



The Myth of the “Otherwise Law-Abiding” Illegal Alien

By Jon Feere

For years advocates of amnesty and high levels of immigration have described the illegal alien population as one made up of “otherwise law-abiding” people who have committed no violation other than the simple act of crossing a border illegally or overstaying a visa.¹ Journalists routinely invoke this language when writing about amnesty, conspicuously avoiding any discussion of the various crimes the average working illegal alien commits. Many politicians have also embraced the myth of the otherwise law-abiding illegal alien in an effort to promote amnesty, arguing that illegal aliens are no threat to the United States.²

But the average illegal alien violates numerous statutes, often creating real victims.

This *Backgrounder* details the many statutes the average illegal alien who is simply “here to work” may be violating. The violations include laws involving the entry, presence, and travel of illegal aliens as well as laws related to employment such as perjury and identity theft. Examples of oft-violated but under-enforced laws include:

- **False Personation of a U.S. Citizen (18 U.S.C. § 911).** Illegal aliens often present themselves as U.S. citizens, an act punishable by up to five years in jail, a felony. This law is often cited in immigration prosecutions and may involve, for example, an alien claiming U.S. citizenship to his employer.
- **Fraud and False Statements (18 U.S.C. § 1001).** It is common for illegal aliens to make false statements to the government or on official documents. An illegal alien violates this law when claiming to be a U.S. citizen on an I-9 Employment Eligibility form and faces a fine and up to five years imprisonment.
- **Social Security Fraud (42 U.S.C. § 408).** This statute has been invoked where an illegal alien provided a false Social Security number for the purpose of acquiring a job, where an illegal alien used a fraudulent Social Security number for the purpose of acquiring a driver’s license, and when an illegal alien used a Social Security card belonging to a citizen in order to obtain Section 8 housing, for example. Violation of this statute can result in a fine and/or imprisonment up to five years. The court can also require violators to provide restitution to the victims.

This *Backgrounder* does not address crimes of violence, property crimes like vandalism, or other acts like gang activity and drunk driving. The focus is on statutes that come into play when a person enters the country illegally or overstays a visa and becomes employed.

Over the past several years, the Obama administration has narrowed the scope of immigration enforcement, promising to focus on what President Obama considers “the worst of the worst” violent offenders.³ But just because an illegal alien isn’t a *violent* threat to society, it does not follow that his or her presence is not a threat to the rule of law, taxpayers, and society generally. Despite the opinion of amnesty advocates — namely, that the United States can give a pass to violations of law without suffering any repercussions — our nation’s immigration laws do serve a variety of purposes and are ultimately meant to protect those who are in the United States lawfully.

Nevertheless, illegal aliens who violate the statutes listed in this report remain a low priority under the guidelines set forth by the Obama administration.

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Obama's Administrative Amnesty. According to Immigration and Customs Enforcement (ICE), the agency “prioritizes the removal of criminal aliens, those who pose a threat to public safety, and repeat immigration violators.” Although low-level illegal aliens engaged in basic identity theft do pose a threat to the public, the Obama administration has directed ICE to ignore such criminality and to focus on the “worst of the worst”. Often called the White House’s “administrative amnesty”, the immigration agenda pursued by the Obama administration is often referred to as a “prioritization” scheme, but it is largely a decision to not deport illegal aliens unless or until a crime of violence has occurred. The policy came into shape through what are known as the “Morton Memos”, a series of directives from former ICE director John Morton.⁴ The directives resulted in the union for ICE agents taking a vote of “no confidence” against Morton in June 2011.⁵

The Obama administration extended its plan to not enforce some immigration laws on June 15, 2012, announcing that most illegal aliens purporting to be under age 31 and claiming to have come to the United States prior to age 16 would be granted a renewable two-year legalization known as Deferred Action for Childhood Arrivals (DACA). The program excludes illegal aliens convicted of felonies, “significant misdemeanors” (e.g. domestic violence, sexual abuse), or three or more non-significant misdemeanors (one for which the individual was sentenced to time in custody of 90 days or less). Put another way, illegal aliens applying for DACA can commit misdemeanors and create real victims and still qualify for the Obama administration’s amnesty program — a program never approved by Congress, creating conflicts within federal law. These conflicts led to ICE agents suing the Obama administration, claiming that they were being forced to choose between enforcing federal law and abiding by political priorities.⁶ In the 15 months DACA has been in operation, over 400,000 illegal aliens have received legal status through the program.⁷

The fallout from releasing or not detaining so-called low-priority aliens has inflicted serious damage on American society, as detailed in a recent Congressional Research Service (CRS) report. CRS is the non-partisan public policy research arm of the United States Congress. CRS studied an approximately 30-month period and found that ICE took no action against more than 159,000 non-citizens who were arrested by local officers and flagged by the federal Secure Communities program.⁸ Of these 159,000 criminal aliens, nearly 47,000 were illegal aliens, 16,000 had temporary visas, 87,000 had green cards, and 9,000 had another legal status such as refugee or temporary protected status.

Upon release, more than 26,000 of the criminal aliens — about one in six — were arrested again within the time period studied (October 27, 2008 through July 31, 2011). They were charged with nearly 58,000 new crimes during this time period. The 58,000 new crimes included more than 5,000 major or violent criminal offenses, including 59 murders, 21 attempted murders, and 542 sex crimes. In addition, they were charged with more than 6,000 drug violations and nearly 8,500 DUI violations.⁹

Presumably some of the criminal aliens were jailed, fined, and deported after committing the murders and sex crimes, but many of the aliens were deportable prior to their acts of violence. Victimization of American citizens, it seems, is all too often a prerequisite for immigration enforcement.

Removing illegal immigrants at the first instance of illegal activity, no matter how small the crime, could prevent larger crimes in the future. This type of enforcement — opposite the approach taken by the Obama administration — might be considered the “broken windows” theory of immigration enforcement. A commitment to immigration enforcement could prevent tens of thousands of Americans from becoming victims.

Violations in the Context of Legislative Amnesty. If Congress were to pass an amnesty it would immediately give illegal aliens a pass for their violations of immigration law, ranging from illegal entry to overstaying a visa. Many illegal aliens who might benefit from an amnesty have been ordered to leave the country, and they have 90 days to do so from the final removal order. It is incorrect to refer to an alien in the United States 90 days after a removal order as “law-abiding”. The alien faces a fine and imprisonment for the violation. Any amnesty or administrative pass for an alien’s lawlessness would not be a pass for just the illegal entry or overstay of a visa, it would also be a pass for the alien’s decision to ignore the order of removal. It would be a literal get-out-of-jail-free card since the alien would not have to pay a fine or face imprisonment as current law requires.

But an amnesty would also likely give illegal aliens a pass for the other crimes listed in this report. As written, violation of any of the dozens of laws listed below, such as those involving identity theft, could result in an illegal alien being deported after paying a fine or serving time in jail for the violation. However, proposed amnesties have been written so as to not render an applicant ineligible even if he has violated certain statutes and committed some misdemeanors. And due to political priorities in the Obama administration, many of the laws listed below are not being enforced anyway. Taken together, these policy prescriptions make the concept of conducting background checks on illegal aliens applying for amnesty somewhat absurd.

Nevertheless, some of these crimes currently being committed by illegal aliens can amount to aggravated felonies and would prevent an alien from being deemed to have “good moral character”, permanently barring them from naturalization under existing immigration law.¹⁰

Millions of illegal aliens have engaged in identity fraud, a crime that creates real victims. Yet it is unlikely that the White House would require aliens applying for amnesty to declare the names and Social Security numbers they have used in the past. The original application for the DACA amnesty did require applicants to list the Social Security numbers they had previously used; after amnesty advocates complained, the Obama administration removed the requirement, leaving the American victims — the true owners of the numbers — completely in the dark as to the crimes committed against them.¹¹ Real victims have been created yet amnesty gives these violations a pass, putting the interests of the illegal alien before the interests of the U.S. citizen. This is a fact rarely addressed by amnesty advocates or journalists who perpetuate the myth of the otherwise law-abiding illegal alien.

It is important to remember that, ultimately, an amnesty is a free pass not only for the basic immigration violations, but also a free pass for many other crimes committed during the alien’s stay in the United States.

What about Detention? The myth of the law-abiding illegal alien is also important in the context of detention. In 2002, Congress tasked ICE with creating an “Alternatives to Detention Program”, which allows aliens “who present a low risk of flight, and who pose no danger to the community” to be released without detention as they await deportation proceedings.¹² The threshold of posing “no danger” should be a difficult one to meet considering the numerous criminal statutes the average illegal alien may be violating, but non-violent crimes generally are not considered a bar to alternative detention. In the period studied by ICE between 2002 and 2009, most of the nearly 40,000 aliens granted an alternative to detention only had to meet limited requirements such as calling ICE at certain times throughout the day or being present for unannounced home visitations. Over 2,000 of these aliens simply disappeared. It is unclear how many crimes the aliens committed while in “alternative detention” and whether those who absconded are continuing to commit crimes today, crimes that the Obama administration considers too insignificant to justify deportation.

What Is a Criminal? Many illegal aliens are potential “criminal aliens” as many have violated a number of criminal statutes (e.g. identity theft).¹³ Some illegal aliens are “violent criminal aliens” and have committed more serious crimes (e.g. murder).¹⁴ It is important that language is used cautiously and that illegal aliens are never referred to as “non-criminal” or “otherwise law-abiding” unless it is clear that they have violated no criminal statutes on the local, state, or federal levels.

Additionally, it is important to think about what it means to be a criminal. In the legal sense, only after one is found guilty of a legal violation is one considered to be a “criminal”. In the colloquial sense, a person who has broken a law, but has not yet been prosecuted or convicted, is often considered to be a “criminal.” *Black’s Law Dictionary*, for example, explains that the word “criminal” can be used to describe a person “who has been convicted of a crime” or a person “who has committed a criminal offense”. While those writing on the subject of immigrant criminality are justified in being cautious about referring to an individual as a criminal, writers should be equally cautious about using the phrases “non-criminal” and “law-abiding” when referring to illegal immigrants.

Simply because a person has not been brought before a court, prosecuted, and found guilty, it does not necessarily follow that the individual has not engaged in criminal activity. This is often true in immigration enforcement where ICE will encounter, for example, a number of illegal aliens using false documents at a worksite. ICE will often make the decision to deport the individuals based on their illegal status without filing identity fraud or perjury charges, for example, even though it is understood that fraud was used to acquire the jobs. The decision to not go after the alien on perjury or fraud charges is a way of avoiding the expenditure of resources on detention and a trial. Such a decision is also advantageous to the alien because he avoids the punishment (a fine or imprisonment) associated with the criminal violation. Of course, deportation without punishment for crimes committed here is arguably a loss to the United States (and to individual victims) because the fines are never collected. It also has the effect of making an illegal alien appear “non-criminal” and “otherwise law-abiding”.

Discussion

The statutes below are grouped into four different sections. Section I focuses on laws involving the entry, presence, and travel of illegal aliens. Section II focuses on laws employed illegal aliens may be violating, including identity theft laws. Section III lists additional document laws that illegal aliens often violate. Finally, Section IV lists miscellaneous laws and addresses the issue of state law.

While the list below may seem lengthy, it is only a sampling of the statutes an average illegal alien may be violating. It is not to be interpreted as a comprehensive list. Whether or not a statute applies to an illegal alien will depend on that individual's circumstances.

I. Laws Involving Entry, Presence, and Travel

Improper Entry by Alien (8 U.S.C. § 1325). While some illegal aliens entered the United States legally and then overstayed a visa, the majority of illegal aliens in the United States have violated this entry-focused statute.¹⁵ This statute is aimed at any alien who “(1) enters or attempts to enter the United States at any time or place other than as designated by immigration officers, or (2) eludes examination or inspection by immigration officers, or (3) attempts to enter or obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact.” The first time an alien is convicted, he faces a fine and/or up to six months in prison. A second violation results in another fine and/or imprisonment up to two years.¹⁶

Also, any alien who is “apprehended while entering (or attempting to enter) the United States at a time or place other than as designated by immigration officers” is subject to a civil penalty of \$50 to \$250 for each such entry (or attempt). If the alien is apprehended again making or attempting such an entry, the amounts can be doubled.¹⁷

Registration of Aliens (8 U.S.C. § 1302). Advocates of amnesty often argue that a mass legalization program is necessary so that we can determine the identities of illegal aliens in the country. But federal law already requires all aliens, even those in the country illegally, to register their presence if they remain in the United States for 30 days or longer. Specifically,

*It shall be the duty of every alien...in the United States, who (1) is fourteen years of age or older, (2) has not been registered and fingerprinted [during the visa process], and (3) remains in the United States for thirty days or longer, to apply for registration and to be fingerprinted before the expiration of such thirty days.*¹⁸

Aliens under the age of 14 are not exempt from registration, but the duty to make sure it happens falls on the parent or guardian:

*It shall be the duty of every parent or legal guardian of any alien now or hereafter in the United States, who (1) is less than fourteen years of age, (2) has not been registered [during the visa process], and (3) remains in the United States for thirty days or longer, to apply for the registration of such alien before the expiration of such thirty days.*¹⁹

If an illegal alien is unregistered and has been in the country for 30 days or longer, the alien is guilty of a misdemeanor and faces a fine up to \$1,000 and a jail term of up to six months.²⁰ Since failing to register is a continuing violation, the statute of limitations does not apply and the alien is liable for as long as he remains unregistered in the country.²¹

Interestingly, this provision could be applied to millions of illegal aliens today. DHS estimates of 11.5 million illegal aliens as of January 2011 are based the American Community Survey. The survey uses a two-month rule for calculating residency; those here for less than two months are not counted. This means that the 11.5 million illegal immigrants as estimated by DHS are by definition people who have been in the United States illegally for more than 60 days. There is simply no question that the border-hopping portion of the illegal immigrant population is comprised largely of people who are violating this registration statute.²²

Additionally, if an alien procures or attempts to procure registration of himself or another person through fraud, he is guilty of a misdemeanor and faces a fine up to \$1,000 and/or a jail term of up to six months.²³

Counterfeiting is also a potential issue here. Any person “who with unlawful intent photographs, prints, or in any other manner makes, or executes, any engraving, photograph, print, or impression in the likeness of any certificate of alien registration or an alien registration receipt card or any colorable imitation thereof” faces a fine of up to \$5,000 and/or imprisonment up to five years.²⁴

Reporting Requirements for Individuals (19 U.S.C. § 1459). Any illegal alien who has walked across the U.S. border and entered illegally at a location that is not a designated crossing point has violated this statute. The statute requires those “individuals arriving in the United States other than by vessel, vehicle, or aircraft” to “enter the United States only at a border crossing point” and “immediately ... report the arrival, and ... present themselves, and all articles accompanying them, for inspection” to a customs officer.²⁵

People arriving by a reported conveyance — like a cruise ship, bus, or train — “shall remain aboard the conveyance until authorized to depart the conveyance by the appropriate customs officer.” After leaving the conveyance, “passengers and crew members shall immediately report to the designated customs facility with all articles accompanying them.”²⁶

People arriving by an unreported conveyance — like a private vehicle — “shall immediately notify a customs officer and report their arrival, together with appropriate information concerning the conveyance on or in which they arrived, and present their property for customs examination and inspection.”

Penalties for violation of this law are quite serious and include “a civil penalty of \$5,000 for the first violation, and \$10,000 for each subsequent violation” as well as a criminal penalty of up to \$5,000 and/or imprisonment up to one year.

High Speed Flight from Immigration Checkpoint (18 U.S.C. § 758). Depending on how an illegal alien enters the United States, if he came across the border and evaded law enforcement at a checkpoint, he may have violated this statute. To violate this statute, the alien must be in a motor vehicle traveling in excess of the legal speed limit and must be fleeing federal, state, or local law enforcement officers. Such offense is punishable by a fine and/or imprisonment of up to five years.²⁷

Unlawful Bringing of Aliens into United States (8 U.S.C. § 1323). Oftentimes illegal aliens will enter the United States with other illegal aliens, and if the alien was involved in helping to bring in other aliens, he has violated this law. Put simply, it is unlawful for an illegal alien to bring to the United States from any place outside of the country any alien without valid travel documents. The government can levy a fine of \$3,300 for each unlawful alien brought into the country.²⁸

The sentencing guidelines take into account the severity of the violation, which depends on a number of factors, including how many people were smuggled, whether it was done for profit, and whether it was done recklessly (e.g. no seatbelts for those being smuggled, overcrowding of a vehicle, children smuggled in trunk on hot day, use of a vehicle with bald tires).²⁹

Some illegal immigrants bring family members into the United States illegally, a fact much-discussed during the recent debate over the failed DREAM Act and President Obama’s Deferred Action program. If the amnesty were to become law, it is interesting to think about how this violation may never be punished; it seems more likely that the parent smugglers of DREAM Act recipients would be able to obtain legal status as a result of existing chain migration laws. But every illegal alien who brought a child across the border is likely liable under this statute.

Human traffickers are also often charged under 18 U.S.C. § 371, “Conspiracy to commit offense or to defraud United States”, discussed later.

Overstaying Duration of Stay (8 U.S.C. § 1227(a)(1)(B) & (C)(i)). Approximately 40 percent of illegal aliens currently in the United States entered legally and overstayed their authorized duration of stay. The actual annual number of overstayers is quite significant; the government estimated that in 2008 alone, 2.9 million foreign visitors on temporary visas were admitted but never officially checked out and that perhaps several hundred thousand of them overstayed.³⁰ Though Congress has requested a working Exit system for nearly two decades, the United States still has no way of determining whether or not a legal immigrant actually leaves when his duration of stay expires.³¹

An alien who overstays becomes an illegal alien and is deportable.³² If the alien overstays a by more than 180 days, but less than one year, and then departs the United States voluntarily, he is barred from reentering the United States for a period of

three years. If he leaves after having been in the country illegally for one year or more, then the alien is barred from reentering for ten years.³³ It is inaccurate to label as “law-abiding” a person who fails to uphold their end of an agreement to visit the United States on a temporary basis and chooses to remain in the country illegally.

Reentry of Removed Aliens (8 U.S.C. § 1326). Many illegal aliens in the United States have either been previously deported or at least denied admission. This statute addresses the alien who has reentered, or attempted to reenter, the United States after having been previously denied admission, excluded, deported, or removed. It is also aimed at the alien who has reentered, or attempted to reenter, after earlier departing the United States while an order of exclusion, deportation, or removal was outstanding. An alien who violates this statute faces a fine and/or imprisonment up to two years. If the deportation was the result of certain criminal convictions, the alien faces imprisonment up to 20 years.³⁴

Willful Failure or Refusal to Depart (8 U.S.C. § 1253). Many illegal aliens have already been ordered to leave the country by immigration authorities, and they have 90 days to do so from the final removal order. If an alien has had a final order of removal issued against him and he either willfully fails or refuses to depart from the United States, make timely application in good faith for necessary travel documents, or takes any action designed to prevent or hamper his departure, he faces a fine and/or imprisonment up to four years. The alien faces the same penalties for willfully failing or refusing to present himself for removal at the time and place required by the government. If the alien is involved in smuggling, high-speed flight from a checkpoint, or other serious crimes outlined in the statute, the alien faces up to 10 years imprisonment.³⁵ It is incorrect to refer to an alien in the United States 90 days after a removal order as “law-abiding.”

Civil Penalties for Failure to Depart (8 U.S.C. § 1324d). Any alien subject to a final order of removal who “willfully fails or refuses” to depart from the United States pursuant to the order, make timely application for travel or other documents necessary for departure, or present themselves for removal at the time and place required by the government, is required to pay a civil penalty up to \$500 for each day he is in violation of this statute.³⁶ The same penalty applies for an alien who conspires to or takes any action designed to prevent or hamper his own departure. Over the course of a year, an illegal alien could rack up a fine of up to \$182,500. As of March 2013, ICE estimates that over 851,000 illegal aliens who have been ordered removed are still living in the United States.³⁷ The Senate amnesty bill (S.744) would effectively waive these penalties and replace them with a waivable fine of only \$500 for provisional legal status.

Failure to Comply with Terms of Release under Supervision (8 U.S.C. § 1253(b)). In some instances, an illegal alien ordered deported is not repatriated due to unique circumstances. For example, some countries refuse to take back their nationals.³⁸ If the alien does not leave or is not removed within the removal period, the alien, pending removal, is to be subject to supervision under regulations prescribed by the DHS secretary. The regulations can include, for example, a requirement that the alien not commit any crimes.³⁹ The regulations “shall” include provisions requiring the alien to appear before an immigration officer periodically for identification; to submit, if necessary, to a medical and psychiatric examination at the expense of the United States government; to give information under oath about the alien’s nationality, circumstances, habits, associations, and activities, and other information the secretary considers appropriate; and to obey reasonable written restrictions on the alien’s conduct or activities that the secretary prescribes for the alien.⁴⁰

An alien who willfully fails to comply with the regulations or requirements issued pursuant to the supervised release or knowingly gives false information in response to an inquiry under this release, shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.⁴¹

Bringing in and Harboring Certain Aliens (8 U.S.C. § 1324). This statute is aimed at an individual who “knowing that a person is an alien, brings to or attempts to bring to the United States in any manner whatsoever such person at a place other than a designated port of entry.” The statute is also aimed at the person who “knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, transports, or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law”; or with the same knowledge “conceals, harbors, or shields from detection” such an alien; or “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.” An individual is liable under this statute if they engage in any conspiracy to commit any of these acts, or if they aid or abet the commission the acts.⁴²

Punishment ranges from one to 10 years, but can reach up to 20 years if the alien places a person’s life in jeopardy during the process, if the aliens presented a life-threatening health risk to people in the United States, or if aliens were transported in groups of 10 or more, for example.⁴³

Any alien who is participating in the smuggling can be charged as a principal under 18 U.S.C. § 2, as aiding and abetting the illegal entry of an alien is a not a lesser included offense of concealing, harboring, shielding, and illegally transporting aliens as described in §1324.⁴⁴

Aiding or Assisting Certain Aliens to Enter (8 U.S.C. § 1327). If a person knowingly aids or assists any alien inadmissible because of an aggravated felony conviction, he faces a fine and/or imprisonment up to 10 years. This is the case even if he simply “connives or conspires” with any person to “allow, procure, or permit” any such alien to enter the United States.⁴⁵ To be found liable, the individual does not need to have knowledge of the alien’s felony record; he simply needs to have knowledge that the individual is inadmissible. For example, a defendant was found liable under this statute even though he was unaware that the alien he helped enter the country illegally had previously been convicted of possession of a narcotic substance for sale, an aggravated felony, which made the alien inadmissible to the United States.⁴⁶

Conspiracy to Commit Offense or to Defraud the United States (18. U.S.C. § 371). Oftentimes an illegal alien will work with other aliens in order to enter the United States or commit some other type of fraud. In such an instance, each party might be violating a conspiracy offense related to defrauding the United States. Specifically, if two or more individuals “conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof” and one or more of the individuals makes even one small act in furtherance of the conspiracy, each can be fined and/or imprisoned up to five years.⁴⁷ This statute has been invoked where illegal aliens have conspired to falsify entry documents,⁴⁸ and in the context of illegal aliens transporting and harboring illegal aliens,⁴⁹ for example. The government can charge the alien with both conspiracy and the underlying, substantive offense.

Civil Penalty for Failure to Depart under Voluntary Departure (8 U.S.C. § 1229c(d)). Some illegal aliens are given the opportunity to voluntarily leave the United States in a manner that does not include a legal order of removal. They are allowed to leave at their own expense within a specified period of time. Failure to depart within the time granted results in a fine and a ten-year bar of certain forms of relief from deportation. In addition, the alien “shall be subject to a civil penalty of not less than \$1,000 and not more than \$5,000.”⁵⁰

Driving without a License. It is increasingly unlikely that an illegal alien who operates a motor vehicle will have a valid driver’s license.⁵¹ Driving without a license is a violation of state-level statutes, and the penalties vary from state to state.⁵² Generally, an illegal alien driving without a license will be guilty of a misdemeanor and will face fines. It is important to remember that some states grant temporary driver’s licenses to legal, temporary aliens which expire at the end of an alien’s visa period.⁵³ Depending on state laws, driving with an expired license can be a greater offense than driving without a license.

Driving without Insurance. Illegal aliens who drive without a license are very unlikely to carry car insurance. Driving without insurance is a violation of state-level statutes. Generally, driving a car without insurance is a misdemeanor and the penalty is usually either a fine or imprisonment, depending on state law.⁵⁴

Driving without a Valid Vehicle Registration. It is likely that millions of illegal aliens across the United States drive unregistered vehicles, a violation that may be either a misdemeanor or felony depending on circumstances and state law.⁵⁵ When Ohio recently cancelled nearly 50,000 suspected fraudulent registrations, amnesty advocates at the League of United Latin American Citizens (LULAC) seemed to admit that this violation is common among illegal aliens, calling Ohio’s efforts “a thinly veiled and inappropriate attempt to enforce federal immigration policy at the state level.”⁵⁶ Although a lawsuit filed by LULAC failed, it remains unclear how many illegal aliens continue to drive in the state without a valid registration.⁵⁷

False Statement to Law Enforcement. When an illegal alien is stopped or arrested as part of an investigation, particularly if it involves one of the travel-based offenses listed above, it is not uncommon for the alien to make a false statement as to the alien’s identity.⁵⁸ Depending on circumstances and state law, false statements to a law enforcement officer may be considered a misdemeanor or a felony.⁵⁹

II. Laws Involving the Workplace

Since the comprehensive amnesty of 1986 — the Immigration Reform and Control Act (IRCA) — it has been illegal for employers to hire illegal aliens. Employers who knowingly employ illegal aliens are subject to fines that range from \$250 to \$2,500 for the first violation, to \$3,000 to \$10,000 for a third violation. If such illegal employment becomes a pattern or prac-

tice, the employer can also face imprisonment.⁶⁰ Any type of amnesty would give employers a pass for such violations and make their illegal hires permanent.

Illegal aliens who seek out employment often violate many laws themselves, some of which are listed below. Many of these crimes create real victims for which there is often little restitution. American victims face years of correcting problems associated with identity theft and have tremendous difficulty re-establishing their credit.⁶¹ It has been reported that every year, nearly nine million people pay their taxes using the wrong Social Security number and that many if not most are the result of illegal aliens using numbers that do not belong to them.⁶² Despite this, amnesties generally give such lawlessness a pass leaving American victims to fend for themselves.

Under federal law, aliens engaged in certain identity crimes face civil and criminal penalties under both the Immigration and Nationality Act and the U.S. Criminal Code. Those found guilty of such crimes can also be denied certain immigration benefits, including the ability to enter and/or remain in the United States.⁶³

False Personation of a U.S. Citizen (18 U.S.C. § 911). Illegal aliens often present themselves as U.S. citizens, an act punishable as a felony. This law is often cited in immigration prosecutions and may involve, for example, an alien claiming U.S. citizenship to his employer. It may also involve an illegal alien claiming to be a citizen for purposes of voting, receiving some government benefit, or an alien attempting to avoid deportation by presenting a fake U.S. birth certificate to an ICE agent during an investigation.⁶⁴ An alien who “falsely and willfully represents himself to be a citizen of the United States” faces a fine and imprisonment up to three years.⁶⁵

Fraud and False Statements (18 U.S.C. § 1001). It is common for illegal aliens to make false statements to immigration officials during investigations, and to misrepresent themselves to the government, generally. Any false statement or fraudulent act may be prosecuted under 18 U.S.C. § 1001 as a felony. The falsification does not have to be made directly to a government official; it must simply relate to and affect a relationship “within the jurisdiction” of the federal government.⁶⁶ It is broad in scope, and as the courts have noted, §1001 is “intended to serve the vital public purpose of protecting governmental functions from frustration and distortion through deceptive practices, and it must not be construed as if its object were narrow and technical.”⁶⁷

There are a number of ways in which a person may violate §1001. For example, a false statement on an I-9 employment eligibility verification form is a violation of this law.⁶⁸ Other examples include providing fake identification or orally misrepresenting oneself to a border agent,⁶⁹ falsely telling a border agent that all vehicle occupants are U.S. citizens,⁷⁰ and concealing the fact that a marriage was entered into solely for purposes of obtaining legal status.⁷¹

All U.S. employers must complete and retain a Form I-9 for each individual they hire. This includes citizens and noncitizens. The purpose is to document that each new employee is authorized to work in the United States. The form must be completed within three days of the hiring, but if the job is to last less than three days the form must be completed at the time employment begins.⁷²

Any illegal alien who has filled out an I-9 Employment Eligibility Verification form is likely guilty of perjury. One section requires an attestation of employability and reads as follows:

I attest, under penalty of perjury, that I am:

- A citizen of the United States*
- A noncitizen national of the United States*
- A lawful permanent resident*
- An alien authorized to work.*

The I-9 form also requires employees to attest to the following:

*I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.*⁷³

A person faces a fine and up to five years imprisonment for knowingly and willfully “in any matter within the jurisdiction” of the United States (1) falsifying, concealing, or covering up by any trick, scheme, or device a material fact; (2) making any materially false, fictitious, or fraudulent statement or representation; or (3) making or using any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry.⁷⁴

It is likely that an amnesty will provide illegal aliens a pass for I-9 perjury. Additionally, businesses that have been violating federal law by not maintaining I-9 forms will also likely face no repercussions.

Interestingly, “an alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit” under the INA or any other federal or state law, or for the purpose of employment, is inadmissible.⁷⁵ Yet an amnesty could grant a person who would normally be denied admission for such violations the ability to adjust their status to that of a legal resident and eventually to that of a U.S. citizen.

Falsely Claiming Citizenship (8 U.S.C. § 1182(a)(6)(C)(ii) and § 1227(a)(3)(D)). Violations of these statutes make an alien inadmissible to the United States, can make an illegal alien ineligible to adjust his immigration status, and renders an alien deportable. Specifically “any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit [under the Immigration and Nationality chapter of the U.S. Code] or any other Federal or State law is inadmissible.”⁷⁶

Similarly, “any alien who falsely represents, or has falsely represented, himself to be a citizen of the United States for any purpose or benefit [under the Immigration and Nationality chapter of the U.S. Code] or any Federal or State law is deportable.”

Claiming to be a U.S. citizen on an employment I-9 Form is a violation of these statutes.⁷⁷

This statute is taken quite seriously and courts have held that a violation cannot be waived by the U.S. Attorney General.⁷⁸ Yet an amnesty would have the effect of waiving these violations and would allow violators to adjust their status to U.S. citizen.

Since nearly half of working illegal aliens have filled out I-9 Forms and are likely in violation of these statutes, it is incorrect to claim that such individuals are “law-abiding”.

Fraud and Misuse of Visas, Permits, and Other Documents (18 U.S.C. § 1546). Illegal immigrants often use fraudulent documentation as a means to enter the United States, procure a job, or to obtain certain benefits. As such, this law is frequently used in immigration prosecutions.⁷⁹

If the goal is procuring illegal employment and a person uses an identification document knowing (or having reason to know) that the document was not issued lawfully to him, or uses an identification document knowing (or having reason to know) that the document is false, or makes a false attestation, the person faces fines and up to five years imprisonment.⁸⁰

This statute is broad and is aimed at anyone who “knowingly forges, counterfeits, alters, or falsely makes any immigrant or nonimmigrant visa, permit, border crossing card, alien registration receipt card”, or other identification document for entry into the United States or for the purpose of either proving permission to stay or work in the United States. It is also aimed at anyone who “utters, uses, attempts to use, possesses, obtains, accepts, or receives” such a document if the person knows it to be “forged, counterfeited, altered, or falsely made, or to have been procured by means of any false claim or statement, or to have been otherwise procured by fraud or unlawfully obtained.”⁸¹ Foreign-issued passports that are fraudulently used are covered under this statute.⁸²

The law also is aimed at anyone who possesses and/or brings into the United States materials used for manufacturing fake documents (e.g. blank permits, distinctive paper adopted by immigration authorities, printing plates). It is also aimed at anyone who sells such items.⁸³

The law also is aimed at aliens applying for a visa, permit, or other entry document who “personates another, or falsely appears in the name of a deceased individual, or evades or attempts to evade the immigration laws by appearing under an assumed or fictitious name without disclosing his true identity.”⁸⁴

A person also is liable under this law for selling or disposing (or simply offering) such a document to a person not authorized to receive such a document.

A perjury statute is also found in this section of law and it applies to anyone who uses a false statement with respect to a material fact in any application or other document required under immigration laws. For example, it has been invoked where a previously deported alien answered “no” to a question on an entry form asking whether he had ever been previously arrested and deported.⁸⁵ Similarly, the statute can be invoked where an alien denies existence of an earlier criminal conviction.⁸⁶

A basic violation of this law can result in a 10-year jail sentence and/or fine, provided it does not involve terrorism or a drug trafficking. If the violation is in furtherance of terrorism, the penalty can range up to 25 years imprisonment.⁸⁷

Every state has its own laws aimed at preventing identity theft. The National Conference of State Legislatures provides a detailed list of some of these laws.⁸⁸ Depending on the state statute, when an illegal alien uses another person’s identity, he may be guilty of a misdemeanor or felony, may face fines and/or jail time, and may be required to provide restitution to any victims of the ID theft. Even if an illegal alien does not use another’s ID personally, any illegal aliens who facilitates the fraudulent use of IDs belonging to another may face repercussions, as many states provide penalties for individuals who sell, transfer, or convey misappropriated identity information to others. However, any federal legislation aimed at shielding illegal aliens from prosecution (i.e. an amnesty) may also prevent victims of identity theft from having their identities and credit corrected.

Penalties for Document Fraud (8 U.S.C. § 1324c). This statute makes it illegal for any person or entity to knowingly “forge, counterfeit, alter, or falsely make any document” for the purpose of satisfying a requirement or obtaining a benefit under the “Immigration and Nationality” section of the U.S. Code.⁸⁹ It also makes it illegal for a person “to use, attempt to use, possess, obtain, accept, or receive or to provide any forged, counterfeit, altered, or falsely made document”, or “to use or attempt to use or to provide or attempt to provide any document lawfully issued to or with respect to a person other than the possessor (including a deceased individual)” for the purpose of satisfying a requirement or obtaining a benefit under the “Immigration and Nationality” section.

The statute also makes it illegal to “accept or receive” or “provide” any document to a person that was lawfully issued to someone else for the purpose of employment verification, or some other benefit.⁹⁰ A person who assists someone to knowingly prepare and/or submit a false application for benefits under the “Immigration and Nationality” section of the U.S. Code can be prosecuted under this statute as well.

Violators face a fine from \$250 to \$2,000 for each document that is the subject of the violation. Repeat offenders face a fine from \$2,000 to \$5,000 for each document confiscated during the second violation.

Penalties for Social Security Fraud (42 U.S.C. § 408). As might be expected, this statute is aimed primarily at preventing individuals from defrauding the Social Security Administration. Much of the statute focuses on unauthorized payments and falsified employment information. However, the statute is broad and can apply in a number of different situations. For example, when it comes to a person illegally receiving government benefits through use of a fraudulent Social Security card, such benefits do not need to be pursuant to the Social Security Act; other governmental benefits such as subsidized housing would trigger this statute.⁹¹ Furthermore, any use of a false SSN on nonfederal documents is actionable as the statute reaches private transactions.⁹²

As examples, this statute has been invoked where an illegal alien provided a false Social Security number for the purpose of acquiring a job.⁹³ The statute has been invoked where an illegal alien used a fraudulent Social Security number for the purpose of acquiring a driver’s license.⁹⁴ In another instance, an illegal alien was found liable under this statute when she used a Social Security card belonging to a citizen in order to obtain Section 8 housing.⁹⁵

This statute can likely be invoked against many illegal aliens who are working. After the 2008 ICE effort against Agriprocessors Inc. in Postville, Iowa, federal officials alleged that about 76 percent of the company’s nearly 1,000 workers were using fraudulent Social Security numbers.⁹⁶ ICE filed almost 700 complaints against the workers for Social Security fraud and other crimes.⁹⁷ Not surprisingly, ICE explained that their investigation started when the victims of this identity theft came forward after being unable to get credit reports and having problems with their taxes.⁹⁸

In 2012 alone, the Internal Revenue Service identified nearly 1.8 million incidents of identity theft.⁹⁹ The Federal Trade Commission notes that children are prime targets for ID theft since their identities are “blank slate[s] that can be used to obtain goods and services over a long time” and are not generally monitored by their parents. The FTC points out that more than 140,000 instances of identity fraud per year are perpetrated on children in the United States.¹⁰⁰

Specifically, the statute is aimed at anyone who “willfully, knowingly, and with intent to deceive, uses a Social Security account number” acquired through false information provided to the SSA by either the individual himself or any other person. It is also aimed at anyone who “with intent to deceive, falsely represents” a number as a number validly assigned to him. The statute is also aimed at a person who “knowingly alters a Social Security card” issued by the federal government, or “buys or sells a card” that is, or purports to be a Social Security card issued by the federal government, or “counterfeits a Social Security card”, or “possesses a Social Security card or counterfeit Social Security card with intent to sell or alter it.” Finally, the statute is aimed at anyone who “discloses, uses, or compels the disclosure of the Social Security number of any person in violation of the laws of the United States.” Violation of this statute can result in a fine and/or imprisonment up to five years. The court can also require violators to provide restitution to the victims.

Aggravated Identity Theft (18 U.S.C. § 1028A). This statute applies when certain felonies occur during and in relation to an act that constitutes knowingly transferring, possessing, or using, without lawful authority, a means of identification of another. The list of applicable felonies is lengthy and includes a number of immigration-related crimes involving nationality, citizenship, passports, visas, and “False Personation of U.S. Citizen”, (18 U.S.C. § 911). The penalty is a mandatory two years imprisonment. The penalty rises to five years if the act involves terrorism. The sentence can only be served consecutively to any other sentence.¹⁰¹ And since there will often be an imprisonment for the underlying felony, this statute can result in lengthy imprisonment due to the fact that the two years cannot be served concurrently with any other sentence.

Willful Failure to File Return, Supply Information, or Pay Tax (26 U.S.C. § 7203). According to the Internal Revenue Service (IRS), an illegal alien who passes a “Substantial Presence Test” (a tax law formula that measures length of stay in the United States) is to be treated for tax purposes as a resident alien. Specifically, illegal aliens who are present in the United States for at least 183 days over the past three years (31 days of which must be during the current year) in accordance with an IRS formula, are generally subject to tax in the same manner as a U.S. citizen.¹⁰² The IRS explains, an “undocumented (illegal) alien under the immigration laws who passes the Substantial Presence Test will be treated for tax purposes as a RESIDENT ALIEN.”¹⁰³

Approximately seven to eight million illegal aliens are holding jobs, and approximately 45 to 50 percent of them are estimated to be working off the books.¹⁰⁴ This means that millions of illegal aliens are likely violating this statute.

In order to collect taxes owed, the government can place a levy on the violator’s bank account, place a lien on his home, and/or seize any personal or real property of value (e.g. a vehicle).

In addition, under § 7203, a person who fails to pay his taxes is guilty of a misdemeanor and faces a fine up to \$25,000 and/or imprisonment up to one year, or both.

Many advocates of the recently passed Senate amnesty bill S.744 frequently claim that the bill would require illegal aliens to pay back taxes for the years they worked off the books. However, such a requirement was never included in the final version of the bill. Instead, it provides that amnesty applicants must have “satisfied any applicable federal tax liability” that has previously been “assessed” by the IRS. A tax is “assessed” only when the IRS officially records that it is owed, which occurs after a tax return has been submitted or after the IRS has conducted an audit. Since illegal immigrants working off the books do not submit tax returns and are generally not the subjects of IRS audits, it is unlikely that this provision will have any impact on the majority of amnesty applicants.¹⁰⁵

The lack of specific language on a back taxes requirement was not an accident. Sen. Charles E. Schumer (D-N.Y.), one of the architects of S.744, has previously worked to prohibit the IRS from requiring amnesty applicants to pay back taxes. Two weeks before the 1986 amnesty bill (IRCA) was enacted, Congress enacted the Tax Reform Act of 1986, which required aliens applying for permanent residence to pay back taxes. Only months after IRCA’s passage, Schumer, then a member of the House of Representatives, wrote a letter to the Secretary of the Treasury urging the government to “immediately” issue a regulation declaring that illegal aliens applying for permanent residence pursuant to IRCA were exempt. According to Schumer: “Obviously, we could not have a successful legalization program if by submitting an application an alien became vulnerable to an enforcement action by the IRS.” While the IRS declined, a year later Congress amended the tax law to prohibit the INS from providing the IRS any tax information of amnesty applicants.¹⁰⁶

Similarly, the amnesty bill of 2007 originally included a requirement that illegal aliens pay back taxes. But the Bush administration persuaded Congress to remove the provision, arguing that it would have been too difficult to administer. The National

Taxpayers Union estimated the change would mean a loss of tens of billions of dollars, and argued that most law-abiding Americans would find the change “totally distasteful”.¹⁰⁷

If an amnesty bill were to become law, it will send the message that only citizens and legal residents are responsible for paying taxes, and that illegal immigrants are above the law.

III. Additional Document Laws

Misuse of Evidence of Citizenship or Naturalization (18 U.S.C. § 1423). This is aimed at a person who knowingly uses any unlawfully issued or made “order, certificate, certificate of naturalization, certificate of citizenship, judgment, decree, or exemplification . . . or copies or duplicates thereof” that shows any person to be naturalized or admitted to be a citizen. A violation of this statute can result in a fine and/or imprisonment up to five years.¹⁰⁸

Procurement of Citizenship or Naturalization Unlawfully (18 U.S.C. § 1425). Although invoked often in cases involving legal immigrants applying for U.S. citizenship, this statute covers any alien who illegally obtains or attempts to obtain naturalization or citizenship, such as through marriage fraud.¹⁰⁹ It also covers any alien who illegally procures or attempts to procure certain documents. Specifically, the law is aimed at anyone who “knowingly procures or attempts to procure, contrary to law, the naturalization of any person, or documentary or other evidence of naturalization or of citizenship” and also anyone who, “whether for himself or another person not entitled thereto, knowingly issues, procures, or obtains or applies for or otherwise attempts to procure or obtain naturalization, or citizenship, or a declaration of intention to become a citizen, or a certificate of arrival or any certificate or evidence of nationalization or citizenship, documentary or otherwise, or duplicates or copies of any of the foregoing.” A violation of this statute can result in a fine and/or imprisonment that ranges from 10 to 25 years depending on the severity of the violation.¹¹⁰

Reproduction of Naturalization or Citizenship Papers (18 U.S.C. § 1426). This statute is broad in scope and addresses a number of issues related to identity fraud and illegal entry into the United States. It is aimed at anyone who “falsely makes, forges, alters, or counterfeits” documents such as certificates of arrival, certificates of evidence of naturalization or citizenship, and a number of other such records, including anything “required or authorized by any law relating to naturalization or citizenship or registry of aliens.”¹¹¹ It is also aimed at anyone who “utters, sells, disposes of or uses as true or genuine, any false, forged, altered, antedated, or counterfeited” naturalization or citizenship papers.¹¹² The law also criminalizes possession of such documents with the intent to use them.¹¹³ Additionally, the law is aimed at anyone who, without lawful authority, engraves or possesses a plate designed for creating naturalization or citizenship papers, or who brings into the United States any document printed therefrom, or who possesses blank naturalization or citizenship papers or distinctive paper used by immigration authorities for citizenship and naturalization purposes.¹¹⁴ The law is also aimed at anyone who without lawful authority “prints, photographs, makes, or executes any print or impression in the likeness of a certificate of arrival, declaration of intention to become a citizen, or certificate of naturalization or citizenship,” or any part thereof.¹¹⁵ Violations of this law result in a fine and/or imprisonment that ranges from 10 to 25 years depending on the severity of the violation.¹¹⁶

Sale of Naturalization or Citizenship Papers (18 U.S.C. § 1427). Not only do Illegal aliens often carry false identification, they also often sell such identification to other illegal aliens. This statute is aimed at the individual who “unlawfully sells or disposes of a declaration of intention to become a citizen, certificate of naturalization, certificate of citizenship or copies or duplicates or other documentary evidence of naturalization or citizenship.”¹¹⁷ A U.S. birth certificate is one example of the type of paper referenced here.¹¹⁸ A simple violation of this statute can result in a fine and/or imprisonment up to 10 years for the first or second offense. If it was committed to facilitate drug trafficking or terrorism, the imprisonment term can go up to 20 or 25 years, respectively.¹¹⁹

Naturalization, Citizenship, or Alien Registry (18 U.S.C. § 1015). This statute criminalizes the act of making false statements under oath regarding matters relating to naturalization, citizenship, or registry of aliens. It also criminalizes the use and attempted use of any certificate of arrival, naturalization, or other documentary evidence of naturalization or citizenship with knowledge that the document was procured by fraud or otherwise unlawfully obtained. The statute also criminalizes false statements, affirmations, attestations and the like that are required as part of the immigration, naturalization, citizenship, or registry process.

Additionally, this statute is aimed at aliens who knowingly make a false statement or claim that they are or have been a citizen or national of the United States for the purpose of obtaining any federal or state benefit for themselves or any other persons,

welfare being a significant focus. It is also a violation to make such a statement or claim for the purpose of illegally acquiring employment in the United States.¹²⁰ For example, the statute has come into play where an illegal alien claimed to be a U.S. citizen on an I-9 Form.¹²¹

Finally, the statute criminalizes false statement or claims of U.S. citizenship made for the purpose of registering to vote or to vote in a federal, state, or local election. Violation of this statute can result in a fine and/or imprisonment up to five years.¹²²

Fraud and Related Activity in Connection with Identification Documents, Authentication Features, and Information (18 U.S.C. § 1028). In 1998, Congress passed the Identity Theft and Assumption Deterrence Act, which prohibits knowingly transferring or using without lawful authority, another person's identification with the intent to commit, or to aid or abet, any unlawful activity that constitutes a violation of federal law, or a felony under applicable state and local laws. The statute is also aimed at the production and simple possession of false identification as well as trafficking of false identification documents or document-making implements.¹²³ The statute covers fraudulent use of both U.S. and foreign identification. Depending on the violation, an alien violating this law faces a fine and up to 15 years imprisonment; the jail sentence increases if the violation involves drug trafficking or terrorism.

Possession of False Papers to Defraud the United States (18 U.S.C. § 1002). This statute is aimed at individuals who “knowingly and with intent to defraud the United States, or any agency thereof, possesses any false, altered, forged, or counterfeited writing or document for the purpose of enabling another to obtain from the United States, or from any agency, officer or agent thereof, any sum of money.” Violation of this statute results in a fine and/or imprisonment up to five years.

False Statement in Application and Use of Passport (18 U.S.C. § 1542). There are a number of reasons why an illegal alien may attempt to obtain a passport, not the least of which is to create the appearance of legal status. This statute is aimed at anyone who willfully and knowingly makes any false statement in applying for a passport with intent to “induce or secure the issuance of a passport under the authority of the United States, either for his own use or the use of another.” It is also aimed at anyone who “knowingly uses or attempts to use, or furnishes to another for use any passport” that was obtained through use of a false statement.¹²⁴ As examples, the law has been invoked where an alien attempted to enter the United States by showing a false passport to an inspector¹²⁵ and where an alien used false statements in applying for a passport — a passport that she planned to provide to her prospective employer as proof of employment eligibility.¹²⁶

Forgery or False Use of Passport (18 U.S.C. § 1543). Oftentimes illegal aliens will enter the United States using a phony passport. This statute is aimed at anyone who “makes, forges, counterfeits, mutilates, or alters” a passport with the intent that it be used. It is also aimed at anyone who willfully and knowingly “uses, or attempts to use, or furnishes to another for use” any such passport. Passports that have become void as a result of certain occurrences are also covered.¹²⁷ This law covers forgery and false use of both U.S.-issued and foreign passports.¹²⁸ A violation of this nature can also be prosecuted under 18 U.S.C. § 1546.

Misuse of Passport (18 U.S.C. § 1544). This statute is aimed at anyone who willfully and knowingly “uses, or attempts to use, any passport issued or designed for the use of another” or “any passport in violation of the conditions or restrictions therein contained, or of the rules prescribed pursuant to the laws regulating the issuance of passports.” It also aimed at anyone who “willfully and knowingly furnishes, disposes of, or delivers a passport to any person” for use by a person other than the person to whom it was originally issued. Violations of this law result in a fine and/or imprisonment that ranges from 10 to 25 years depending on the severity of the violation.¹²⁹

IV. Additional Laws

Selective Service Registration. In the United States, all males must register with the Selective Service within 30 days of their 18th birthday for the purpose of preparing for a national military draft. This requirement is not limited to U.S. citizens. Illegal alien males are also required to register, as are permanent resident aliens, seasonal agricultural workers, and refugee, parolee, and asylee aliens.¹³⁰ In fact, the front page of the Selective Service website includes a special notice to illegal aliens:

*ATTENTION, UNDOCUMENTED MALES & IMMIGRANT SERVICING GROUPS! Selective Service does not collect any information which would indicate whether or not you are undocumented. You want to protect yourself for future U.S. citizenship and other government benefits and programs by registering with Selective Service. Do it today.*¹³¹

The agency will accept late registrations but not after the age of 26. At that point, an unregistered male can be denied federal student financial aid, federal job training, federal employment, and may have difficulty obtaining U.S. citizenship.¹³² Citizenship applicants who fail to register for the Selective Service may not meet the statutory requirement of “good moral character.” Additionally, failure to register may result in a fine of up to \$250,000 and/or a prison term of up to five years.¹³³ Illegal aliens who do not register may also find themselves unable to obtain state benefits as 41 states have passed legislation that requires registration for certain benefits like driver’s licenses, state financial aid, and employment with a state agency.¹³⁴

Voting by Aliens (18 U.S.C. § 611). While it is unclear to what extent illegal aliens have voted in national elections, federal law make it unlawful for “any alien to vote in any election held solely or in part for the purpose of electing a candidate for the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, Delegate from the District of Columbia, or Resident Commissioner.” An alien who violates this statute faces a fine and up to a year in jail, or both.¹³⁵ This is a general intent crime meaning that the act of voting, even without malicious intent, is sufficient for a conviction.¹³⁶

Additionally, under 18 U.S.C. § 1015(f), any alien who “makes any false statement or claim that he is a citizen of the United States in order to register to vote or to vote in any Federal, State or local election (including an initiative, recall, or referendum)” faces a fine and/or imprisonment up to five years.¹³⁷

It is interesting to note that the attestation required on a ballot — a statement that the person filling it out is a U.S. citizen — is identical to the attestation required on an I-9 Form; it is well-established that illegal aliens are willing to violate this legal requirement and lie about their identities.

Violations of State Laws. Any amnesty put into law by Congress only operates as a pardon for violations of federal law. Illegal aliens would still liable for any violations of state and local laws that occurred prior to the amnesty. For example, states have their own identity theft, forgery, and tax laws that many illegal aliens may be violating.

Many states have also created immigration-related statutes that may become more relevant after an amnesty, particularly if an alien’s identity and background becomes better understood through the amnesty application process. Amnesties written by Congress have often included a requirement that applicants prove they were in the country for a period of years, and that requirement can be fulfilled by evidence of employment. Such evidence may indicate that the alien and his employer are violating not only federal law, but state law as well. For example, a state government may determine that the employer referenced on the application was engaged in illegal hiring practices such as a failure to abide by state-level E-Verify laws, for example. An investigation could further uncover instances of identity theft that could be prosecuted on the state level depending on the circumstances.

In fact, some in the business community raised their concern about such liability to the Obama administration after President Obama decreed his “Deferred Action” (DACA) program into existence. The DACA program grants legal status to illegal aliens under 31 years of age if they meet certain requirements. After some business owners voiced concern about facing prosecution as a result of being named in an amnesty application, the pro-amnesty organization Migration Policy Institute demanded that the Obama administration protect law-breaking businesses and bury evidence of any related identity theft. The organization wrote:

Since 58 percent of potential applicants are currently employed, employer documentation will be vital in establishing eligibility for many applicants. But employers may be reluctant to provide documentation if they suspect that the information may subject them to investigations and sanctions for hiring unauthorized workers. Their fear could be partially addressed if the Department of Homeland Security (DHS) issued a specific policy statement that any information presented by a DACA applicant will, by itself, not trigger an employer sanctions investigation.¹³⁸

Within a month of this request, the Obama administration amended its guidelines and promised to not go after employers whose illegal hiring practices are used as evidence of eligibility on an amnesty application.¹³⁹ State governments have not offered any such assurances to businesses, nor any promise to amnesty applicants that violations of state law will be ignored. Of course, without detailed information about amnesty applicants, including places they have worked and identities used during their illegal stay in the country, it may be difficult for a state to build a case aimed at punishing past acts. Depending on how it is written, an amnesty may effectively give a pass to state-level violations.

Conclusion

The myth of the otherwise law-abiding illegal alien is powerful, but it is not grounded in truth. A large share of the illegal alien population has violated numerous laws, oftentimes creating real victims. Enforcement of laws is necessary for the protection of the interests of legal residents. Of course, even if laws listed above are enforced and the alien is punished through imprisonment and/or a fine and later deported to his homeland, the porous nature of our borders may result in the alien returning to the United States. A firm commitment to the rule of law is critical in a modern society. Yet immigration and criminal laws are routinely violated and too many politicians spend time looking for ways to avoid holding the violators accountable for their actions. This unwillingness to support the rule of law simply encourages more illegal activity and more illegal immigration.

End Notes

¹ Kathy Kiely, [“Immigrants’ Advocates Look to Churches”](#), *USA Today*, April 1, 2007 (quoting Richard Land, then-president of Southern Evangelical Seminary, as saying in support of amnesty that the nation has “a biblical mandate to act compassionately” toward “hard-working and otherwise law-abiding immigrants”).

² Office of Sen. Charles E. Schumer (D-N.Y.), [“As Follow Up To New U.S. Policy To Prioritize Deportations: Schumer Urges Feds To Allow Immigrants With Clean Records To Work & Pay Taxes While Felons Are Deported First”](#), press release, January 24, 2012; Shannon McCaffrey, [“Gingrich Could Draw GOP Ire on Immigration”](#), Associated Press, November 24, 2011 (noting that Newt Gingrich “broke with the Republican hard line on immigration, calling for ‘humane’ treatment for otherwise law-abiding illegal immigrants”).

³ “Don’t Blame Sequestration Release of Illegal Immigrants”, *Boston Globe*, March 7, 2013 (noting that “President Obama has repeatedly avowed that only the ‘worst of the worst’ — illegal immigrants who commit serious crimes — would be subjected to detainment as opposed to other legal procedures.”).

⁴ Janice Kephart, [“Amnesty by Any Means: Memos Trace Evolution of Obama Administration Policy”](#), Center for Immigration Studies, October 2011. Note: ICE director John Morton stepped down from his post in July 2013; Josh Hicks, [“ICE Director John Morton Stepping Down”](#), *The Washington Post*, June 18, 2013.

⁵ Janice Kephart, [“ICE’s Mission Melt: Agents Vote ‘No Confidence’ in Leadership”](#), Center for Immigration Studies, August 4, 2010.

⁶ Caroline May, [“ICE Agents Sue Napolitano, Morton Over Immigration Policies”](#), *Daily Caller*, August 23, 2012; Elizabeth Llorente, [“Judge Dismisses ICE Agents’ Lawsuit Challenging Obama’s Deferred Action”](#), Fox News Latino, August 1, 2013.

⁷ “Data on Individual Applications and Petitions”, U.S. Citizenship and Immigration Services data sheet.

⁸ Jessica Vaughan, [“New Report: Obama Catch and Release Policies Result in More Crimes, More Victims”](#), Center for Immigration Studies, August 1, 2012.

⁹ *Ibid.*

¹⁰ [“Permanent Bars to Good Moral Character”](#), USCIS Policy Manual, Vol. 12, Part F, Ch. 4.

¹¹ Jon Feere, [“Obama Administration Promises to Ignore SSN Fraud, Protect Law-Breaking Businesses”](#), Center for Immigration Studies, September 27, 2012.

¹² “Alternatives to Detention for ICE Detainees”, Department of Homeland Security, U.S. Immigration and Customs Enforcement, October 23, 2009.

¹³ Roxana Hegeman, [“Woman gets prison time in ‘total identity theft’”](#), Associated Press, March 25, 2013.

¹⁴ See, e.g., Gregg MacDonald, "[Pham's Killer Facing Life In Prison: Blanco Garcia Found Guilty of First-Degree Murder](#)", *Fairfax (Va.) Times*, August 22, 2013; Ashley Collman and Damien Gayle, "[Scene Pictures Reveal Extent of Bloody and Brutal Attack on Teen as it Emerges Her Killer Should Have Been Deported Three Months Before She Was Stabbed 13 Times](#)", *Daily Mail*, August 21, 2013; "[Examples of Serious Crimes of Illegal Aliens](#)", Federation for American Immigration Reform.

¹⁵ While most illegal aliens enter the United States illegally, anywhere from a third to half of the illegal alien population is made up of people who were legally admitted, but who remained in the country after the expiration of their authorized duration of stay. Overstaying the authorized time period is not a criminal offense, but a civil ground of inadmissibility. An overstayer who remains in the United States over 180 days faces a three-year bar on reentry should he leave and attempt to reenter; if the overstayer accumulates more than 12 months of unlawful presence, he is barred from reentry for 10 years. See Jessica Vaughan, "[Bar None: An Evaluation of the 3/10-Year Bar](#)", Center for Immigration Studies, July 2003.

¹⁶ 8 U.S.C. § 1325(a) (2013).

¹⁷ 8 U.S.C. § 1325(b) (2013).

¹⁸ 8 U.S.C. § 1302(a) (2013).

¹⁹ 8 U.S.C. § 1302(b) (2013).

²⁰ "[Arrest of Illegal Aliens by State and Local Officers](#)", *Criminal Resource Manual*, Title 9, Department of Justice (explaining, "If the alien is undocumented and has been in the United States for longer than 30 days, he or she has . . . violated 8 U.S.C. § 1306(a).").

²¹ See, e.g., *United States v. Franklin*, 188 F.2d 182 (7th Cir. 1951).

²² Department of Homeland Security, "[Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2011](#)", March 2012.

²³ 8 U.S.C. § 1306(c).

²⁴ 8 U.S.C. § 1306(d).

²⁵ 19 U.S.C. § 1459 (2013).

²⁶ 19 U.S.C. § 1459(b) (2013).

²⁷ 18 U.S.C. § 758 (2013).

²⁸ 8 U.S.C. § 1323 (2013). See also "Civil monetary penalties inflation adjustment", 8 C.F.R. 280.53 (2013).

²⁹ See, e.g., *United States v. Palomares-Alcantar*, 406 F.3d 966 (8th Cir. 2005); *United States v. Miguel*, 368 F.3d 1150 (9th Cir. 2004). See also 18 USCS Appx § 2L1.1 (2013).

³⁰ James C. McKinley, Jr., and Julia Preston, "[U.S. Can't Trace Foreign Visitors on Expired Visas](#)", *The New York Times*, October 11, 2009.

³¹ [US VISIT and EXIT System topic page](#), Center for Immigration Studies.

³² 8 U.S.C. § 1227(a)(1)(B) & (C)(i) (2013). See also, 8 U.S.C. § 1202(g) (2013).

³³ 8 U.S.C. § 1182(a)(9)(B) (2013). See also, Jessica Vaughan, "[Bar None: An Evaluation of the 3/10-Year Bar](#)", Center for Immigration Studies, July 2003.

³⁴ 8 U.S.C. § 1326 (2013).

³⁵ 8 U.S.C. § 1253 (2013).

³⁶ 8 U.S.C. § 1324d (2013).

³⁷ Immigration and Customs Enforcement statistic obtained by the Center for Immigration Studies.

³⁸ Jon Feere, "[Reining in Zadvydas](#)", Center for Immigration Studies, May 2011.

³⁹ See, e.g., *United States v. Nguyen*, 465 F.3d 1128 (9th Cir. 2006).

⁴⁰ 8 U.S.C. 1231(a)(3) (2013).

⁴¹ 8 U.S.C. § 1253(b) (2013).

⁴² 8 U.S.C. § 1324 (2013).

⁴³ *Ibid.* See also, § 1324(a)(4) (2013).

⁴⁴ See, e.g., *United States v. Pruitt*, 719 F.2d 975 (9th Cir. 1983); see also, *United States v. Rosales-Lopez*, 617 F.2d 1349 (9th Cir. 1980).

⁴⁵ 8 U.S.C. § 1327 (2013).

⁴⁶ *United States v. Flores-Garcia*, 198 F.3d 1119 (9th Cir. 2000).

⁴⁷ 18 U.S.C. § 371 (2013). Note: If the offense toward which the conspiracy is aimed is only a misdemeanor, the punishment for such conspiracy will not exceed the maximum punishment provided for such misdemeanor.

⁴⁸ See, e.g., *Shimi Miho v. United States*, 57 F.2d 491 (9th Cir. 1932).

⁴⁹ See, e.g., [Matter of Roman, Interim Decision #3095](#), A-37431891, December 16, 1988.

⁵⁰ 8 U.S.C. § 1229c(d) (2013).

⁵¹ Kristin Collins, "More Illegal Immigrants Driving Without N.C. License", *News & Observer*, (N.C.), June 1, 2008.

⁵² See, e.g., California Vehicle Code, VC § 12500, "Unlawful to Drive Unless Licensed".

⁵³ See, e.g., Illinois Vehicle Code, 625 ILCS 5/6 105.1, "Temporary Visitor's Driver's License".

⁵⁴ See, e.g., Massachusetts General Law, Ch. 90 § 34J, "[Operating motor vehicle without liability policy, bond or security deposit](#)".

⁵⁵ See, e.g., [Arizona Revised Statutes](#), §§ 28-2531, -2532.

⁵⁶ "[LULAC Ohio Joins Campaign Against Ohio's Vehicle Registration Policy](#)", League of United Latin American Citizens press release, 2009.

⁵⁷ Randy Ludlow, "[Latino Group Sues To Stop State From Canceling Vehicle Registrations](#)", *Columbus Dispatch*, November 24, 2009. See also, "[Judge Sides With Ohio Over Immigrant Drivers](#)", Associated Press, December 7, 2009.

⁵⁸ See, e.g., "[Warrant Issued for Kennesaw Student](#)", Cobb County Sheriff's Office press release, 2010 (illegal alien cited for giving false statement after traffic stop).

⁵⁹ See, e.g., Md. Criminal Code § 9-501, False statement — To law enforcement officer. See also Md. Criminal Code § 9-502. Same — When under arrest. See also S.C. Code Ann. § 16-17-725.

⁶⁰ 8 U.S.C. § 1324a (2013).

⁶¹ For a horrific example of the damage identity theft at the hands of an illegal alien can cause for legal residents of the United States, see Roxana Hegeman, [“Woman gets prison time in ‘total identity theft’”](#), Associated Press, March 25, 2013.

⁶² Bob Sullivan, [“Hidden Costs of Illegal immigration: ID Theft”](#), NBC News, March 31 2006.

³ “Immigration-Related Document Fraud: Overview of Civil, Criminal, and Immigration Consequences”, Congressional Research Service, January 23, 2009.

⁶⁴ Craig C. Donsanto et al., [“Federal Prosecution of Election Offenses”](#), Department of Justice, 7th ed., pg. 68, May 2007 (discussing §911 relationship to elections); see also, [ICE Adjudicator’s Field Manual](#), Ch. 40.; see also, Pichardo v. INS, 216 F.3d 1198 (2000)(alien guilty of §911 for presenting fake U.S. birth certificate to immigration agents at border).

⁶⁵ 18 U.S.C. § 911 (2013).

⁶⁶ See *United States v. Munoz*, 392 F. Supp. 183 (E.D. Mich. 1974).

⁶⁷ *Ogden v. United States*, 303 F.2d 724, 742 (9th Cir. 1962). See also *United States v. Rodgers*, 466 U.S. 475 (1984) (upholding a broad interpretation of the scope of § 1001); see also *Brogan v. United States*, 522 U.S. 398 (1998).

⁶⁸ *United States v. Garcia-Ochoa*, 607 F.3d 371 (4th Cir. 2010).

⁶⁹ *United States v. Popow*, 821 F.2d 483 (8th Cir. 1987).

⁷⁰ *United States v. Rodriguez-Rodriguez*, 840 F.2d 697 (9th Cir. 1988).

⁷¹ *United States v. Bernard*, 384 F.2d 915 (2nd Cir. 1967).

⁷² [Form I-9](#), Employment Eligibility Verification, Department of Homeland Security, ICE.

⁷³ *Ibid.*

⁷⁴ 18 U.S.C. § 1001 (2013).

⁷⁵ 8 U.S.C. § 1182(a)(6)(C)(ii)(I) (2013). See, e.g., *Ferrans v. Holder*, 612 F.3d 528 (6th Cir. 2010), holding that alien’s false representation of U.S. citizenship, made for the purpose of obtaining employment from a private employer, constituted a false representation of citizenship for “any purpose or benefit” within meaning of the Immigration and Nationality Act.

⁷⁶ 8 U.S.C. § 1182(a)(6)(C)(ii)(I) (2013).

⁷⁷ See, e.g., *Kechkar v. Gonzales*, 500 F.3d 1080 (10th Cir. 2007); *Ekasinta v. Gonzales*, 415 F.3d 1188 (10th Cir. 2005).

⁷⁸ See, e.g., *Castro v. Attorney General of the United States*, 671 F.3d 356 (3rd Cir.)(2012); see also, *Diaz v. Holder*, 2013 WL 1777225 (6th Cir. 2013).

⁷⁹ [“Surge in Immigration Prosecutions Continues”](#), TRAC Reports, June 17, 2008.

⁸⁰ 18 U.S.C. § 1546(b) (2013). See also 8 U.S.C. § 1324a(b), “Unlawful employment of aliens”.

⁸¹ 18 U.S.C. § 1546(a) (2013).

⁸² See *United States v. Osiemi*, 980 F.2d 344 (5th Cir. 1993).

⁸³ 18 U.S.C. § 1546(a) (2013).

⁸⁴ *Ibid.*

⁸⁵ See, e.g., *United States v. Wiggan*, 673 F.2d 145 (6th Cir. 1982).

⁸⁶ See, e.g., *United States v. Kong Yin Chu*, 5 F.3d 1244 (9th Cir. 1993).

⁸⁷ *Ibid.*

⁸⁸ Webpage, [“Identity Theft Statutes & Criminal Penalties, National Conference of State Legislatures”](#).

⁸⁹ Specifically, Chapter 12 under Title 8 “Aliens and Nationality”.

⁹⁰ See, e.g., *Villegas-Valenzuela v. INS*, 103 F.3d 805 (9th Cir. 1996)(finding illegal aliens violated §1324c when they presented phony documents to an employer for the purpose of acquiring employment).

⁹¹ 42 U.S.C. § 408 (2013).

⁹² See [“Social Security Fraud”](#), *U.S. Attorneys’ Bulletin*, Vol. 52, No. 6.

⁹³ *Garcia-Garcia v. Ashcroft*, 86 Fed. Appx. 26, No. 02-72661. (9th Cir. 2003).

⁹⁴ *Hyder v. Keisler*, 506 F.3d 388 (5th Cir. 2007).

⁹⁵ *United States v. Herrera-Martinez*, 525 F.3d 60 (1st Cir. 2008).

⁹⁶ Alicia Ebaugh, [“300 Workers Held – Identity theft, Fraud Among Charges”](#), *The Gazette* (Iowa), May 13, 2008.

⁹⁷ Nigel Duara, William Petroski, and Grant Schulte, [“Claims Of ID Fraud Lead To Largest Raid In State History”](#), *Des Moines Register*, May 12, 2008.

⁹⁸ Danielle Capper, [“Identity Theft Details Released; LULAC Condemns Raid”](#), KTLV (East Texas), April 17, 2008.

⁹⁹ J. Russell George, Treasury Inspector General, [“Tax-Related Identity Theft: An Epidemic Facing Seniors and Taxpayers”](#), testimony before the U.S. Senate Committee on Aging, 113th Congress, 2013.

¹⁰⁰ [“FTC Testifies on Children’s Identity Theft”](#), Federal Trade Commission press release, September 1, 2011); see also, “Child Identity Theft: Hearing before the Subcommittee On Social Security Of The House Committee On Ways And Means”, 112th Congress, 2011, [testimony of Deanya Kueckelhan](#), Director of the Southwest Regional Office of the Federal Trade Commission.

¹⁰¹ 18 U.S.C. § 1028A (2013).

¹⁰² [“Introduction to Residency Under U.S. Tax Law”](#), Internal Revenue Service, April 22, 2013. See also, [“Taxation of Resident Aliens”](#), Internal Revenue Service, December 7, 2010.

¹⁰³ *Ibid.*

¹⁰⁴ Steve Camarota, [“The High Cost of Cheap Labor: Illegal Immigration and the Federal Budget”](#), Center for Immigration Studies, August 2004.

¹⁰⁵ Jon Feere, [“What Back Taxes?”](#) Center for Immigration Studies, April 30, 2013.

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

¹⁰⁸ 18 U.S.C. § 1423 (2013).

¹⁰⁹ See, e.g., [“Romanian Couple Living In Idaho Pleads Guilty To Immigration Fraud”](#), U.S. Citizenship and Immigration Services press release, 2013.

¹¹⁰ 18 U.S.C. § 1425 (2013). A first or second such offense can result in a 10-year sentence, but if it involves drug trafficking or terrorism, the sentence can raise to 20 or 25 years, respectively.

¹¹¹ 18 U.S.C. § 1426(a) (2013).

¹¹² 18 U.S.C. § 1426(b) (2013).

¹¹³ 18 U.S.C. § 1426(c) (2013).

¹¹⁴ 18 U.S.C. § 1426(d-g) (2013).

¹¹⁵ 18 U.S.C. § 1426(h) (2013).

¹¹⁶ 18 U.S.C. § 1426 (2013). A first or second such offense can result in a 10-year sentence, but if it involves drug trafficking or terrorism, the sentence can raise to 20 or 25 years, respectively.

¹¹⁷ 18 U.S.C. § 1427 (2013).

¹¹⁸ See, e.g., *United States v. Gutierrez*, 279 Fed. Appx. 719 (10th Cir. 2008).

¹¹⁹ *Ibid.* n. 46.

¹²⁰ 18 U.S.C. § 1015(e) (2013).

¹²¹ *United States v. Angel Carreto-Escobar*, 2008 WL 656057 (N.D. Iowa 2008).

¹²² 18 U.S.C. § 1015 (2013). See also 18 U.S.C. § 611 (2013).

¹²³ 18 U.S.C. § 1028 (2013).

¹²⁴ 18 U.S.C. § 1542 (2013).

¹²⁵ See, e.g., *United States v. Warszower*, 113 F.2d 100 (2nd Cir. 1940).

¹²⁶ See, e.g., [Matter of Olga Barcenás-Barrera](#), 25 I&N Dec. 40, Interim Decision #3647, A-093086418 (June 19, 2009).

¹²⁷ 18 U.S.C. § 1543 (2013).

¹²⁸ See, e.g., *United States v. Dangdee*, 616 F.2d 1118 (9th Cir. 1980).

¹²⁹ 18 U.S.C. § 1544 (2013).

¹³⁰ [“Who Must Register – Chart, Selective Service System”](#).

¹³¹ [Webpage](#), Selective Service System (viewed September 25, 2013).

¹³² [Webpage](#), “Men Cannot Register After Reaching Age 26”, Selective Service System. See also William R. Yates, [“Effect of Failure to Register for Selective Service on Eligibility for Naturalization”](#), Policy Memorandum #52, Immigration and Naturalization Service, June 18, 1999.

¹³³ [Webpage](#), “Benefits And Programs Linked To Registration”, Selective Service System.

¹³⁴ [Webpage](#), “State/Commonwealth Legislation, Selective Service System”.

¹³⁵ 18 U.S.C. § 611 (2013). Note: This statute provides an exception where the election is held partly for some other purpose and the state or local ordinance allows for alien voting, provided that the voting for the separate purpose is conducted independently from the vote on candidates for federal office so that the alien can vote only on the former and not the latter). *See, e.g.*, *United States v. Knight*, 490 F.3d 1268 (11th Cir. 2011)(upholding alien’s conviction for voting in 2000 presidential election).

¹³⁶ *Ibid.*

¹³⁷ 18 U.S.C. § 1015(f) (2013). Note: Subsection (f) does not apply to an alien “if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making the false statement or claim that he or she was a citizen of the United States.”

¹³⁸ Jon Feere, [“Pro-Amnesty Think Tank Wants Lawbreaking Businesses Protected, ID Fraud Buried”](#), Center for Immigration Studies, August 20, 2012.

¹³⁹ Jon Feere, [“Obama Administration Promises to Ignore SSN Fraud, Protect Law-Breaking Businesses”](#), Center for Immigration Studies, September 27, 2012.