



Written by [Jack Kenny](#) on August 24, 2012

Immigration Agents Sue DHS Chief Napolitano

Ten Immigration and Customs Enforcement agents Thursday filed suit against Homeland Security Secretary Janet Napolitano (pictured) and ICE Director John Morton, claiming selective enforcement of the nation's immigration laws are forcing them to break the law and ignore their duty in the deportation of illegal aliens, Fox News [reported](#). The suit, filed in Texas federal court, claims that directives requiring agents to allow some illegal immigrants to stay and, in some cases, apply for work permits, forces them to "violate federal law" and "unconstitutionally usurps and encroaches upon the legislative powers of Congress."



While President Obama is not named in the suit, it appears aimed at the policy recently announced by the president of not deporting immigrants who came here illegally as children and have remained. The policy does not apply to convicted felons.

Republicans and Democrats will no doubt trade charges in this election over who is politicizing the issue more. Obama's policy has been described as a bid for more of the Latin American vote this November, while the lead attorney for the ICE plaintiffs, Kansas Secretary of State Kris Kobach, is an adviser to Mitt Romney and co-author of the controversial Arizona immigration law giving police in that state power to apprehend suspected illegal immigrants. The law was recently upheld by the U.S. Supreme Court.

Kobach likened the immigration policy to the Justice Department's "Fast and Furious" operation that was supposed to nab illegal gunrunners, but resulted in thousands of guns crossing the border and winding up in the hands of Mexican drug cartels.

"In both instances," Kobach told Fox, "the Obama administration ordered federal law enforcement agents to break the law, to ignore the laws that they're supposed to enforce, and, in the case of the ICE agents, to actually break federal laws that say you're supposed to deport certain people. And in each case, the Obama administration seems to be doing so for political reasons."

The suit brings the DHS into the crosshairs of controversy for the second time in eight days. On August 15, Suzanne Barr, chief of staff for Immigration and Customs Enforcement, voluntarily took administrative leave, following accusations by employees that she had created a "frat-house" work [environment](#). Two ICE employees submitted affidavits complaining of "lewd conduct" within the agency and accusing Barr of making graphic comments. The affidavits were submitted as part of a discrimination and retaliation suit filed earlier this year by James T. Hayes, Jr., head of the New York office for Immigration and Customs Enforcement.

ICE Public Affairs Director Brian Hale said the department would respond in court to the Hayes suit, but had turned the complaints about Barr over to the DHS Office of Inspector General and the ICE



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Office of Professional Responsibility for Review.

DHS spokesman Matt Chandler said Thursday the new immigration policy enables the department to focus on serious offenders. ICE removed a record 216,000 criminal aliens in fiscal year 2011, he said.

“DHS uses prosecutorial discretion to assist in focusing vigorously on the removal of individuals who are convicted criminals, repeat immigration law violators, and recent border crossers,” he said. “This policy is a temporary measure; Congress must still act to provide a permanent solution to fix the broken immigration system.”

Testifying on the new rules before the House Judiciary Committee last month, Napolitano said the policy promotes “the efficient use of our resources, ensuring that we do not divert them away from the removal of convicted criminals by pursuing the removal of young people who came to this country as children and who have called no other country home.”

The agents are asking a federal judge to block the directives, saying they bypass Congress and violate the separation of powers between the legislative and executive branches. The Supreme Court has upheld prosecutorial discretion in the past, and Fox News noted that in the ruling in favor of the Arizona immigration law, the high court held that the government has some discretionary authority in law enforcement. Republican lawmakers were quick to speak out in support of the plaintiffs, while accusing the Obama administration of subverting rather than upholding the law.” The Obama administration’s amnesty program not only rewards lawbreakers, it also forces ICE agents to violate federal law, House Judiciary Committee Chairman Lamar Smith of Texas said in a written statement. “ICE agents should enforce our immigration laws and apprehend illegal immigrants. But the Obama administration makes it impossible for ICE agents to do their jobs.”

And while felons do not benefit from the selective prosecution of the immigration laws, Senator Jeff Sessions of Alabama issued a statement expressing concern that the ICE officials may be required to release illegal immigrants convicted of misdemeanors.

“It is a sad day when our nation’s law enforcement officers are left with no recourse but to file suit against the administration and its political appointees,” Sessions said.

Photo of Homeland Security Secretary Janet Napolitano: AP Images



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