - \* *A handful of governments routinely refuse to issue travel documents to their nationals who have been ordered removed from the United States, but this provision has never been invoked.*
- ☒ Failure of an alien intending to remain in the United States for thirty days or longer to apply for registration and fingerprinting during that thirty-day period is a deportable offense. §262
  - \* *Enforcement of this provision would be of obvious national security value, and it would send a clear message that security is our top priority.*
- ☒ All registered aliens are required to notify DHS within ten days of changing addresses; failure to do so is a deportable offense. §266
  - \* *This, too, has important national security value.*
- ☒ The confidentiality law governing when the Internal Revenue Service may release taxpayer information includes a provision that permits the IRS to notify a federal law enforcement agency (like DHS) when it has information indicating that a non-tax crime has been committed. 26 U.S.C. 6103
  - \* *Rather than providing to DHS information that could be used to locate and apprehend illegal aliens, the IRS claims that these confidentiality rules prevent it from assisting DHS.*
- ☒ The confidentiality law governing when the Social Security Administration may release information about individuals with social security numbers permits the Commissioner of SSA to share information so long as she promulgates regulations governing such information sharing. 42 U.S.C. 1306
  - \* *Rather than providing to DHS information that could be used to locate and apprehend illegal aliens, SSA claims that these confidentiality rules prevent it from assisting DHS.*