

NumbersUSA

Immigration Laws the Administration is NOT Enforcing

[This is a partial list only and is presented in no particular priority order.]

[Enhanced Border Security and Visa Entry Reform Act of 2002](#)

- Integration of all databases and data systems maintained by [DHS] that process or contain information on aliens (§202).
 - ◆ DHS has no plan to accomplish this.
- Implementation of an interoperable electronic data system (also known as the “Chimera” system) to provide current and immediate access to information in databases of Federal law enforcement agencies and the intelligence community that is needed to determine whether to issue a visa or to determine the admissibility or deportability of an alien (§202).
 - Chimera is to incorporate the integrated alien data system;
 - information in Chimera 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.
 - ◆ DHS has no plan to accomplish this.
- Make interoperable all security databases relevant to making determinations of admissibility under section 212 of the Immigration and Nationality Act (§302).
 - ◆ DHS has no plan to accomplish this.
- Not later than October 26, 2004, DHS and the State Department shall issue to aliens only machine-readable, tamper-resistant visas and other travel and entry documents that use biometric identifiers (§303).
 - ◆ DHS still issues easily counterfeited temporary cards until a more secure card is mailed to the alien.
- Not later than October 26, 2004, the Attorney General, in consultation with the Secretary of State, shall install at all ports of entry of the United States equipment and software (i.e., machine readers) to allow biometric comparison and authentication of all United States visas and other travel and entry documents issued to aliens, and passports (§303).
 - ◆ About 500 readers have been put in place in only some POEs, and all are in secondary, rather than primary, inspection.

- Beginning upon implementation of Chimera, not later than 72 hours after receiving notification of the loss or theft of a United States or foreign passport, DHS and State, as appropriate, shall enter into Chimera the corresponding identification number for every lost or stolen passport (§308).

Illegal Immigration Reform and Immigrant Responsibility Act of 1996

- An alien presenting a border crossing identification card (i.e., a laser visa) is not permitted to cross over the border into the United States unless the biometric identifier contained on the card matches the appropriate biometric characteristic of the alien (§104).
 - ◆ The Administration exempted Mexico from participation in US-VISIT, so biometrics are not being verified and border crossing cards are merely inspected visually.
- 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” (§110).
 - ◆ Only about 20 percent of nonimmigrants are being process through the entry part of US-VISIT; the other 80 percent of nonimmigrants have been exempted; immigrants (lawful permanent residents) also have been exempted; and the exit part of the system is still being tested in pilots at a handful of POEs.
- Aliens who have resided illegally in the United States for more than six months but less than one year and voluntarily departed 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 (§301).
 - ◆ 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.
- Mandatory detention pending removal of all aggravated felons and other aliens who are inadmissible or removable due to criminal convictions (§303).
 - ◆ Limited detention space and mismanagement of budgets result in criminal aliens being routinely released from detention prior to removal; more than 80,000 criminal aliens are free in American communities.
- Mandatory detention of 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 (§305).
 - ◆ In 2004, almost half (34,800) of the more than 75,000 “other than Mexicans” apprehended by the Border Patrol were released on their own recognizance pending removal; an estimated 90 percent of non-detained aliens abscond after being issued an order of removal.
- 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 shall suspend the issuance of immigrant and/or nonimmigrant visas to nationals of that country (§307).
 - ◆ 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 is not invoked.
- Each Department of the Federal Government shall elect to participate in a pilot program to verify employment authorization of its employees and shall comply with the terms and conditions of such election (§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.
- 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).
 - ◆ Neither DHS nor the Justice Department has challenged any of the nine states that have passed laws that violate this law, despite the fact that Federal law clearly supersedes state law in the area of immigration.
- 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 (§531).
 - ◆ DHS has yet to come up with a definition of “public charge” to implement this provision.
- 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 (§551).
 - ◆ 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.
- States and localities may not adopt policies, formally or informally, that prohibit employees from communicating with DHS regarding the immigration status of individuals (sanctuary policies) (§642).
 - ◆ Neither of the two sanctuary states, Maine and New Mexico, nor any of the multitude of sanctuary cities have been challenged by DHS or DOJ for violating this provision; soon after this law passed, the City of New York challenged the law in court and the court upheld the law and ordered the City to rescind its sanctuary policy; instead, the City modified its policy slightly, but the Federal Government has not challenged it.
- DHS shall 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).
 - ◆ This law also required the establishment by then-INS of the Law Enforcement Support Center (LESC), which is available 24/7 to state and local police seeking information on alienage and citizenship; however, state and local police who contact ICE about illegal aliens they have taken into custody are routinely rebuffed and told to simply release the aliens.

Immigration and Nationality Act

- The Secretary of DHS is authorized to expand expedited removal procedures 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).
 - ◆ The Secretary has only recently used this authority to expand expedited removal to nine Border Patrol sectors. 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 along the entire land border of the United States.
- Once an alien is apprehended and removal proceedings are initiated, DHS may detain the alien, release him on a minimum \$1,500 bond, or release him on conditional parole (§236).
 - ◆ Since an estimated 90 percent of non-detained aliens abscond after being issued an order of removal, and since DHS has the authority to detain aliens pending removal, it makes no sense that almost half

(34,800) of the more than 75,000 "other than Mexicans" apprehended by the Border Patrol were released on their own recognizance pending removal in 2004.

- 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.
- 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 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.
- 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.
- 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 like Herndon, Virginia, 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.
- 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 Basic Pilot program (§274A).
 - ◆ While it is exceedingly 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.
- Aliens who commit fraud, use false or altered documents, or make misrepresentations on applications for immigration benefits are ineligible for the benefits (§§212, 237, 340, among others).
 - ◆ Not only does USCIS grant benefits to aliens despite indications of, and sometimes even evidence of, fraud or misrepresentation, ICE rarely investigates cases of alleged benefits fraud referred by USCIS. USCIS estimates that ICE declines to investigate over 70 percent of the benefits fraud referrals it receives. It is exceedingly rare for either agency to attempt to rescind a benefit once it is granted.