



Critical Alert

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CRITICAL ALERT: DHS Enforcement Data Reveals Administrative Amnesty Much Broader Than Previously Understood

Even Future Illegal Immigrants And Visa Overstays Are Exempt From Enforcement

Much of the attention on the Obama Administration's suspension of immigration law has cited the Administration's decision to provide executive amnesty and work permits for illegal immigrants covered by the DREAM Act proposal that Congress repeatedly rejected. Less attention was given to the August 23, 2013 Department of Homeland Security (DHS) directive expanding that amnesty to illegal immigrant relatives of DREAM Act beneficiaries. So too was less notice given to the December 21, 2012 DHS directive reinforcing that almost all immigration offenses were unenforceable absent a separate criminal conviction.¹

Now, a review of Immigration and Customs Enforcement's (ICE) published enforcement statistics for 2013 reveals a shocking truth: DHS has blocked the enforcement of immigration law for the overwhelming majority of violations—and is planning to widen that amnesty even further.

Here are the sober facts.

According to ICE's published report on 2013 removals,² 98% of all removals met one of the agency's "enforcement priorities": individuals who have been convicted of a serious criminal offense; those apprehended in the act of crossing the border; those who have been previously deported; and fugitives from the law. Remarkably, the first two categories—border apprehensions (which are not deportations as commonly understood) and convicted criminals—account for 94% of the 368,000 removals (235,000 and 110,000, respectively). Less than 0.2% of the approximately 12 million illegal immigrants and visa overstays in the U.S. were placed into removal proceedings who did not have serious criminal convictions on their record; only about .08% of the approximately 12 million were placed into removal proceedings who were neither convicted of a serious crime nor a repeat immigration violator. While there is no published tally of the .08%, reports from ICE officers indicate these individuals likely had other security red flags on their record. Regardless, at least 99.92% of illegal immigrants and visa overstays without known crimes on their records did not face removal.

Those who do not facially meet the Administration's select "priorities" are free to illegally work in the United States and to receive taxpayer benefits, regardless of whether or not they come into contact with immigration enforcement. After a law enforcement action took place at a Phoenix car wash last year, local media reported: "Workers suspected of being in the country illegally were taken into custody, but [ICE spokeswoman Amber] Cargile said they would be released within a matter of hours as long as they had no outstanding criminal records." ICE officers were ordered to ignore the law, as

¹ For a complete history of the Administration's non-enforcement directives, please [click here](#).

² ICE press release, "FY 2013: ICE announces year-end removal numbers," available [here](#).

they are so ordered every day, and to release 179 illegal workers because they did not have known outstanding warrants or criminal convictions.³

Or consider the report from a local news outlet in Texas, entitled “Illegal Immigrants Captured, Then Released in US.” The report explained that a “dozen [illegal immigrants] were set free at a Brownsville bus station. ICE doesn’t consider the group a major threat to our safety. They’re considered a low priority. ICE routinely releases illegal immigrants.”⁴ In 2011, an ICE officer was warned that he would be brought up on disciplinary action for trying to issue a Notice to Appear to an illegal immigrant driving the vehicle of a known fugitive without a license. The suspect, who had multiple misdemeanor offenses on his record, was released while the ICE officer was threatened with suspension.⁵

Instances like these are not the exception, but the rule. DHS has decided that the Administration’s “priorities” trump the immigration laws passed by Congress.

The Administration’s priorities have therefore provided an executive amnesty not only to the great majority of the 12 million living here illegally today (including even the most recent arrivals) but to those who will violate immigration law tomorrow. It is an open invitation for a future immigrant to overstay a visa, or to enter the U.S. illegally, knowing that they will be immune from enforcement as long as they avoid being convicted of a felony or other serious crime once here.

DHS has declared to foreign visitors, would-be visa overstays, and future illegal immigrants across the world that immigration law will almost surely not apply unless you are a.) physically caught crossing the border (a non-issue for overstays) or b.) caught committing a serious crime while in the U.S.

This free pass from immigration law even applies to those with criminal records that do not rise to the level of an agency “priority.” ICE officers are routinely forced to release those with criminal records who are considered eligible for “prosecutorial discretion,” based on the deemed seriousness of the criminal offense. (ICE guidelines even outline the need for multiple misdemeanor criminal convictions.⁶) Chris Crane, president of the ICE officers’ union, explained that “violent criminals are released every day back into communities based on the president’s unlawful policies.”⁷ And since ICE officers are frequently barred from issuing detainers (to prevent release on the underlying charge) until criminal suspects are actually convicted, many high-risk offenders are released on bond and flee from authorities before the trial ever takes place.⁸

In effect, DHS has ordered ICE to largely abandon crime prevention and to wait until after a serious criminal offense has occurred, a conviction has been obtained, and a prison sentence has been served at taxpayer expense—and to only take action subsequent to the offense by providing shuttle transport to the airport. Much of ICE’s operation has been reduced to transporting convicted felons from prisons to planes.

³ Associated Press, “Feds serve warrants at Phoenix-area car washes,” published August 17, 2013.

⁴ KRGV-TV report, August 1, 2013, available [here](#).

⁵ FOX News report, “Senator: ICE Agent Faces Punishment For Arresting Illegal,” available [here](#).

⁶ Memo from ICE Director John Morton on “Civil Immigration Enforcement: Guidance on the Use of Detainers in the Federal, State, Local, and Tribal Criminal Justice Systems,” December 21, 2012. Available [here](#).

⁷ Daily Caller, “ICE Agent Union Head: Obama in ‘no position’ to Demand Congress pass immigration reform,” published on October 16, 2013.

⁸ Testimony from Jessica Vaughan before the House Judiciary Committee, March 28, 2012, available [here](#).

But the *Los Angeles Times* reports that with the new “enforcement review,” the Administration is considering going even further and erasing most of the now-statistically-rare 13,000 interior removals categorized as either immigration fugitives or habitual violators/previous deportees (which are still, of course, serious offenses). The *Times* writes: “the changes under review would effectively stop most deportations of foreigners with no criminal convictions other than immigration violations, and focus enforcement efforts instead mostly at those charged or convicted of felony crimes or who pose more of a threat to public safety.”⁹ In other words: DHS is considering exempting even some of the most habitual immigration violators and fugitives, offering near enforcement immunity to any illegal immigrant who does not commit a felony or other grave offense.

Already, a closer examination of FY13 removals illustrates the extent to which an immigration violator without a serious criminal record is already functionally immune from interior enforcement.

Since two-thirds of removals were not interior deportations but border apprehensions, let’s focus on the 133,000 removals that are more commonly understood as deportations.¹⁰ Of the 133,000 interior removals in FY13, ICE reports 82%, or 110,000, were convicted criminals (see breakdown [here](#)). ICE further reports that 80,000 of the 110,000 were convicted of a felony (including 53,000 convicted of one or more aggravated felonies). The remaining 30,000 were convicted of a crime less than a felony but in most cases, according to ICE, had also either absconded or re-entered the country illegally after being deported (a felony). Altogether, 60% of all convicted criminals removed by ICE had either been previously deported and returned to this country whereupon they committed a crime, or had been released after being apprehended by immigration authorities and fled, becoming a fugitive.

So, we are left with roughly 23,000 interior removals which, according to ICE, don’t have a known criminal conviction in the U.S. on their record. Of those 23,000, ICE reports that 13,000 are either fugitives or habitual offenders/previous deportees. That leaves only 10,000 removals out of 368,000 removals—or just 2%—who were seemingly removed/returned for immigration crimes without additional serious offenses such as being felons or fugitives. However, according to the National ICE Council, many of these were security red flags for other reasons (for instance, they had been in and out of jail for serious offenses without a conviction) and the field office was able to overcome “prosecutorial discretion” to secure a removal.

As previously established, of the 12 million current illegal immigrants and visa overstays, approximately 0.2% were removed who did not have a criminal conviction and approximately 0.08% were removed who were not habitual offenders/previous deportees or convicted criminals. Yet now, per the *LA Times*, those instances may be further reduced towards 0%—which would represent a nearly complete prohibition against everyday immigration enforcement and would erase the core distinction between legal and illegal immigration.

The Administration’s actions are breathtaking and without precedent. American citizens have both a legal and moral right to the protection our immigration laws afford; those rights have been systematically ignored, resulting in a massive loss of income and wages for the most vulnerable Americans. The Administration has abandoned its duty to faithfully execute the law and protect U.S. sovereignty, resulting not only in a collapse of immigration enforcement but a grave jeopardy to the American system of law and justice itself.

⁹ *Los Angeles Times*, “Obama calls on Homeland Security to ease deportations,” published March 14, 2014.

¹⁰ For comparison, in the last year of the Bush Administration, only a little more than one-third of removals were border apprehensions.