



Written by [R. Cort Kirkwood](#) on June 27, 2011

## Circumventing Congress: Failed Dream Act Mandated by ICE Director

The director of Immigration and Customs Enforcement has made official the Obama administration's declaration that the DREAM Act — the amnesty bill for illegal aliens — is now federal law, despite the bill's having failed in the Senate last year.

ICE chieftain John Morton [published a memorandum](#) on June 17 giving federal prosecutors and agents carte blanche prosecutorial discretion in deciding whether illegal aliens should be deported. Rep. [Lamar Smith](#) (R-Texas, left) declares that he will overturn Morton's [ukase](#) with legislation, and [the union](#) representing the nation's ICE employees says that in light of Morton's memo, ICE officers will not know which illegals to detain or arrest, and will therefore be pressured to let them go.



### The Memo

Morton's [memo creates](#) two key lists of criteria by which an ICE employee or prosecutor can decide whether an illegal alien must be deported. In keeping with past federal policy, Morton stated that ICE is not interested in deporting illegals who are here illegally but have committed no crimes.

Yet the list is so long that virtually that any illegal alien, except for the most dangerous felons, is covered under its blanket de facto amnesty.

Wrote Morton, "[W]hen weighing whether an exercise of prosecutorial discretion may be warranted for a given alien, ICE officers, agents, and attorneys should consider all relevant factors." Those factors include the following:

- the person's length of presence in the United States, with particular consideration given to presence while in lawful status;
- the circumstances of the person's arrival in the United States and the manner of his or her entry, particularly if the alien came to the United States as a young child;
- the person's pursuit of education in the United States, with particular consideration given
  - >to those who have graduated from a U.S. high school or have successfully pursued or are
  - >pursuing a college or advanced degrees at a legitimate institution of higher education in the United States;
- whether the person, or the person's immediate relative, has served in the U.S. military, reserves, or national guard, with particular consideration given to those who served in combat;



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- the person's criminal history, including arrests, prior convictions, or outstanding arrest warrants;
- >the person's immigration history, including any prior removal, outstanding order of removal, prior denial of status, or evidence of fraud;
- whether the person poses a national security or public safety concern;
- the person's ties and contributions to the community, including family relationships;
- the person's ties to the home country and condition in the country;
- the person's age, with particular consideration given to minors and the elderly;
- whether the person has a U.S. citizen or permanent resident spouse, child, or parent;
- whether the person is the primary caretaker of a person with a mental or physical disability, minor, or seriously ill relative;
- whether the person or the person's spouse is pregnant or nursing;
- whether the person or the person's spouse suffers from severe mental or physical illness;
- whether the person's nationality renders removal unlikely;
- whether the person is likely to be granted temporary or permanent status or other relief from removal, including as a relative of a U.S. citizen or permanent resident;
- whether the person is likely to be granted temporary or permanent status or other relief from removal, including as an asylum seeker, or a victim of domestic violence, human trafficking, or other crime; and
- whether the person is currently cooperating or has cooperated with federal, state or local law enforcement authorities, such as ICE, the U.S. Attorneys or Department of Justice, the Department of Labor, or National Labor Relations Board, among others.

Hilariously, [Morton wrote](#), "the list is not exhaustive."

Beyond that, [Morton offers](#) a list of "positive factors" that might induce an ICE employee to simply let an illegal alien stay forever. The following positive factors should prompt particular care and consideration:

- veterans and members of the U.S. armed forces;
- long-time lawful permanent residents;
- >minors and elderly individuals;
- individuals present in the United States since childhood;
- pregnant or nursing women;
- victims of domestic violence; trafficking, or other serious crimes;
- individuals who suffer from a serious mental or physical disability; and
- individuals with serious health conditions.

Morton [does warn](#) that ICE employees must also consider "negative factors." They include "individuals who pose a clear risk to national security," "serious felons," "known gang members," and "individuals with an egregious record of immigration violation, including those with a record of illegal re-entry and



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those who engaged in immigration fraud.”

Question is, what does that mean for an illegal who has used false documents to obtain a bogus driver’s license and, perhaps, welfare benefits, but otherwise meets the “positive factors” in Morton’s long list of excuses for being here illegally?

That, apparently, is where the “prosecutorial discretion” comes in.

### **Opposition**

Rep. [Lou Barletta](#) (R-Pa.), who as mayor of Hazelton pushed the famous town law [that punishes](#) employers and landlords who ignore illegals, asks a simple question: “Frankly, I don’t understand why we don’t deport every single illegal alien caught by any law enforcement officer in the country,” he told the *Citizens Voice* newspaper.

Rep. Lamar Smith (R-Texas), who is pushing a bill to mandate that all American employers participate in the federal E-Verify program, wants colleagues to reverse Morton’s fiat with legislation.

[The Los Angeles Times reported](#) on Friday that Smith’s bill, the HALT Act, “... would strip the administration’s power to defer deportation of immigration violators, grant work authorization or grant temporary protected status to immigrants who are fleeing a disaster.”

Smith’s bill targets only the Obama administration’s use of the power to exercise prosecutorial discretion, [the Times noted](#). “Because of the Obama administration’s record, it cannot be trusted with these powers,” Smith wrote to colleagues, according to the *Times*. The bill would return prosecutorial discretion to the executive when the Obama administration ends.

Strenuous opposition to the ICE Director’s memo comes from the union that represents ICE employees. Chris Crane, president of the [National ICE Council](#), unleashed a brutal assessment of Morton’s policy.

“Any American concerned about immigration needs to brace themselves for what’s coming,” [he said](#) in a prepared statement, adding:

This is just one of many new ICE policies in queue aimed at stopping the enforcement of U.S. immigration laws in the United States. Unable to pass its immigration agenda through legislation, the Administration is now implementing it through agency policy.

[According to](#) the ICE union’s release, “Agents say the policy is a ‘law enforcement nightmare’ developed by the Administration to win votes at the expense of sound and responsible law enforcement policy.”

[Crane said](#), “[T]he result is a means for every person here illegally to avoid arrest or detention[;] as officers we will never know who we can or cannot arrest.” Crane also claimed that ICE officers are “under orders not to make arrests or even talk to foreign nationals in most cases unless another agency has already arrested them; you won’t find that written in any public ICE policy.”

With respect to giving ICE agents prosecutorial discretion, Crane averred that agents won’t have it:

“Tell any ICE agent he or she will have the final say on making an arrest or holding someone in custody and they’ll tell you you’re crazy[;] officers will be ordered not to make arrests and failure to comply will result in the end of the agent or officer’s career, that’s business as usual at ICE. It’s unfortunate but the Administration protects foreign nationals illegally in the U.S. but does nothing for our employees.”

### **Napolitano Admitted DREAM Act Was Law**



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The effect of Morton's memo is to codify in writing what was already unwritten policy since before President Obama took office. But his administration [has declared](#) the DREAM Act to be law. [Dream, Development, Relief and Education for Alien Minors](#) was an amnesty bill which would have made deporting illegals virtually impossible if they met a list of conditions that Morton included in his memo.

[The New American reported](#) in April that Homeland Security Secretary Janet Napolitano and Morton refused to deport illegals. Speaking at a confabulation of leftists, Napolitano said that if illegals "truly meet those [criteria], they're not the priority." Those "criteria" contained in the failed DREAM Act are now in writing in Morton's memo. "The reason we set priorities is so that the focus could be on those in the country who are also committing other illegal acts," she said.

[Said Morton](#), "If you take a look at the record, people that fit within the confines of the Dream Act, there are in fact very, very few deportations of those kinds of individuals."



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