



United States Conference of Catholic Bishops Government Relations

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Weekly Update on Immigration and Refugee Legislative Matters 111th Congress, First Session

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Legislative Highlights

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Congress has begun a week-long recess. Upon its return, it will remain in session through Friday, June 26, 2009, at which time it will leave Washington for a week-long Independence Day recess.

Beginning next week, Congress is expected to complete action on the fiscal year 2009 war supplemental appropriations bill, which contains increased funding for refugee assistance. The full House is expected, as well, to take up the State Department Authorization bill, which contains a number of reforms to the refugee admissions process. Finally, beginning next week, the appropriations committees are expected to begin to produce the fiscal year 2010 appropriations bills, including the four annual measures that appropriate funds to operate the immigration services-, refugee-, immigration enforcement-, and border security-related agencies, functions, programs, and activities of the federal government.

This Week's Hearings

With Congress in a week-long recess, no hearings are scheduled this week at which significant immigration- or refugee-related matters will be examined. ◇

This Week's Markups

With Congress in recess, no markups are scheduled this week on measures having implications for immigration- or refugee-related law or policy. ◇

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This Week's Floor Activity

With Congress in recess, no House or Senate floor actions are scheduled this week on measures containing significant immigration- or refugee-related provisions or having significant consequences for immigration- or refugee-related policy. ◇

This Week's Conference Activity

At the time of this writing, one measure that contains significant immigration- or refugee-related provisions is pending in a House-Senate conference committee:

- [H.R. 2346, Fiscal Year 2009 War Supplemental](#). The House and Senate have passed differing versions of H.R. 2346, the Supplemental Appropriations Act, 2009.

Conferees Must Resolve Differing Versions of FY '09 War Supplemental Bill: House and Senate conferees will meet next week to resolve differences between the House- and Senate-passed versions of the fiscal year 2009 war supplemental appropriations bill. Both versions contain differing amounts of spending for refugee assistance, assistance to internally displaced persons, and the care and placement of unaccompanied alien children.

When the conferees deliberate, they do so in connection with the [House-passed](#) and [Senate-passed](#) versions of H.R. 2346, the Supplemental Appropriations Act, 2009.

With Congress in recess, no formal conference deliberations will occur this week. However, staff members are likely to begin ironing out differences this week.

Summary of Refugee-Related Provisions. As passed by the House and Senate, the measures contain the following immigration- and refugee-related provisions:

- [Overseas Refugee Assistance and Refugee Resettlement](#). The Senate-passed version of the fiscal year 2009 war supplemental appropriations bill would appropriate \$345 MILLION for the Department of State's Migration and Refugee Assistance (MRA) account.

The House-passed measure would appropriate \$343 MILLION for the MRA account.

The Administration requested \$293 MILLION for the MRA account in its supplemental request.

The Senate Appropriations committee report accompanying the measure directs that the supplemental MRA funds be used "for the assistance and resettlement needs of refugees and internally displaced persons [IDPs]." The Senate committee report, further, directs

that "[o]f this amount, the Committee recommends \$25,000,000 for returning refugees and IDPs in Afghanistan, \$25,000,000 for such needs in Africa, \$5,000,000 for refugees from Burma, \$15,000,000 for IDPs in Sri Lanka, and \$5,000,000 for IDPs in Colombia."

The House committee report indicates that the funds provided "are necessary to respond to urgent humanitarian requirements to assist refugees and internally displaced persons in Iraq, Jordan, Syria, the West Bank and Gaza, Lebanon, Afghanistan, Pakistan, Africa, and Burmese refugees Asia." The report went on to state that funds "also will help respond to urgent food pipeline breaks in refugee feeding operations, particularly in Africa." Unlike the Senate committee report, the House committee report did not specify that any of the funds be used for refugee resettlement.

The House committee report spent a considerable amount of space expressing concerns about the United Nations Relief and Works Agency (UNRWA) and whether it was "taking all possible steps to prevent its funds from supporting terrorists and other extremists, particularly in the West Bank and Gaza, and is operating in an open and transparent manner." The bill contains two provisions that seek to ensure that UNRWA makes progress in efforts to prevent that from occurring. The first of these, 21004(a), would limit to \$119 MILLION the amount of funding provided in the bill that can be made available to UNRWA for activities in the West Bank and Gaza. Section 21004(b) would require that the Secretary of State prepare and submit to the Committees on Appropriations an accountability report on UNRWA. There were no comparable provisions in the Senate committee report.

According to materials prepared by the Administration at the time it submitted its supplemental appropriations request to Congress, the funds it requested "would provide \$293 million for Migration and Refugee Assistance. The request includes: \$108 million for basic

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This Week Conference (continued)

Conference on FY '09 Supplemental (continued)

Overseas Refugee Assistance (continued)

social services to Iraqi refugees, internally displaced persons and conflict victims; \$25 million for assistance to Palestinian refugees in Lebanon and \$125 million to support emergency humanitarian needs in Gaza and the West Bank; \$7 million to address humanitarian needs in South Asia, including Afghanistan and Pakistan; \$15 million to address displacement and humanitarian needs related to violence in the Democratic Republic of Congo; \$10 million to respond to food pipeline breaks in Africa; and \$3 million to assist Burmese refugees.⁵⁷⁷

- Funding for the Office of Refugee Resettlement. The Senate-passed version of the fiscal year 2009 war supplemental appropriations bill would appropriate \$82 MILLION in Refugee and Entrant Assistance for the Office of Refugee Resettlement (ORR). The Committee report accompanying the measure directs that the funds be “used for the care and custody of unaccompanied alien children. These funds will allow the Office of Refugee Resettlement [ORR] to implement the provisions of Public Law 110–457, the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008.” The Committee report noted that “[t]he President requested these funds in the Department of Defense along with language providing transfer authority to other Federal agencies.”⁵⁷⁸

The House-passed version of the measure does not contain an explicit provision providing funding to the Office of Refugee Resettlement. However, it contains a proposal requested by the Administration that \$350 MILLION be appropriated to the Department of Defense (DOD) “for counternarcotics and other activities including assistance to other Federal agencies, on the United States’ border with Mexico.” The bill would permit DOD “to transfer up to \$100 MILLION of these funds to any other Federal appropriations accounts, with the concurrence of the head of the relevant Federal department or agency for border-related activities.” It is understood by House appropriators that this \$100 MILLION would be transferred to the Office of Refugee Resettlement for the care and placement of unaccompanied alien children.

The House-passed provision was contained in the Administration’s fiscal year 2009 war supplemental request.⁵⁷⁹

- ESF Funds for Refugees and Internally Displaced Persons. The Senate-passed version of the supplemental appropriations bill would appropriate \$2.828 BILLION for Economic Support Fund (ESF) funding. This would be \$76.5 MILLION below the Administration’s request and \$247 MILLION below the amount contained in the House-passed version of H.R. 2346.

The Senate committee report contains a number of directives relating to the use of ESF funds for refugees and IDPs. Among these are the following:

1. Jordan. The Senate committee report accompanying recommends \$150 MILLION in Economic Support Fund (ESF) funding for Jordan. The report directs that the funds be used “to help mitigate the impact of the global economic crisis, including for health, education, water and sanitation, and other assistance for Iraqi and other refugees in Jordan, and are in addition to funds otherwise made available for assistance for Jordan in other acts.”⁵⁸⁰

There was no comparable language in the House committee report.

2. Columbia. S. 1054 requires that \$3.5 MILLION of ESF funds that are intended for Columbia be transferred to the MRA account and may be made available “only for assistance to nongovernmental organizations that provide emergency relief aid to Colombian refugees in neighboring countries.”⁵⁸¹

There was no comparable language in the House committee report.

3. Pakistan. The Senate committee report provides \$50 MILLION “for humanitarian assistance for internally displaced persons whose numbers have increased sharply in recent months due to the Taliban’s advances.”⁵⁸²

⁵⁷⁹ Page 17 of the Supplemental appropriations request

⁵⁸⁰ [S. Rept. 111-20](#), Page 87

⁵⁸¹ [S. Rept. 111-20](#), Page 126

⁵⁸² [S. Rept. 111-20](#), Page 87

⁵⁷⁷ Page 81 of the Supplemental appropriations request

⁵⁷⁸ [S. Rept. 111-20](#), Page 69

The House report would set aside “\$8 MILLION for humanitarian assistance for internally displaced populations (IDPs) escaping violence particularly in the Federally Administered Tribal Areas and the North-West Frontier Province of Pakistan.”⁵⁸³

The House committee report contains language that is not included in the Senate committee report directing the Administration to use ESF funds for other refugee or IDP populations. These mandates include directives to –

1. Burmese Refugees. spend \$3 MILLION for Burmese refugees, migrants in Thailand, and internally displaced persons;
2. Iraqis. use ESF funds to assist Iraqi Christians, religious minorities in Iraq, and other displaced and refugee populations in Iraq;
3. West Bank and Gaza. use ESF funds to assist and refugees on the West Bank and Gaza; and
4. Georgia. provide funds for IDPs in Georgia.

- International Disaster Assistance. The Senate-passed version of the supplemental appropriations bill would appropriate \$245 MILLION for International Disaster Assistance (IDA). The committee report accompanying the measure would direct that the funds be used “to meet basic needs of internally displaced persons in Africa, the Middle East, and South and Central Asia, and to respond to other humanitarian crises.”⁵⁸⁴

The House-passed measure would appropriate \$200 MILLION for IDA. The House committee report indicates that the funds “are needed to respond to increased insecurity, armed conflict, and weather complications in Africa, including Somalia, Ethiopia, the Democratic Republic of the Congo, and Zimbabwe.” The report went on to state that funds “also will help address growing needs in the Middle East, and Central and South Asia, particularly Pakistan, Tajikistan, and Kyrgyzstan.”

According to materials prepared by the Administration at the time that it submitted its supplemental appropriations request to Congress, a portion of the funds it requested for IDA would be used to “help to address increases in internally displaced persons in Pakistan.”⁵⁸⁵

The following compares funding for refugees or IDPs in the President’s request with the House- and Senate-passed bills:

Refugee-Related Funding in FY ’09 War Supplemental Appropriations Bill

Item	Obama	House	Senate
Migration and Refugee Assistance	\$ 293	\$ 343 ⁵⁸⁶	\$ 345 ⁵⁸⁷
ESF for Pakistani IDPs	\$ 8	\$ 8	\$ 50
ESF for Jordan IDPs	-----	-----	\$ 150
ESF for Columbian IDPs	-----	-----	\$ 3.5
ESF for Burmese in Thailand	-----	\$ 3	-----
ESF for Georgian IDPs	\$ 68.5	-----	-----
Internat’l Dvlpmnt Assistance	\$ 200	\$ 200	\$ 245
Office of Refugee Resettlement	\$ 100 ⁵⁸⁸	\$ 100 ⁵⁸⁹	\$ 82 ⁵⁹⁰

Millions of Dollars ◇

⁵⁸⁶ Page 62 of [H. Rept. 111-105](#), the report accompanying the House version of the supplemental appropriations bill, provides that the MRA funds in the bill “are necessary to respond to urgent humanitarian requirements to assist refugees and internally displaced persons in Iraq, Jordan, Syria, the West Bank and Gaza, Lebanon, Afghanistan, Pakistan, Africa and Burmese refugees in Asia. Funds also will help respond to urgent food pipeline breaks in refugee feeding operations, particularly in Africa. The House report makes no mention of refugees’ resettlement needs.”

⁵⁸⁷ Page 91 of [S. Rept. 111-20](#), the report accompanying the Senate supplemental appropriations bill, provides that the MRA funds in the bill be used “for the assistance and resettlement needs of refugees and internally displaced persons (IDPs).”

⁵⁸⁸ The Obama request for the Office of Refugee Resettlement (ORR) is hidden on Page 17 of [the Administration’s fiscal year 2009 war supplemental request](#). On that page, it requested that \$350 MILLION be appropriated to the Department of Defense “for counternarcotics and other activities including assistance to other Federal agencies, on the United States’ border with Mexico.” However, it also requested that DOD be permitted “to transfer up to \$100 MILLION of these funds to any other Federal appropriations accounts, with the concurrence of the head of the relevant Federal department or agency for border-related activities.”

⁵⁸⁹ ORR funding in the [House-passed version of H.R. 2346](#), hidden on pages 5–6 of the bill, is identical to the Administration’s request.

⁵⁹⁰ Page 67 of [S. Rept. 111-20](#) explicitly provides that “the Committee intends that these funds be used for the care and custody of unaccompanied alien children. These funds will allow the Office of Refugee Resettlement [ORR] to implement the provisions of Public Law 110–457, the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008. The President requested these funds in the Department of Defense along with language providing transfer authority to other Federal agencies.”

⁵⁸³ Page 84 of the Supplemental appropriations request

⁵⁸⁴ [S. Rept. 111-20](#), Page 82

⁵⁸⁵ Page 91 of the Supplemental appropriations request

This Week's Executive Activity

Secretary Napolitano to Tour Northern Border: Secretary of Homeland Security Janet Napolitano has scheduled a visit to the U.S. border with Canada for this week. The Secretary's visit will occur on Tuesday, May 26, 2009 through Wednesday, May 27.

According to press materials released by the Department of Homeland Security, the Secretary will travel to Detroit and Ottawa and meet with Canadian officials, including Public Safety Minister Peter Van Loan and Citizenship, Immigration and Multiculturalism Minister Jason Kenney. She plans to sign an agreement with Minister Van Loan on a law enforcement program on Tuesday. Secretary Napolitano will also meet with stakeholders and state and local law enforcement officials to discuss challenges at the Northern border. ◇

Last Week's Legislative Activity

Last Week's Hearings

Four panels held hearings last week at which significant immigration- or refugee-related matters were discussed. Three of the hearings took place in the Senate and one in the House:

- Border Enforcement. A Senate Judiciary Committee panel held a hearing on border enforcement;
- Fiscal Year 2010 International Affairs Budget. Two panels held hearings on the Administration's fiscal year 2009 budget request for international affairs at which Secretary of State Hillary Rodham Clinton testified —
 1. The Senate Committee on Foreign Relations, and
 2. The Senate Appropriations Subcommittee on State, Foreign Operations, and Related Agencies; and
- Oversight of the Federal Bureau of Investigation. The House Committee on the Judiciary held an oversight hearing on the operations of the Federal Bureau of Investigation (FBI), at which FBI Director Robert S. Mueller, III testified.

House Judiciary Committee Holds Oversight Hearing on the FBI: The House Committee on the Judiciary last week held an oversight hearing on the operations of the Federal Bureau of Investigation (FBI). Last week's hearing occurred on Wednesday, May 20, 2009.

Witnesses. The sole witness at last week's hearing was FBI Director Robert S. Mueller, III.

Opening Statements. The following summarizes the immigration- and refugee-related comments that were contained in opening statements made by Members at last week's hearing:

- Chairman Conyers. House Judiciary Committee Chairman John Conyers, Jr. (D-MI) did not make any immigration-related references in his opening statement at last week's hearing.
- Ranking Republican Smith. House Judiciary Committee Ranking Republican Lamar Smith (R-TX) In his opening statement, House Judiciary Committee Ranking Republican Lamar Smith (R-TX) did not make any immigration-related references in his opening statement at last week's hearing.

Prepared Testimony. In the only immigration-related comments in his prepared testimony, FBI Director Mueller told the Committee that he knew the FBI has "made significant improvement during Fiscal Year (FY) 2008, with that trend continuing into FY 2009. At the beginning of FY 2008, the FBI had over 402,000 pending name check requests submitted by the United States Citizenship and Immigration Services (USCIS), with over 380,000 of those pending for more than 30 days. As of March 31, 2009, the FBI has processed over 99 percent of all incoming USCIS name checks within 60 days for the fiscal year and had only 30 USCIS name check requests pending for more than 30 days. The FBI will build on this success and will further streamline and improve the name check process."⁵⁹¹

Q&A Session. No immigration-related questions were asked of Director Mueller during last week's hearing. ☼

Two Senate Panels Hold Hearings on the Administration's FY '10 Budget Request for International Affairs: The Senate Appropriations Subcommittee on State, Foreign Operations, and Related Agencies and the Senate Committee on Foreign Relations each held separate hearings last week on the Administration's fiscal year 2010 budget request for international affairs. Both the Senate Appropriations and the Senate Foreign Relations hearings occurred on Wednesday, May 20, 2009.

Witnesses. The sole witness at both of last week's hearings was Secretary of State Hillary Rodham Clinton.

⁵⁹¹ [Click Here](#) to see the complete text of FBI Director Robert S. Mueller's prepared testimony before the House Judiciary Committee's May 20, 2009, oversight hearing on the operations of the FBI

Opening Statements. The following summarizes the immigration- and refugee-related comments that were contained in opening statements made by Members and Senators at last week's hearing:

- Chairman Leahy. Senate Appropriations Subcommittee on State, Foreign Operations, and Related Programs Chairman Patrick Leahy (D-VT) did not reference refugee-related matters in his opening statement at last week's Senate Appropriations Subcommittee hearing.
- Ranking Republican Gregg. Senate Appropriations Subcommittee on State, Foreign Operations, and Related Programs Ranking Republican Judd Gregg (R-NH) did not reference refugee-related matters in his opening statement at last week's Senate Appropriations Subcommittee hearing.
- Chairman Kerry. Senate Foreign Relations Committee Chairman John Kerry (D-MA) did not reference refugee-related matters in his opening statement at last week's Senate Foreign Relations Committee hearing.⁵⁹²
- Ranking Republican Lugar. Senate Foreign Relations Committee Ranking Republican Richard Lugar (R-IN) did not reference refugee-related matters in his opening statement at last week's Senate Foreign Relations Committee hearing.⁵⁹³

Prepared Testimony. Secretary of State Hillary Rodham Clinton submitted nearly identical versions of her prepared testimony at both the Senate Foreign Relations Committee and the Senate Appropriations Subcommittee on State, Foreign Operations Subcommittee hearings. She did not reference any refugee-related matters in her prepared testimony at last week's hearings.⁵⁹⁴

⁵⁹² [Click Here](#) to see the complete text of the opening statement made by Senate Foreign Relations Committee Chairman John Kerry (D-MA) at the Committee's May 20, 2009, hearing on the Administration's fiscal year 2010 budget request for international affairs

⁵⁹³ [Click Here](#) to see the complete text of the opening statement made by Senate Foreign Relations Committee Ranking Republican Richard Lugar (R-IN) at the Committee's May 20, 2009, hearing on the Administration's fiscal year 2010 budget request for international affairs

⁵⁹⁴ [Click Here](#) to see the complete text of the prepared testimony of Secretary of State Hillary Rodham Clinton at the May 20, 2009, Senate Foreign Relations Committee hearing on the Administration's fiscal year 2010 budget request for international affairs. [Click Here](#) to see the complete text of the prepared testimony of Secretary of State Hillary Rodham Clinton at the May 20, 2009, Senate Appropriations Subcommittee on State, Foreign Operations, and Related Programs hearing.

Q&A Sessions. There were no significant references to refugees or internally displaced persons during the Q&A session between Secretary Clinton and the Senate Appropriations Subcommittee on State, Foreign Operations, and Related Programs. The transcript of the May 20, 2009, Senate Foreign Relations Committee hearing was not available for review at the time of this writing. ☀

Senate Judiciary Panel Holds Hearing on Border Enforcement: The Senate Judiciary Subcommittee on Immigration, Refugees and Border Security held a hearing last week titled, "Securing the Borders and America's Points of Entry: What Remains to Be Done." Last week's hearing occurred on Wednesday, May 20, 2009.⁵⁹⁵

Witnesses. The following is the list of witnesses who testified at last week's hearing:

Panel I

- John P. Torres, Deputy Assistant Secretary of Homeland Security for Immigration and Customs Enforcement;
- David Aguilar, Chief, Office of Border Patrol, U.S. Customs and Border Protection; and
- Thomas Winkowski, Assistant Commissioner, Office of Field Operations, U.S. Customs and Border Protection.

Panel II

- J.D. Hayworth, Former U.S. Representative, 5th District of Arizona, Phoenix, Arizona;
- Richard Wiles, Sheriff, El Paso, Texas;
- Chad Foster, Mayor, City of Eagle Pass, Texas;
- Douglas Massey, Professor of sociology and public affairs, Princeton University, Princeton, N.J.; and
- Samuel Franklin Vale, President, Starr-Camargo Bridge, Rio Grande City, Texas.

Opening Statements. The following summarizes the immigration- and refugee-related comments in opening statements made by senators at last week's hearing:

- Chairman Schumer. In his opening statement, Senate Judiciary Subcommittee on Immigration, Refugees, and Border Security Chairman Charles Schumer (D-NY) said he was "cautiously optimistic" that the Senate could "pass strong, fair, practical and effective immigration reform this year." He went on to say that, "[a]t the very least, I'm convinced we owe the American people our very best effort to try and fix what we all acknowledge is

⁵⁹⁵ [Click Here](#) to see video of the May 20, 2009, Senate Judiciary Subcommittee on Immigration, Refugees, and Border Security hearing on border security

a broken immigration system.” He promised that the Senate Judiciary Subcommittee on Immigration, Refugees, and Border Security will convene a series of hearings over the next few months entitled, "Road to Immigration Reform in 2009: Clearing the Hurdles." Chairman Schumer said that “[d]uring these hearings, the subcommittee will directly address the most challenging issues that the American people and the various stakeholders want and need this Congress to resolve as part of a fair and practical immigration solution.”

Chairman Schumer cited a number of polls that he said showed that Americans would support a program giving illegal immigrants living in the United States the right to live here legally if they pay a fine and meet other requirements. He said that the same poll also reported that 74 percent of Americans think that the United States is not doing enough to keep illegal immigrants from coming into this country.

Chairman Schumer said that “[t]he mandate of the American people cannot be any clearer. They will support better immigration laws if they can be convinced that their government is serious about drastically reducing the number of illegal immigrants entering the United States.”

Chairman Schumer asserted that the United States has made great progress in securing its borders, saying that the progress includes the following:

1. the number of people trying to illegally cross the Southwest border has decreased by 27 percent compared to last year.
2. at the end of fiscal year 2005, there were 11,106 Border Patrol agents. As of today, there are nearly 20,000 Border Patrol agents operating between the ports of entry.
3. At the end of fiscal year 2005, only 241 miles of the Southwest border were deemed to be under effective control by the U.S. Border Patrol. Today, the Border Patrol will tell us they are in effective control of 700 miles of the Southwest border.
4. approximately 625 miles of border fence have been built and the remaining 40 miles will soon be built after disputes with private property owners are resolved.
5. ICE has implemented Border Enforcement Security Task Force teams that have made thousands of arrests of drug smugglers and of human smugglers.
6. border personnel have implemented new technology such as sensors, light towers, mobile night vision scopes, remote video surveillance systems,

directional listening devices, database systems and unmanned aerial vehicles along the border. These new technologies serve as force multipliers and allow Border Patrol to maintain control of larger segments of the border with fewer agents.

Chairman Schumer told the Subcommittee that “[a]ll of these measures have contributed to what the New York Times reported, on May 15th, 2009, is, quote, ‘an extraordinary decline in the number of Mexican immigrants going to the United States.’ And that was based on Mexican census data.” He went on to say that “[f]or years now, the opponents of immigration reform have continually promised that they’ll engage in conversation about immigration reform once Congress showed it was serious about securing the border.” He said that “that showing has clearly been made.” He said that “it’s time to end the divisive and unhelpful rhetoric which claims that nothing has been done to secure the border. It’s time to reengage in the long-promised yet long-delayed conversation about how to best reform our broken immigration system, including doing even more than we have done.” He said that “[m]any people have said secure the border first, and that’s what we’re in good process doing. So it’s now time for balanced, fair and tough immigration reform.”

- Ranking Republican Cornyn. In his opening statement, Senate Judiciary Subcommittee on Immigration, Refugees, and Border Security Ranking Republican John Cornyn noted that Texas has a 1,200-mile common border with Mexico. He said that he has visited the border region often and that he knows that border security is much on the minds of my constituents along the border. At the same time, he said that his constituents “want to make sure that we pay attention to the mutually beneficial aspects of our trading relationship with Mexico and Canada.” He said that his constituents “view NAFTA as a net plus for many, many reasons. And it’s important that we preserve the proper balance and do both, encourage trade and also encourage and see that the federal government lives up to its responsibility when it comes to border security.”

Ranking Republican Cornyn said he thought it important, as well, “to recognize the administration’s stated commitment, at least that’s what I read in the newspaper, to expand the current program started in the last administration of identifying violent criminals in custody of our sheriffs and police in various county and municipal jail facilities.”

Ranking Republican Cornyn said that “we need more Border Patrol agents. We’ve done a good job increasing that number. But rather than state and local officials having to carry that burden, I think we need more professional law enforcement officers, namely Border

Patrol and officials within DHS to help us provide a secure border.”

Ranking Republican Cornyn also alluded to the use of technology on the border during his opening statement, saying that it initially was “somewhat disappointing” but that he hoped it can be improved to “provide a virtual fence.” Even then, he said that “if you don't have the people or the technology to work with it, it simply is not going to be a solution” but that it, “at least in the opinion of Border Patrol is a tool that they can use in doing their job.”

As he began to bring his statement to a close, Ranking Republican Cornyn said he believes that “the federal government's credibility is on the line. This to me was the reason why we were unsuccessful in dealing with immigration reform previously, because the American people simply did not believe us when we said we were serious about border security and had for so long done virtually nothing to deal with that problem.” He said that “after the '86 amnesty signed by Ronald Reagan where the American people were told if you'll accept an amnesty for 3 million people, we'll really get serious about worksite enforcement and border security and the like, we saw the amnesty but no worksite enforcement, no border security. And so, as the saying goes, ‘Fool me once, shame on you; fool me twice, shame on me.’ And the American people were not going to be fooled again.”

Senator Cornyn said that “[t]he order in which you talk about things is very important. When we talk about border security, tamper-proof identification, workplace enforcement, I think that's the right order to talk about these things rather than start out talking about a pathway to citizenship for 20 million people at the beginning.”

In conclusion, Ranking Republican Cornyn said that “[t]he American people will not accept a pragmatic solution to the problems confronting folks who are here without their proper visa until we regain their confidence. And I think the only way we're going to regain their confidence is by showing them that we're serious about security measures, we're serious about the rule of law, and then I believe we can come up with a comprehensive solution that makes sense the American people will embrace.”

Prepared Testimony. The following summarizes the immigration-related comments made by the witnesses at last week's hearing:

Panel I

- John P. Torres. In his testimony, ICE Assistant Secretary John P. Torres told the Subcommittee that “while immigration enforcement is a key component of ICE's mission, we cannot and do not establish enforcement priorities in a stove-piped fashion. Instead,

we target the organizations that exploit our legitimate trade, travel and financial systems with all our enforcement authorities to ensure that cross-border crime is attacked from every possible angle.”⁵⁹⁶

Assistant Secretary Torres detailed for the Subcommittee a number of areas in which ICE is working on immigration enforcement, including partnering with federal, state, local, and tribal enforcement; working with Mexican authorities; preventing the flow of illegal weapons and bulk cash smuggling into Mexico; Identifying, arresting and removing criminal aliens; combating human smuggling and trafficking; expanding ICE's partnerships with state and local law enforcement under the 287(g) Program; and devising and implementing a new strategy on worksite enforcement.

With regard to the 287(g) program, Assistant Secretary Torres told the Subcommittee that ICE has continued to expand partnerships with state and local law enforcement under the 287(g) program. He said that ICE has 66 active Memoranda of Agreement (MOAs) with law enforcement agencies in 23 states. He said that as of May 2009, ICE's 287(g) partners have encountered over 109,000 aliens who were screened for removability.

Assistant Secretary Torres said that the 287(g) program “continues to be an effective force multiplier for our efforts. For this reason, it is vitally important that the program has strong oversight and remains free of abuse. In the past few years, the 287(g) Program has been the subject of much media attention. To address many of the concerns, ICE is redrafting the MOA template to increase oversight and supervision as well as align the goals of state and local law enforcement participating in the program with ICE priorities and guidelines. In addition to the MOA, ICE has issued credentials to state and local 287(g) partners and is drafting a policy mandating refresher training for all active 287(g) officers. With these efforts, DHS is carefully reviewing the recommendations provided in the January 2009 report by the Government Accountability Office (GAO). Finally, we are committed to working with stakeholders to address concerns about racial and ethnic profiling and other abuses in this and other enforcement programs.”

With regard to worksite enforcement, Assistant Secretary Torres told the Subcommittee that on April 30, 2009, Secretary of Homeland Security's new Worksite Enforcement Strategy was released, marking a shift in how ICE conducts worksite enforcement. He said that the goal of the strategy is to—

⁵⁹⁶ [Click Here](#) to see the complete text of the prepared testimony of ICE Assistant Secretary John P. Torres at the May 20, 2009, Senate Judiciary Subcommittee on Immigration, Refugees, and Border Security hearing on border security

1. penalize employers who knowingly hire illegal workers;
2. deter employers who are attempting to hire illegal workers;
3. encourage employers to take advantage of compliance tools and best practices.

Assistant Secretary Torres said that, in addition, ICE will continue to fulfill its responsibility to arrest and process for removal illegal workers encountered during worksite enforcement operations. He said that “[t]he strategy emphasizes both the criminal investigation of employers and the use of administrative tools such as Form I-9 audits and civil fines. The strategy maintains the mission of protecting critical infrastructure by identifying and removing unauthorized workers.” He said that “ICE believes the most effective deterrent involves criminal prosecutions, the seizure of assets and the imposition of meaningful civil penalties upon employers who use and profit from the labor of unauthorized aliens. Administrative inspections and fines are a critical component of ICE’s overall national strategy aimed at reducing illicit employment as a motivating factor for illegal immigration and to garner employers’ voluntary compliance with the nation’s immigration laws. Based on our comprehensive strategy to address worksite enforcement, we believe that we are creating the conditions of a culture of industry compliance.”

- Thomas Winkowski and David Aguilar. In their joint prepared testimony, Assistant Commissioner for Field Operations Thomas Winkowski and Chief of the U.S. Border Patrol David Aguilar told the Subcommittee that the Department of Homeland Security’s Customs and Border Protection bureau is the largest uniformed, Federal law enforcement agency in the country. He said that CBP stations over 20,000 CBP officers at access points around the Nation and that, by the end of fiscal year 2009, it will have deployed over 20,000 Border Patrol agents between the ports of entry. These forces are supplemented with 980 Air and Marine agents, 2,260 agricultural specialists, and other professionals. These personnel are key players to the implementation of Secretary Napolitano’s Southwest Border Security Initiative.⁵⁹⁷

After citing a number of statistics about CBPs enforcement activities, the two witnesses said in their joint statement that CBP must perform its security and

trade enforcement work without stifling the flow of legitimate trade and travel that is so important to our Nation’s economy. He said that “[t]hese are our twin goals: border security and facilitation of legitimate trade and travel.

With regard to border security between the ports of entry, the two witnesses said that the primary goal is “to gain effective control of our Nation’s borders.” They said that “[e]ffective control is achieved when a Chief Patrol Agent determines that agents deployed in a given area consistently: detect illegal entries into the United States, assess and classify any threats associated with the illegal entries, respond to the area, and bring the situation to a successful law enforcement resolution.” They pointed to testimony given earlier in the 111th Congress by Secretary of Homeland Security Janet Napolitano, in which she explained the importance of having a border security strategy that incorporates the elements of effective control. They testified that CBP establishes operational control through a balanced combination of technology, personnel, and tactical infrastructure allowing Border Patrol agents to confront the criminal element. They said that Secretary Napolitano often refers to this strategy as the “three-legged stool.” One of these legs cannot provide operational control by itself. The mix of these three elements will vary depending on the challenges of the focus area. They went on to explain what CBP is doing in each of the legs of this proverbial stool.

With regard to the facilitation of travel, the two witnesses noted that CBP welcomes nearly 400 million travelers into the United States annually. They said that “[w]hile security will always be CBP’s primary mission - and is key to maintaining travelers’ confidence - we strive to make the process of entering the U.S. more streamlined, user-friendly and understandable.” They reviewed what they said was progress on this mission, including progress on implementation of the Western Hemisphere Travel Initiative; trusted traveler programs; and the Global Entry program.

Other, more specific points that were touched on in the two witness’ testimony included ongoing efforts that the Department is undertaking in support of U.S./Mexican counter-drug initiatives; intelligence and operational coordination; the Secure Border Initiative (SBI); and the Southwest Border Security Initiative.

The two witnesses concluded their written testimony by thanking the Subcommittee for its continued support for CBP and by asserting their belief that “the next logical investment is in the workforce itself” by ensuring that CBP’s officers and agents “have the right training, pay, and benefits commensurate with their complex and often dangerous work.”

⁵⁹⁷ [Click Here](#) to see the complete text of the prepared testimony of Assistant Commissioner for Field Operations Thomas Winkowski and Chief of the U.S. Border Patrol David Aguilar at the May 20, 2009, Senate Judiciary Subcommittee on Immigration, Refugees, and Border Security hearing on border security

Panel II

- J.D. Hayworth. In his prepared testimony, former Representative J.D. Hayworth (R-AZ) declared that “[i]n my opinion, the Federal Government’s inability to secure our borders and enforce our immigration laws has been a bipartisan failure.” He said that “[f]irst, the Bush Administration and now the Obama Administration have both expressed the desire for so-called ‘comprehensive immigration reform.’ While the term ‘comprehensive’ suggests ‘complete or all-encompassing’ reform, the American People see it for what it is: Amnesty for those who have entered this country illegally.”⁵⁹⁸

Former Representative Hayworth attributed the failure of the Senate to pass a comprehensive immigration reform bill during the 110th Congress on the mass opposition to the measure by senators’ constituents, who he said overloaded the Senate’s switchboard. He said that the reason why Congress is still interested in pursuing comprehensive immigration reform is that “some Republicans want ‘cheap labor’ and some Democrats want ‘cheap votes.’” Sadly, he said, “what has been short-changed in this deficient political calculation is the border security... indeed the national security... that our country so desperately needs.”

Former Representative Hayworth asserted in his testimony that “two policy objectives indicate the gulf between the real and the ideal.” First, he said, only 200 of 700 miles of double layered fencing has been built since enactment of the “Secure Fence Act of 2006.” He was critical of the Obama Administration for its reliance on ‘virtual fencing’ and asserted that because of inadequate fencing, “smugglers are using collapsible ramps to drive over the vehicle barriers.” Second, he said, he was critical of the Obama Administration for what he believes is lax workplace immigration enforcement. This latter concept was expressed as concern about the failure of the federal government to make greater use of the E-Verify Program and concern that Secretary Napolitano undercut the efforts of ICE agents by releasing illegal immigrants apprehended in raids and investigating those agents.

He said that “Americans want our immigration laws enforced!”

- Richard Wiles. In his prepared testimony, El Paso, Texas Sheriff Richard Wiles told the Subcommittee that there is a significant difference between immigration enforcement, particularly as it relates to undocumented immigrants, and criminal law enforcement, which is independent from immigration issues. He said that

“from a law enforcement perspective, the first issue I want to discuss is illegal immigration and undocumented immigrants. There seems to be a misperception in some communities across our country that people who 0illegally enter our country from Mexico do so for the purpose of engaging in criminal activity. This could not be further from the truth. In fact, even members of the U.S. Border Patrol will, without hesitation, admit that the vast majority are here for economic reasons. In many respects, they enter illegally knowing there are U.S. employers that want and need the labor they provide. With the current immigration system, it’s as if we are waving them in with one hand and telling them to stop with the other.”⁵⁹⁹

Sherriff Wiles went on to say that “[i]mmigration and immigration enforcement rest solely with the federal government and federal agencies. Yet, when the government ignores its duties and obligations, this burden falls increasingly on state and local law enforcement, and this is especially true in border communities.”

Harkening back to the 26 years that he spent with the El Paso, Texas Police Department, where he was once Chief of Police, he said that “[t]he general recommendation of the Major Cities Chiefs Association was that local law enforcement should not be engaged in the enforcement of federal immigration law. Although there are many reasons for this, I will concentrate on two main ones. First, local agencies lack resources to engage in the enforcement of immigration law that are clearly the responsibility of the federal government. Secondly, local law enforcement depends on the cooperation of the community it serves to prevent and solve crimes in its jurisdiction. In fact, many local agencies spend large amounts of time, energy, and money (mostly through federal funding such as Community Oriented Policing grants) building relationships for just this purpose. The enforcement of federal immigration laws by local law enforcement will undermine these efforts and impair cooperation and communication between local law enforcement and the communities they serve.”

Sheriff Wiles was especially critical of the 287(g) program. He said that the program has been expanded beyond its original intent and “is no longer feasible or appropriate...” Federal agencies, Sheriff Wiles said, “have the personnel, training, equipment and systems in place to handle immigration enforcement.” If they are deficient in any of these areas, he said, “that is something for them to overcome, not a reason to put an additional burden on local, county and state agencies which are

⁵⁹⁸ [Click Here](#) to see the complete text of former Representative J.D. Hayworth’s prepared testimony at the May 20, 2009, Senate Judiciary Subcommittee on Immigration, Refugees, and Border Security hearing on border security

⁵⁹⁹ [Click Here](#) to see the complete text of El Paso, Texas Sheriff Richard Wile’s prepared testimony at the May 20, 2009, Senate Judiciary Subcommittee on Immigration, Refugees, and Border Security hearing on border security

already struggling to keep up with the demands they face.”

Sheriff Wiles also addressed in his testimony what he called “the unique criminal issues faced by law enforcement agencies in our border communities.” He said that, “[d]ue to the demand all across our nation, illegal drugs continue to flow North while money and weapons flow South. In addition, border communities must deal with human smuggling and border crime, which many times are offenses committed against undocumented immigrants. These crimes include robbery, sexual assault, kidnapping, and even murder.” The Sheriff said that “[t]hese acts clearly are within our jurisdiction and responsibility and take law enforcement resources away from our neighborhoods when we have to respond to them. We understand we have an obligation to protect ALL persons within our borders and we respond appropriately without regard to immigration status. Our purpose is to prevent crime and when we fail to do that, to apprehend criminal offenders. We also understand that when we arrest a drug smuggler, drug seller, human smuggler or rapist, it prevents drugs and crime from expanding into other areas of our country. In this regard, we are truly at the front lines using local resources to address a national problem.”

Ultimately, sheriff Wiles declared, “our main concern is border and community security. Our position on immigration enforcement works and it shows in the fact that we are an extremely safe community. El Paso wants to remain one of the safest large cities in the United States. We are growing and expanding and we want to maintain the safety and security necessary for our citizens to be free from crime and the fear of crime. I believe that if we became involved in federal immigration enforcement, that trust and respect we have with our community would fracture and fail. It would create a communication gap that would hamper our ability to continue our efforts in crime reduction.”

Sheriff Wiles concluded his statement by declaring that “[i]f the federal government needs the help of local law enforcement, it would be better concentrated on issues related to crime. We are already working with many federal agencies on issues such as drug smuggling, weapons trafficking, gangs, vehicle thefts, etc. With the proper resources, we stand ready to assist our federal and state partners on issues that are important to all of us and most certainly the communities we serve and represent. Ultimately, the entire nation benefits when we are successful at stopping the flow of illegal drugs and preventing criminals from continuing to victimize our citizenry.”

- **Chad Foster.** In his prepared testimony, Eagle Pass, Texas Mayor Chad Foster told the Subcommittee that the border region that he represents “is a region of contrasts,

exhibiting differences and similarities of language, culture, tradition, and economy.” He said that “[t]he multi-national, multi-cultural nature of our communities on both sides of the international boundary gives our region a distinct sense of place. Our blending of cultures is unique. The Texas-Mexico border played a central role in shaping the history of our continent. Two civil wars occurred simultaneously where we live, and created such cross-cultural alliances and enmities that we could spend days rediscovering them.”⁶⁰⁰

Mayor Foster recalled that when the Senate last debated immigration reform in June of 2007, opponents of the measure at that time said that the border needed to be secured before visas could be reformed, any effort could be made to legalize the status of undocumented aliens, or before the nation could institute a guest worker program. He recounted a list of accomplishments on securing the border and said “[i]n my opinion, the land ports are now our nation's weakest link. We need your help and we would appreciate it now.” Mayor Foster noted that “[t]he 9-11 terrorists entered the United States through ports of entry. Most undocumented aliens enter the United States through ports of entry. Most of the illegal drugs entering the United States come through ports of entry. No border wall will solve those problems. Illegal border crossing arrests at the Texas-Mexico border have been falling for more than three years, without a wall, a great tribute to the deterrence of our Border Patrol and CBP officers. Arrests this year along the southern border are likely to be way below half the nearly 1.6 million during the peak in 2000.”

Mayor Foster complained that “[i]n their headlong rush to achieve an arbitrary deadline to erect an ineffective wall, the Bush Administration chose to abandon our nation's laws that commit us to preserving our environment, our culture, our history and our religious liberties. We can't afford to go down that path -- a path that waives all laws -- again.” He said that the waivers approved by former Secretary of Homeland Security Michael Chertoff “will affect the natural movement of animal species, including the larger mammals that are on the threatened or endangered species lists, and cause irreparable harm to the unique eco- and bio-systems located along the Rio Grande River. They provided carte blanche for the destruction of cultural and religious artifacts that are irreplaceable to our heritage. The avoidance and mitigation of these damages is not an inconvenience to the government. They are essential elements of our national fabric, guaranteed to the people of the United States under Articles I and II of the

⁶⁰⁰ [Click Here](#) to see the complete text of Eagle Pass, Texas Mayor Chad Foster's prepared testimony at the May 20, 2009, Senate Judiciary Subcommittee on Immigration, Refugees, and Border Security hearing on border security

Constitution. We demand that Congress require the enforcement of our commitment to being a nation of laws. We support repeal of the unconstitutional waiver authority and urge the repeal of the Secure Fence Act in favor of measures that will provide our region with real security.”

Mayor Foster concluded his statement by asserting that “[t]he Texas Border Coalition wants to finish the job of securing the border by enacting immigration reform. We support an earned legalization program for the undocumented people who are in the US today. We need an effective guest worker program to prevent the immigration policy and political failures from repeating themselves in another general. We need more than a bill that balances the ideological and political continuums in Congress and the nation. We need policies that balance supply and demand, that provide circularity and stability in demographic and economic change for our hemisphere and that will guarantee our economic and national security for years to come.”

- Douglas Massey. In his prepared testimony, Douglas Massey told the Subcommittee during the 1970s the United States declared a War on Crime; during the 1980s it declared a War on Drugs; and in the 1990s it declared a War on Immigrants. In my view, these policies had more to do with domestic politics than with the underlying realities of crime, drugs, or immigration, with negative consequences all around.” He spoke of what he said was an exponential increase in immigration enforcement efforts since 1986 and said that “border enforcement accelerated during the late 1990s despite the fact that the rate of undocumented migration to the United States had been falling for years (see Figure 3). The 1990s War on Immigrants was followed by the post-911 War on Terror, which was quickly conflated with immigration and identified with the Mexico-U.S. border, despite the fact that none of the 911 hijackers entered from Mexico, that country has no Islamic terrorists cells, has no significant Moslem population, and by that point had a declining rate of undocumented migration. Border enforcement nonetheless rose exponentially after September 11, with the Border Patrol Budget increasing 95 times its 1980 level and the number of line watch hours rising 111 times. After 911 deportations also began a marked increase, rising from just 11,000 in 1980 to some 350,000 in 2008, breaking old records last set during the mass deportation era of the 1930s.”⁶⁰¹

Mr. Massey complained about what he termed the militarization of the U.S. border and said that “[t]o solve our serious immigration problems, we need to undertake

a program of legalization for those already resident in the country, and especially for the more than three million people who entered the country as minors and are guilty of no sin except obeying their parents. We also need to provide for the legal entry of Mexicans by increasing the number of permanent resident visas and guest worker permits to levels consistent with the needs of an integrated North American economy. Unfortunately the current immigration crisis is very much one of our own making, reflecting bad policy choices in the past; but fortunately this means that with better policy choices we have the power resolve the dilemma moving forward.”

- Sam F. Vale. In his prepared testimony, Samuel Franklin Vale told the Subcommittee that “[t]he security of our borders is not something that is static and is dependent on Comprehensive Immigration Reform. The very nature of trade, travel and cross-border commerce within the context of the concerns with terrorism require that we stay ever vigilant and prepared. Over the past eight years the federal government has taken many steps to enhance security at our land ports of entry and between them. However, not all these steps have been taken in the same direction. The implementation of multiple layers of security, especially at our land ports of entry, where all legitimate cross-border commerce and trade occurs has not been without its negative impacts on another aspect of border and national security, that of our economic security. This is certainly a significant factor in our future economic survival.”⁶⁰²

Mr. Vale said that “[i]t has become apparent during the past decade that all too often during the deliberation and development of U.S. border policy, the prevailing mindset in Washington, D.C. is that one-size fits all. While there are shared underlying issues along both the U.S.-Canada and U.S.-Mexico borders, such as the ongoing need to invest significantly to increase capacity and update infrastructure at our busiest land ports of entry. However, there are many challenges and complex dynamics that are unique to each of our borders with our NAFTA partners. With over 30 years of hands on border operational experiences, I strongly urges this Committee, Congress and the Administration to not neglect our unique bi-lateral relationships with Canada and Mexico, along with the individual needs and concerns of these relations in pursuit of a one-size fits all, national border policy.” He said that “[o]ur land ports of entry do not have the infrastructural capacity to adequately handle out-bound inspections into Canada or Mexico, yet there have been calls for Congress to require DHS to do exactly that. In fact without proper Immigration Reform

⁶⁰¹ [Click Here](#) to see the complete text of Douglas Massey’s prepared testimony at the May 20, 2009, Senate Judiciary Subcommittee on Immigration, Refugees, and Border Security hearing on border security

⁶⁰² [Click Here](#) to see the complete text of Sam F. Vale’s prepared testimony at the May 20, 2009, Senate Judiciary Subcommittee on Immigration, Refugees, and Border Security hearing on border security

the database for all security programs is inadequate and constantly changing.”

Mr. Vale praised funds that were appropriated for ports of entry in the recently enacted economic stimulus bill. He said, however, that “Congress simply has to do more to address the decades old backlog in our Immigration Codes as well as adequate annual infrastructural investments needed at U.S. land ports of entry. Today the majority of our land ports were designed without anticipation of the vast federal security operations now present at all U.S. border crossings. The increased security presence at our border crossing in Texas has overwhelmed our existing infrastructure. Our import lots become parking lots for unmanned border patrol units. Most existing port of entry, were designed and built a half century or more ago. Our ability to protect our nation in both terms of physical and economic security while generating more cross-border economic activity with our two largest export markets in Canada and Mexico is limited by our infrastructure and human resources.” He said that “[d]elays and long lines hamper cross-border commerce and trade, causing just-in-time manufacturing to give way to just-in-case; prompting lower crossing numbers for work or pleasure to our neighboring communities in Canada and Mexico, which in turn reduce both tax revenues and toll revenue which results in our lessened ability at the local level to reinvest in infrastructure to support legitimate trade and travel.

Mr. Vale told the Subcommittee that “before Congress mandates any further layers of security at our borders that we examine thoroughly what we already have in place. Adding yet another requirement for DHS to implement without changing the infrastructure at our ports and committing more resources, more boots on the ground, is unlikely to yield much in return in terms of security, while having a serious impact on the facilitation of legitimate trade and travel.” He said that, in short, “Congress has to ensure that scarce federal dollars are committed toward pro-grams, policies, and projects that result in the greatest benefit in terms of economic and physical security. Successful border security efforts require the utilization of risk-based assessments based upon real-time intelligence to direct the most efficient allocation of scarce federal resources in order to attain the greatest security benefit.” Moreover, Mr. Vale said, “at the foundation to all security inspections is identifying the people who enter and leave our country. To do that a fundamental need is Comprehensive Immigration Reform.”

Q&A Session. The following is a list of the immigration-related subjects that were explored during the question-and-answer session at last week’s hearings:

- [Adequacy of Funding for Border Efforts](#)
- [The American People and CIR](#)

- [Drugs, Gang, and Criminal Aliens](#)
- [El Paso Border Control Efforts](#)
- [Fencing Along the Border with Mexico](#)
- [Operation Streamline](#)
- [Persons from Third Countries Traversing Mexico](#)
- [Smuggling of Aliens into the United States](#)
- [Successfulness of Enforcement Efforts](#)

The following summarizes the refugee-related matters that came up during the question-and-answer sessions that took place between committee members and Secretary Clinton at last week’s hearings:

- [Adequacy of Funding for Border Efforts.](#) Ranking Republican Cornyn noted that Congress has increased funding for border enforcement and infrastructure but asked Mr. Vale if the money is being spent wisely.

Mr. Vale said that Congress has done a good job in sending money but that it hasn’t watched how the funding is being spent.

- [The American and CIR.](#) Chairman Schumer asked former Representative J.D. Hayworth if he agreed that the American people would accept a system that is pro legal immigration and anti illegal immigration if you can make people feel very good that we have stopped the flow of future illegal immigrants.

Former Representative Hayworth responded that “so-called comprehensive immigration reform” means a simultaneous border enforcement with an alteration of the status of those who have come here illegally. He said he believes it is important that we work first with what is the crucial problem of first, securing the border, second, having accurate verification of employees and those who are here. Then, and only then, he said, can the debate about guest workers and the immigration reform that some desire move forward. He declared that the border must be secured first and then bring about comprehensive and secure identification.

- [Drug, Gangs, and Criminal Aliens.](#) Ranking Republican Sessions asked Mr. Torres if we would help the government of Mexico if the U.S. aggressively prosecuted gang members and other criminals.

Assistant Secretary Torres agreed, telling the Subcommittee about efforts that the Department of Homeland Security and Department of Justice are undertaking to increase prosecutions. He pointed to two programs, in particular: Operation Community Shield has resulted in the arrest of over 11,000 gang member since 2005 and Operation Repeat Offender, focused along the Southwest border, in which the government identifies people who have committed crimes who have

previously been deported and prosecutes them for felony violations resulting in sentences of three-to-five years.

- El Paso Border Control Efforts. Ranking Republican Sessions cited statistics about “a dramatic drop in apprehensions” in El Paso and how it is impacting crime. Among the statistics he cited was that El Paso has seen a reduction of apprehensions from 122,000 apprehensions in 2006 to just 30,000 apprehensions in 2008. The apprehension rate, he said, has dropped from 300 apprehensions per day to 48 apprehensions per day. He also noted that crime in El Paso has dropped. He attributed this to increased border patrol agents and more sophisticated technology.

Chief Aguilar said that the El Paso sector includes the city of El Paso but all of New Mexico, as well. He confirmed that apprehensions are down dramatically and that crime in the area has been greatly reduced, as well. He said that El Paso is the third safest large city in the United States.

Mayor Foster said that Eagle Pass has historically been a very safe and tranquil city. He said it is basically a very quiet, safe border community.

- Fencing Along the U.S. Border with Mexico. Chairman Schumer asked Chief Aguilar, Commissioner Winkowski, and Assistant Secretary Torres if they thought the U.S. should build fencing along the 1,200 miles of the Rio Grande River.

All three witnesses responded that there was no need for such fencing. Commissioner Winkowski expanded on the response, warning the Subcommittee that as we close off illegal points of entry more resources would be necessary at ports of entry.

Senate Judiciary Committee Ranking Republican Jeff Sessions asked about the difference between vehicle barriers and pedestrian fencing.

Chief Aguilar explained that vehicle barriers are intended to stop vehicles or anything that has a carrying capacity from crossing borders. He said that pedestrians could get across a vehicle barrier however they are placed where pedestrians are not as likely to try to penetrate the border on foot. He said that there are 626 miles of fencing built out of 661 planned miles of fencing. He said that the 661 planned fencing would be comprised of 116 miles in California, 115 miles in Texas, 115 miles in New Mexico, and 313 miles in Arizona. He did not respond to the question of how many of those miles are pedestrian and how much is vehicular fencing. However, Senator Sessions was later given statistics that there have been 323 miles of single-layer pedestrian fencing, 33 miles of double-layered fencing, and 303

miles of vehicle fencing. Chief Aguilar confirmed those statistics.

Former Representative Hayworth responded that the original goal of building 700 miles of double layered fencing has not been met. He said that, instead, there is a combination of double-layered single-layered fencing, and vehicle barriers.

- Operation Streamline. Senator Sessions commended Operation Streamline, an operation where people who are apprehended are prosecuted for misdemeanor violations rather than simply sent over the border. He cited a number of statistics showing how the prosecutions have resulted in fewer people crossing the border illegally.

Chief Aguilar said that where Operation Streamline has been implemented as part of a part of their comprehensive approach, it is having a tremendous impact. He said that “the fundamentals of a border enforcement model are the ability of the border patrol to be able to detect, deter, identify, classify, and resolve any kind of cross-border illegal entry.” He said that fencing and tactical infrastructure does a lot of the deterrence. In addition to that, anything that gets past us must have a consequence. He said that Operation Streamline is part of the Department’s consequence package that it brings to bear against anything that gets through the Department’s enforcement model.

- Persons from Third Countries Traversing Mexico. Ranking Republican Cornyn noted several instances of persons from Iran and other countries who have crossed into Mexico through South America and Central America. He asked former Representative Hayworth if he was concerned about terrorists from the Middle East and elsewhere who might cross into the United States through Mexico.

Representative Hayworth said he was, indeed, concerned about that possibility. He said that when you have a border as diverse and large as ours and when you have people intent on crossing that border there is an obvious security threat. He said that border security is ultimately national security.

- Smuggling of Aliens into the United States. Senator Arlen Specter (D-PA) asked Commissioner Winkowski if there have been any improvements in detecting smuggling of aliens.

Commissioner Winkowski responded that technology employed at ports of entry has been a step in the right direction. He said that there are still issues in the interior of the country.

- Successfulness of Enforcement Efforts. Senate Judiciary Subcommittee on Immigration, asked Chief Aguilar, Commissioner Winkowski, and Assistant Secretary Torres if the measures that have been taken since 2005 to secure the border have been successful in significantly lowering the number of illegal immigrants seeking to cross the border, including a 27 percent reduction this year.

Chief Aguilar, Commissioner Winkowski, and Assistant Secretary Torres responded that the efforts have been successful. On the second panel, however, Dr. Massey, and Mr. Vale disagreed with that assertion. Representative Hayworth and Sheriff Wiles disagreed that the measures have been successful in significantly lowering the number of illegal aliens seeking to cross the border. And Mayor Foster agreed with the assertion.

Chairman Schumer asked Sheriff Wiles why he thought we were only somewhat successful in curtailing flows across the border.

Sheriff Wiles responded that despite federal efforts, most of the criminal issues he deals with come right across the border through ports of entry.

Ranking Republican Cornyn asked Sheriff Wiles if he thought the best solution to the problem is more federal law enforcement officials at the ports of entry, better technology, or better data sharing.

Sheriff Wiles responded that all three of those solutions were necessary. He said that the Obama Administration is already improving federal efforts. He said that he is seeing more federal agents, especially more ATF agents to deal with the flow of weapons from the United States into Mexico.

Ranking Republican Cornyn asked Sheriff Wiles if he supported the expansion of efforts to screen prisoners in state and local jails for criminal aliens.

Sheriff Wiles said he supported so long as it is targeted. He said he has prisoners coming in and out of the jail all of the time. Many, he said, are coming in for minor offenses. He said that he doesn't want his Department's time consumed with screening minor offenders. He said he supported expansion of screenings so long as the screenings are concentrated on violent offenders who potentially could hurt his community.

Chairman Schumer next asked Chief Aguilar, Commissioner Winkowski, and Assistant Secretary Torres if the U.S.-Mexico border is exponentially more secure today than when the Senate first began discussing comprehensive reform in 2005.

All three witnesses responded that the assertion was true.

Chairman Schumer read off a long list of goals that were laid out in the McCain-Kennedy bill from several years ago for securing the border and asked Chief Aguilar, Commissioner Winkowski, and Assistant Secretary Torres if the metrics had been met.

All three witnesses on the first panel responded that the metrics have been met. ☀

Last Week's Markups

One panel held a markup last week having implications for immigration- or refugee-related matters:

- Refugee Admissions Reforms. The House Foreign Affairs Committee has scheduled a markup of the State Department Authorization Bill.

House Foreign Affairs Committee Approves State Authorization Bill Containing Numerous Reforms to the U.S. Refugee Program:

The House Committee on Foreign Affairs last week approved a measure containing significant reforms in the United States refugee admissions program. Last week's Committee action occurred in connection with [H.R. 2410](#), the Foreign Relations Authorization Act, Fiscal Years 2010 and 2011. The Committee approved the measure on Wednesday, May 20, 2009, by a voice vote, ordering that it be reported to the full House of Representatives.

Summary of Immigration- and Refugee-Related Provisions. As approved by the House Committee on Foreign Affairs, Sections 104, 233, 234, 235, and 1104 of H.R. 2410 contain numerous refugee-related provisions. The following is a summary of those provisions:

- Authorization of Appropriations for MRA. Section 104(a) would authorize \$1.577 BILLION in fiscal year 2010 and such sums as may be necessary in fiscal year 2011 for the Department of State's Migration and Refugee Assistance (MRA) account;
- Refugee Resettlement in Israel. Section 104(b) would authorize \$25 MILLION of the MRA account's fiscal year 2010 funds for resettlement of refugees in Israel. It would authorize such sums as may be necessary for that purpose in fiscal year 2011.
- Reforming Refugee Processing. Section 233 contains a number of provisions to reform refugee processing. More specifically –

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1. Reform of the Worldwide Processing System.

- A. Embassy Referrals. Section 233(a)(1) would require the Secretary of State to expand training of U.S. embassy and consular personnel to ensure that appropriate United States embassies and consulates are equipped and enabled to refer to the United States refugee admissions program aliens in urgent need of resettlement.
- B. NGO Referrals. Section 233(a)(2) would require the Secretary of State to expand training of and communication with nongovernmental organizations (NGOs) that provide assistance to displaced and persecuted persons to enable such organizations to refer to the United States refugee admissions program aliens in urgent need of resettlement.

2. Reform of the Refugee Consultation Process.

- A. Refugee Admissions in the Absence of a Presidential Determination on Refugee Admissions. Section 233(b)(1) would permit the Admission of up to 25 percent of the previous year's refugee ceiling during the first quarter of a subsequent fiscal year if the year begins with no Presidential Determination on refugee admissions in place.
- B. Timing of Refugee Consultation Meetings. Section 233(b)(2) would require that the in-person discussions between the Secretary of State and the House Committee on the Judiciary on the coming year's refugee admissions program commence no later than June 1.

3. Family Reunification.

- A. Multiple Forms of Relief. Section 233(c)(1) would provide that applicants for admission as refugees shall be permitted to simultaneously pursue admission under any other visa categories for which such applicants may be eligible.
- B. Separated Children. Section 233(c)(2) would provide that a child under the age of 18 who has been separated from his or her birth or adoptive parents and is living in a country of asylum under the care of an alien who has been approved for admission to the United States as a refugee shall, if it is in the best interests of the child to be placed with the alien in the United States, be admitted to the United States as a refugee.

Children of Refugee Spouses. Section 233(c)(3) would provide that if a refugee or asylee spouse proves that such spouse is the biological or adoptive parent of a child, such child shall be eligible to accompany or follow to join such parent.

4. ERMA Account.

- A. Increase in the ERMA Cap. Section 233(d)(1) would double the cap on the amount of funds that may be parked in the Emergency Refugee and Migration Assistance (ERMA) account at any one time, raising the cap from \$100 MILLION to \$200 MILLION.
- B. Authority of the Secretary of State. Section 233(d)(2) would permit the Secretary of State to draw down funds from ERMA. Current law gives that authority to the President of the United States, only.

5. Authorization of Appropriations.

- A. Authorization of Such Sums. Section 233(e)(1) would authorize such sums as may be necessary to carry out Section 233 of the bill and the amendments made by Section 233 of the bill..
- B. Rule of Construction. Section 233(e)(2) is a rule of construction stating that nothing in Section 233 Nothing in this section may be construed to reduce funds or services for other refugee assistance or resettlement.

6. Effective Date. Section 233(f) would provides that the effective date of Section 233 and the amendments made by the Section shall take effect on the first day of the first fiscal year that begins after the date of enactment of the section.

- English Language, Cultural Orientation, and Work Orientation Training for Approved Refugee Applicants. Section 234(a) would require the Secretary to establish training programs to provide English as a second language, cultural orientation, and work orientation training for refugees who have been approved for admission to the U.S. before their departure for the U.S.

Section 234(b) provides that in establishing the programs referred to in subsection (a), the Secretary must consult with or utilize both NGOs or international organizations with direct ties to the United States refugee admissions program and NGOs or international organizations with appropriate expertise in developing curriculum and teaching English as a second language.

Sec. 234(c) would require the Secretary to ensure that training programs occur within current processing times and do not unduly delay the departure for the United States of refugees who have been approved for admission to the United States.

Section 234(d) would require that the training programs referred to in subsection (a) be implemented in at least three regions within a year after the date of enactment of the Act and that it be implemented in five regions within two years after the date of enactment of the Act.

Section 234(e) would require that the Government Accountability Office (GAO) to conduct a study of the programs implemented pursuant to the section and report to Congress on its findings.

Finally, Section 234(f) would provide that nothing in the Section should be construed to require that a refugee participate in such a training program as a precondition for the admission to the United States of such refugee.

- Iraqi Refugee and Internally Displaced Persons. Section 235 contains a number of provisions relating to Iraqi refugees and Internally Displaced persons.

More specifically --

1. Protection, Resettlement, and Assistance of Iraqi Refugees and IDPs. Section 235 would require the President to develop and implement policies and strategies to address the protection, resettlement, and assistance needs of Iraqi refugees and internally displaced persons (IDPs), foster long-term solutions for stabilizing the lives of such refugees and IDPs, monitor the development and implementation of assistance strategies to countries in the Middle East that are hosting refugees from Iraq, encourage the Government of Iraq to actively engage the problem of displaced persons and refugees and monitor its resolution of the problem, and ensure that budget requests to Congress are sufficient to meet an appropriate United States contribution to the needs of Iraqi refugees, IDPs within Iraq, and other refugees in Iraq.
2. Interagency Process. Section 235(b) would require the President to establish an interagency working group consisting, at a minimum, of high ranking officials from the Department of State (DOS), Department of Homeland Security (DHS), U.S. Agency for International Development (USAID) to carry out Section 235.
3. Increase in Refugee Processing Capacity. Section 235(c) would encourage the Secretary of State to seek substantial increases in fiscal year 2010 the

resources available to support the processing of refugee applicants in Iraq.

4. Humanitarian Assistance. Section 235(d) would encourage the United States to ensure that other countries make contributions to the United Nations High Commissioner on Refugees (UNHCR) and to other international organizations assisting Iraqi refugees and IDPs; the United States continues to make contributions that are sufficient to fund not less than 50 percent of the amount requested by the UNHCR and such other international organizations in each of fiscal years 2010 and 2011; and the Government of Iraq makes significant contributions to UNHCR and to other international organizations assisting Iraqi refugees and IDPs.
 5. Statement of Policy Regarding Encouraging Voluntary Returns. Section 235(e) would establish that it is the policy of the United States to encourage Iraqi refugees to return to Iraq only when conditions permit safe, sustainable returns on a voluntary basis with the coordination of the UNHCR and the Government of Iraq.
 6. International Cooperation. Section 235(f) would require the Secretary of State to work with the international community, including governments hosting refugees, international organizations, nongovernmental organizations, and donors, to develop a long-term, comprehensive international strategy for assistance and solutions for Iraqi refugees and IDPs.
 7. Enhanced Accounting. Section 235(g) would require the Secretary of State, in coordination with the Administrator of USAID, to develop performance measures to fully assess and report progress in achieving United States goals and objectives for Iraqi refugees and IDPs, as well as to track and report funding apportioned, obligated, and expended for Iraqi refugee programs in Jordan, Syria, Lebanon, and the other host countries, to the extent practicable.
 8. Report to Congress. Section 235(h) would require the President to report to Congress regularly on the implementation of Section 235.
 9. Authorization of Appropriations. Section 235(i) would provide that of the amounts authorized to be appropriated for Migration and Refugee Assistance, sums as may be necessary shall be authorized to be appropriated to carry out Section 235.
- Stateless Refugees. Section 1104 contains a number of provisions relating to persons who are stateless. Among the provisions are those that seek to encourage UNHCR

and UNICEF to work to ensure that children born to refugees and IDPs receive birth certificates; require the Secretary of State to increase resources available within the Bureau of Population, Refugees, and Migration (PRM) devoted to statelessness; and establishing an interagency working group on statelessness that would include in its membership the Assistant Secretary of State for PRM.

Committee Consideration. The House Committee on Foreign Affairs took up H.R. 2410 beginning at 10:00 am on Wednesday, May 20, 2009, completing consideration of the measure at around 3:00 pm that afternoon. The Committee considered numerous amendments to the bill, rejecting most of them.

Refugee-Related Amendments. Only two refugee-related amendments were offered to H.R. 2410 during last week's markup:

- MANAGER'S AMENDMENT.—House Foreign Affairs Committee Chairman Howard L. Berman (D-CA) offered a Manager's Amendment that made a number of changes to the bill, including a number of changes to the refugee provisions in the measure.

Among the refugee-related changes contained in the Manager's Amendment were the following—

1. Revision of the Worldwide Processing Priority System. As introduced, Section 233(a)(1) would have required the Secretary of State to revise the system for processing refugees for admission to the United States to prioritize particularly vulnerable refugees who are most urgently in need of resettlement.

This Manager's Amendment struck this provision.

2. Embassy and NGO Referrals. As introduced, Section 233(a)(2) would have required the Secretary of State to establish a training and implementation plan, including training of United States embassy and consular personnel, for ensuring that all United States embassies and consulates are equipped and enabled to refer aliens in need of resettlement to the United States refugee admissions program. The section also would require the Secretary of State to establish a system to provide ongoing regional support, training, and communication with nongovernmental organizations that provide assistance to displaced and persecuted persons to enable such organizations to refer aliens in need of resettlement to the United States refugee admissions program.

The Manager's Amendment substantially revised this provision, bifurcating it so that embassy

referrals became Sec. 233(a)(2) and NGO referrals became Sec. 233(a)(3). The embassy referral provision (now found in Sec. 233(a)(2)) now would require the Secretary of State to expand training of U.S. embassy and consular personnel to ensure that appropriate United States embassies and consulates are equipped and enabled to refer to the United States refugee admissions program aliens in urgent need of resettlement. The NGO referral provision (now found in Sec. 233(a)(3)) now would require the Secretary of State to expand training of and communication with nongovernmental organizations (NGOs) that provide assistance to displaced and persecuted persons to enable such organizations to refer to the United States refugee admissions program aliens in urgent need of resettlement.

3. Overseas Refugee Processing. As introduced, Sec. 233(a)(3) would have required that by no later than October 1, 2011, the Secretary of State must ensure that any agreement, contract, or other arrangement with an organization to process refugee applicants overseas for admission to the United States be granted through a competitive process among nongovernmental organizations with experience in the processing or resettlement of refugees in the United States. The section would have permitted the Secretary to waive the requirement if she determines that no qualifying organization is available, competent, and authorized to operate in the country at issue or that no such organization is willing or able to do so in a cost-effective manner.

The Manager's Amendment struck this provision.

4. Separated Children. As introduced, Sec. 233(b)(2) would have Section 233(c)(2) would have provided that a child who has been separated from his or her birth or adoptive parents and is living in a country of asylum under the care of an alien who has been approved for admission to the United States as a refugee shall be deemed an unaccompanied refugee minor (URM), be eligible for admission to the United States as a URM, and be considered for placement in the United States with the alien who had been caring him or her.

The Manager's Amendment modified this section to provide that a separated child would be eligible for treatment under the provision only if the child was under the age of 18. It also revised the phraseology of the language, removing explicit references to the URM program. As modified, Sec. 233(b)(2) now would provide that a child under the age of 18 who has been separated from his or her birth or adoptive parents and is living in a country of asylum under the care of an alien who has been approved for admission to the United States as a refugee shall, if

it is in the best interests of the child to be placed with the alien in the United States, be admitted to the United States as a refugee.

5. Children of Refugee Spouses. As introduced, Section 233(c)(3) would have provided that the child of an alien who qualifies as the spouse of someone granted refugee or asylum status shall be eligible to accompany or follow to join such spouse.

The Manager's amendment modified the phraseology of Sec. 233(c)(3) but not its intent. As modified, Sec. 233(c)(3) now would provide that if a refugee or asylee spouse proves that such spouse is the biological or adoptive parent of a child, such child shall be eligible to accompany or follow to join such parent.

6. English Language and Cultural Awareness Training for Approved Refugee Applicants. As introduced, Section 234 would have required the Secretary of State to establish formal training programs in five overseas processing regions to provide English as a second language, cultural orientation, and work orientation training for refugees who have been approved for admission to the United States before their departure for the United States. Under the introduced version of the bill, the Secretary would have been required to ensure that nongovernmental organizations with direct ties to the United States refugee resettlement program are utilized in such training programs; ensure that training programs occur within current processing times and do not unduly delay the departure for the United States of refugees who have been approved for admission to the United States; and implement the programs in at least one region by one year after the date of enactment and in each of the five processing regions by two years after the date of enactment. Finally, the introduced version of Section 234 would have provided that nothing in the Section should be construed to require that a refugee participate in such a training program as a precondition for the admission to the United States of such refugee.

The Manager's Amendment modified this provision to turn it into a pilot program, strike the term "formal training program" and replace it with "training program", require that the Government Accountability Office (GAO) conduct an assessment of the training programs required by the Section, , and softened the provision that would have required that of NGOs with direct ties to the United States refugee resettlement program are utilized in such training programs.

The Committee agreed to the Manager's Amendment by a voice vote.

- REPUBLICAN SUBSTITUTE.—House Foreign Affairs Committee Ranking Republican Ileana Ros-Lehtinen (R-FL) offered a Republican Substitute to H.R. 2410 that would have stripped many of the refugee reform provisions from the measure.

The Committee rejected the Manager's Amendment by a voice vote.

Views of the Advocacy Community. The pro-refugee advocacy community has expressed strong support for Sections 104, 233, 234, and 235 of H.R. 2410. However, the community has indicated the need for a higher authorization level for the MRA account and for the inclusion of additional reforms to the refugee admissions process.

More specifically—

- Authorization Amount. The pro-refugee advocacy community has estimated the need for an authorization level of about \$1.9 BILLION for the MRA account if the United States admits 80,000 refugees in fiscal year 2010. It has estimated that should the Administration admit 125,000 refugees in fiscal year 2010, which is the number it advocates for, the level of appropriations needed for the MRA account would be \$2.05 BILLION.
- Additional Reforms to the Refugee Program. The pro-refugee advocacy community supports including several additional reforms to the refugee admissions and resettlement process.
 1. Reforms to the Reception and Placement Grant Program. The pro-refugee advocacy community supports including a provision in the bill that would make reforms to the Reception and Placement (R&P) grant, a grant program administered by the Bureau of Population, Refugees and Migration of the Department of State's of Population, Refugees, and Migration Bureau (PRM). The program provides grants to resettlement agencies for the reception of refugees arriving in the United States and for their initial resettlement needs. The grant currently is set at \$900 per refugee. It is disbursed upon the refugee's arrival in the United States.

The pro-refugee advocacy community is seeking a provision in the bill that would require the Department of State to increase the R&P grant to at least \$1,800, reform the way it is disbursed, and mandate that it be adjust annually to keep pace with inflation and the cost of living. Such a provision would improve the functionality and effectiveness of the entire U.S. refugee program.

2. Reforms to Grant Programs Administered by the Department of Health and Human Services. Reforms that the pro-refugee advocacy community wants made to programs administered by the Department of Health and Human Services Office of Refugee Resettlement (ORR) constitute a far heavier lift for the community. That is because while programs administered by PRM are arguably relevant to the House Committee on Foreign Affairs' jurisdiction, programs administered by ORR clearly are not under the Committee's purview.

Among the additional programs that the pro-refugee advocacy community would like to see addressed in H.R. 2410 are the Refugee Matching Grant program, the utilization of which it would like to see increased. The community also would like Congress to establish several new grant programs, including programs that would implement case management services for refugees, help refugees in their integration into American life, and an emergency fund to help refugees and communities cope with unforeseen refugee resettlement needs and crises.

Views of the Administration. At the time of this writing, the only official views on H.R. 2346 that the Administration Obama Administration has expressed were expressed by the Department of State. In those views, the Department expressed support for all of the provisions in sections 233, 234, and 235 with the following exceptions:

- Early Consultation Meeting. The Department of State has indicated its strong opposition to Section 233(b)(2), which would require that the annual consultation meeting take place by June 1 of each year.

The Department has indicated its belief that the date in the bill is unrealistic given the competing demands on the time of the Secretary of State and the leadership of the House and Senate Judiciary committees. It has suggested that the phrase, "Whenever possible" be added.

- ESL, Work and Cultural Orientation Training. The Department of State has indicated its strong opposition to Section 234, which would require that the Department establish training English as a Second Language, work orientation, and cultural orientation programs for approved refugees prior to their departure for the United States.

The Department has indicated that its opposition is based on years of experience with extended overseas training programs, primarily in Southeast Asia. The Department says that those programs were found to be costly and ineffective in developing language or other skills and had little impact on refugees' need for these same services once resettled in the U.S. The Department has suggested

that taxpayer money would be better spent on these programs in the U.S. where they can be tailored and are directly relevant to what individual refugee needs are. Moreover, the Department asserts that interested refugees often study English informally or through non-USG funded programs while still overseas.

- Iraqi Refugees and Internally Displaced Persons. The Department of State has indicated its strong opposition to Section 235, which would establish a number of requirements relative to the Department of State's treatment of Iraqi refugees and internally displaced persons.

The Department has expressed broad concerns about nearly every aspect of Section 235. It has expressed particular concern about Section 235(d), which it interprets as requiring the U.S. to fund not less than 50 percent of UNHCR and other international organizations' appeals. It also expressed particular concern about 235(c), which it says is inappropriate in that it would single out one nationality for a special resettlement process. It also raised Constitutional concerns about language in the Section requiring the Department to negotiate or otherwise engage with foreign governments or international organizations.

The Administration is expected to weigh in more formally and more comprehensively as H.R. 2410 proceeds to the House floor.

Next Steps. Now that the House Committee on Foreign Affairs has ordered that H.R. 2410 be reported to the full House of Representatives, the next step in the legislative process is for the Committee to formally report the measure to the House and the full House to take up the measure. Both of those events are expected to occur in June after Congress returns from its week-long Memorial Day recess. ☼

Last Week's Floor Actions

Congress took one floor action last week on measures or matters containing significant immigration- or refugee-related provisions or having significant consequences for immigration- or refugee-related policy.

- Fiscal Year 2009 War Supplemental. The full Senate passed its version of the fiscal year 2009 war supplemental appropriations bill, readying the measure for action in a House-Senate conference committee.

Senate Passes FY '09 War Supplemental Appropriations Bill: The Senate last week passed its version of a fiscal year 2009 supplemental appropriations bill to fund the ongoing war efforts in Iraq and Afghanistan. Last week's Senate floor action occurred in connection with the [Senate-passed version of H.R. 2346](#), the Supplemental

Appropriations Act, 2009.⁶⁰³ The Senate passed the measure on Thursday, May 21, 2009, by a vote of 86-3.⁶⁰⁴

As approved by the Senate, the Senate-passed version of H.R. 2346 would appropriate \$91.3 BILLION in supplemental fiscal year 2009 funds, including \$345 MILLION in Migration and Refugee Assistance, \$82 MILLION for the Office of Refugee Resettlement for the care and placement of unaccompanied alien children; \$245 MILLION in International Disaster Assistance (IDA), and \$50 MILLION in Economic Support Fund funding for internally displaced persons (IPDs) in Pakistan.

Legislative History. President Barack Obama submitted an \$83.4 BILLION request for supplemental fiscal year 2009 funding for the wars in Iraq and Afghanistan on April 9, 2009.⁶⁰⁵ He amended his request on April 28, 2009, to request an additional \$1.5 BILLION in connection with the swine flu outbreak⁶⁰⁶, bringing his total supplemental appropriations request to \$84.9 BILLION.

The House Committee on Appropriations held a markup session on May 12, 2009, ordering the [House Appropriations Committee-approved version of H.R. 2346](#) reported to the full House of Representatives by a voice vote.

The full House took up H.R. 2346 on Thursday, May 14, 2009, approving the [House-passed version of H.R. 2346](#) by a vote of 368-60.⁶⁰⁷

The Senate Committee on Appropriations held a markup session on Thursday, May 14, 2009, ordering [Senate Appropriations Committee-approved version of S. 1054](#) reported to the full Senate by a vote of 30-0.⁶⁰⁸

Summary of Immigration- and Refugee-Related Provisions. As approved by the Senate, the Senate-passed version of the fiscal year 2009 war supplemental

⁶⁰³ [S. Rept. 111-20](#), May 14, 2009

⁶⁰⁴ [Senate Roll Call No. 202](#), May 21, 2009

⁶⁰⁵ [Click Here](#) to see the April 8, 2009, letter from President Barack Obama to Speaker of the House Nancy Pelosi (D-CA) in which he formally requested that Congress appropriate \$83.4 BILLION in supplemental fiscal year 2009 funds for the wars in Iraq and Afghanistan

⁶⁰⁶ [Click Here](#) to see the April 28, 2009, letter from President Barack Obama to Speaker of the House Nancy Pelosi (D-CA) in which he increased the Administration's fiscal year 2009 supplemental appropriations request by \$1.5 BILLION in order to deal with an outbreak of swine flu in the United States

⁶⁰⁷ [House Roll Call No. 265](#), May 14, 2009

⁶⁰⁸ [S. Rept. 111-20](#), May 14, 2009

appropriations bill contains the following immigration- and refugee-related provisions:

- **Overseas Refugee Assistance and Refugee Resettlement.** The Senate-passed version of H.R. 2346 would appropriate \$345 MILLION for the Department of State's Migration and Refugee Assistance (MRA) account. The Senate Appropriations Committee report accompanying the measure directs that the supplemental MRA funds be used "for the assistance and resettlement needs of refugees and internally displaced persons [IDPs]." The report, further, directs that "[o]f this amount, the Committee recommends \$25,000,000 for returning refugees and IDPs in Afghanistan, \$25,000,000 for such needs in Africa, \$5,000,000 for refugees from Burma, \$15,000,000 for IDPs in Sri Lanka, and \$5,000,000 for IDPs in Colombia."

The House-passed version of H.R. 2346 would appropriate \$343 MILLION for Migration and Refugee Assistance (MRA), to remain available until expended.

The report accompanying H.R. 2346 indicates that the funds provided "are necessary to respond to urgent humanitarian requirements to assist refugees and internally displaced persons in Iraq, Jordan, Syria, the West Bank and Gaza, Lebanon, Afghanistan, Pakistan, Africa, and Burmese refugees Asia." The report went on to state that funds "also will help respond to urgent food pipeline breaks in refugee feeding operations, particularly in Africa." Unlike the Senate committee report, the House committee report did not specify that any of the funds be used for refugee resettlement.

- **Funding for the Office of Refugee Resettlement.** The Senate-passed version of H.R. 2346 would appropriate \$82 MILLION in Refugee and Entrant Assistance for the Office of Refugee Resettlement. The committee report accompanying the measure directs that the funds be used "for the care and custody of unaccompanied alien children. These funds will allow the Office of Refugee Resettlement [ORR] to implement the provisions of Public Law 110-457, the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008." The Committee report noted that "[t]he President requested these funds in the Department of Defense along with language providing transfer authority to other Federal agencies."⁶⁰⁹

The House-passed version of H.R. 2346 did not contain a comparable provision. However, the House-passed bill would give the Department of Defense to transfer up to \$100 MILLION for that purpose.

⁶⁰⁹ [S. Rept. 111-20](#), Page 69

- ESF Funds for Refugees and Internally Displaced Persons. The Senate-passed version of H.R. 2346 would appropriate \$2.828 BILLION for Economic Support Fund (ESF) funding. This would be \$76.5 MILLION below the Administration's request and \$247 MILLION below the amount in the House-passed bill.

The Senate Appropriations Committee report accompanying the Senate version of the measure contains a number of directives relating to the use of ESF funds for refugees and internally displaced persons. Among these are the following:

1. Jordan. The Committee report accompanying the Senate Appropriations Committee version of the measure recommends \$150 MILLION in Economic Support Fund (ESF) funding for Jordan. The report directs that the funds be used "to help mitigate the impact of the global economic crisis, including for health, education, water and sanitation, and other assistance for Iraqi and other refugees in Jordan, and are in addition to funds otherwise made available for assistance for Jordan in other acts."⁶¹⁰
2. Columbia. The Senate version of the measure would require that \$3.5 MILLION of ESF funds that are intended for Columbia be transferred to the Department of State's Migration and Refugee Assistance (MRA) account and may be made available "only for assistance to nongovernmental organizations that provide emergency relief aid to Colombian refugees in neighboring countries."⁶¹¹

There was no comparable language in the House committee report.

3. Pakistan. The Committee report accompanying the Senate Appropriations Committee-approved version of the measure would provide \$50 MILLION "for humanitarian assistance for internally displaced persons whose numbers have increased sharply in recent months due to the Taliban's advances."⁶¹²

The report accompanying the House-passed version of H.R. 2346 would set aside "\$8 MILLION for humanitarian assistance for internally displaced populations (IDPs) escaping violence particularly in the Federally Administered Tribal Areas and the North-West Frontier Province of Pakistan."⁶¹³

⁶¹⁰ [S. Rept. 111-20](#), Page 87

⁶¹¹ [S. Rept. 111-20](#), Page 126

⁶¹² [S. Rept. 111-20](#), Page 87

⁶¹³ Page 84 of the Supplemental appropriations request

The committee report accompanying the House-passed version of H.R. 2346 contains language that is not included in the Senate committee report directing the Administration to use ESF funds for other refugee or IDP populations. These House mandates that are not found in the Senate bill include directives to spend \$3 MILLION for Burmese refugees, migrants in Thailand, and internally displaced persons; use ESF funds to assist Iraqi Christians, religious minorities in Iraq, and other displaced and refugee populations in Iraq; use ESF funds to assist and refugees on the West Bank and Gaza; and provide funds for IDPs in Georgia.

- International Disaster Assistance. The Senate-passed version of H.R. 2346 would appropriate \$245 MILLION for International Disaster Assistance (IDA), which is \$45 MILLION more than was requested by the Administration and contained in the House-passed version of H.R. 2346. The Committee report accompanying the Senate bill directs that the funds are to be used "to meet basic needs of internally displaced persons in Africa, the Middle East, and South and Central Asia, and to respond to other humanitarian crises."⁶¹⁴

The House-passed measure would appropriate \$200 MILLION for International Disaster Assistance (IDA), the same amount requested by the Administration.

The committee report accompanying H.R. 2346 indicates that the funds "are needed to respond to increased insecurity, armed conflict, and weather complications in Africa, including Somalia, Ethiopia, the Democratic Republic of the Congo, and Zimbabwe." The report went on to state that funds "also will help address growing needs in the Middle East, and Central and South Asia, particularly Pakistan, Tajikistan, and Kyrgyzstan."

According to materials prepared by the Administration at the time that it submitted its supplemental appropriations request to Congress, a portion of the funds it requested for IDA would be used to "help to address increases in internally displaced persons in Pakistan."⁶¹⁵

Floor Consideration and Amendments. The Senate took up its version of H.R. 2346 beginning on Tuesday, May 21, 2009, and completed consideration of the measure late in the evening on Thursday, May 21, 2009.

While several amendments to increase funding for refugee resettlement or to otherwise make funding in the bill available for refugee resettlement were drafted and filed, in

⁶¹⁴ [S. Rept. 111-20](#), Page 82

⁶¹⁵ Page 91 of the Supplemental appropriations request

the end, no such amendments were offered to H.R. 2346 on the Senate floor.

With regard to immigration, Senator Saxby Chambliss (R-GA) offered an amendment that sought “to protect the national security of the United States by limiting the immigration rights of individuals detained by the Department of Defense at Guantanamo Bay Naval Base.” The Senate never voted on the amendment.

The following summarizes the immigration- and refugee-related amendments that were offered to H.R. 2346 during the full Senate’s consideration of the measure:

- **CHAMBLISS GUANTANAMO DETAINEES AMENDMENT.**—Senator Saxby Chambliss (R-GA) offered an amendment that would have prohibited the United States from admitting individuals detained by the Department of Defense at Guantanamo Bay Naval Base. As introduced, S. 1071 would prohibit the United States from paroling into the United States any alien who was held at the Guantanamo Naval Base on January 1, 2009. The amendment also would have made Guantanamo detainees ineligible for asylum, bond. It would have made Guantanamo detainees subject to mandatory detention. And it would have provided the Secretary of Homeland Security the authority to detain an alien after the expiration of the removal period if no country is willing to accept the alien.⁶¹⁶

The Chambliss amendment was ruled nongermane.

Next Steps. Now that the Senate has passed its version of H.R. 2346, the next step is for a conference committee to be convened to resolve differences between the House- and Senate-passed versions of the measure. A conference committee is expected to be convened next week. ☀

Senate Approves de Baca Trafficking Nomination:

The full Senate has approved the nomination of Luis C. de Baca to be Ambassador-at-Large to Monitor and Combat Trafficking in Persons at the State Department. The Senate Committee on Foreign Relations approved the de Baca nomination on Tuesday, May 5, 2009, by a voice vote. The full Senate approved the nomination one day later, on May 6, 2009, by unanimous consent. The Senate Foreign Relations Subcommittee on African Affairs had held a hearing on the de Baca nomination on Wednesday, April 29, 2009.⁶¹⁷ ☀

⁶¹⁶ See Pages 554-555 of this week’s edition of the Weekly Legislative Update for the text of the Chambliss Amendment

⁶¹⁷ See Pages 476-477 of the May 11, 2009, edition of the Weekly Legislative Update to see a write up on the Senate Committee on Foreign Relations Committee markup during which it approved the nomination of Luis C. de Baca to be Ambassador-at-Large to Monitor and Combat Trafficking. See Pages 420-424 of May 4, 2009, edition of the Weekly Legislative Update for detail on the

Last Week’s Conference Committee Actions

Only one measure containing significant immigration- or refugee-related provisions is currently in conference:

- **Fiscal Year 2009 War Supplemental.** The House and Senate have passed their respective versions of H.R. 2346, the Fiscal Year 2009 War Supplemental Appropriations bill, which contains a number of refugee-related provisions.

Conference Committee Action Deferred on FY ’09 War Supplemental Appropriations Bill:

President Barack Obama had challenged Congress to clear a fiscal year 2009 war supplemental for his signature before it left Washington for its Memorial Day recess. However, with the Senate not completing action until late in the evening on Thursday, May 21, 2009, there was not time last week for a conference committee to meet.

The House of Representatives completed action on the [House-passed version of H.R. 2346](#)⁶¹⁸ on Thursday, May 14, 2009, passing it by a vote of 368-60.⁶¹⁹ The Senate completed action on the [Senate-passed version of H.R. 2346](#) on Thursday, May 21, 2009, passing it by a vote of 86-3.⁶²⁰

The Senate is expected to pass its [S. 1054](#),⁶²¹ its version of the supplemental appropriations bill, sometime this week.

Both the House-passed and the Senate Appropriations-approved versions of the fiscal year 2009 war supplemental appropriations bill contain provisions appropriating supplemental fiscal year 2009 funds for the Department of State’s Migration and Refugee Assistance (MRA) account, as well as for Internally Displaced Persons (IDPs) in the Middle East, South Asia, and elsewhere.

Outlook. The timing of conference committee deliberations was not yet known. Congress is expected, however, to complete conference committee deliberations during the first week after it returns from its Memorial Day recess. ◇

Senate Foreign Relations Committee hearing on the de Baca nomination. See pages 394-395 of the April 27, 2009, edition of the Weekly Legislative Update for a detailed analysis of Mr. de Baca’s record on trafficking. [Click Here](#) to see the White House press release announcing the President’s nomination of Luis de Baca to be Ambassador-at-Large to Monitor and Combat Trafficking in Persons.

⁶¹⁸ [H. Rept. 111-105](#), May 12, 2009

⁶¹⁹ [House Roll Call No. 265](#), May 14, 2009

⁶²⁰ [Senate Roll Call No. 202](#), May 21, 2009

⁶²¹ [S. Rept. 111-20](#), May 14, 2009

Last Week's Executive Activity

U.S. to Expand Immigration Checks at Local Jails:

The Obama Administration last week indicated it would expand the use of the Secure Communities program, which is a program started by the administration of President George W. Bush that checks the immigration status of persons booked into local jails. The Obama Administration reportedly intends to expand the program to nearly all local jails by 2012. The Washington Post last week reported that the administration of Bush Administration started the program in October of 2008 and that currently it operates in 48 counties. It further reports that the Obama Administration's planned expansion of the program could result in a ten-fold increase in the number of criminal aliens identified for deportation.

The Obama Administration asked Congress for \$200 MILLION for the Secure Communities program in fiscal year 2010. This would represent an increase of 30 percent relative to expected spending on the program in fiscal year 2009. ◇

Recently Introduced Legislation

The following bills containing significant immigration- or refugee-related provisions were introduced last week:

House

Employment-Based Immigration System

- **Emergency Nursing Supply Relief Act:** Representative Robert Wexler (D-FL) has introduced H.R. 2536, a bill to provide relief for the shortage of nurses in the United States, and for other purposes.

As introduced, [H.R. 2536](#) would amend the American Competitiveness in the Twenty-first Century Act of 2000 to temporarily lift the numerical limitations for employment based immigrants (and accompanying family members) for nurses and physical therapists, subject to a cap. More specifically, the measure would amend the Immigration and Nationality Act to:

1. direct the Secretary to allow an eligible alien (and spouse or child) to reside in a candidate country (defined to include a lower middle income country or one experiencing a natural disaster) during the period the alien is working there as a health care worker; and
2. make inadmissible an alien seeking entry into the United States to perform labor as a health care worker unless the alien attests that he or she does not have an outstanding obligation to the alien's government or country of residence, subject to a waiver.

H.R. 2536 has been referred to the House Committee on the Judiciary and House Committee on Energy and Commerce.

Legalization

- **Agricultural Job Opportunities, Benefits, and Security Act of 2009 or AgJOBS Act:** Representative Howard L. Berman (D-CA) has introduced [H.R. 2414](#), a bill to improve agricultural job opportunities, benefits, and security for aliens in the United States.

As introduced, H.R. 2414 would ease seasonal agricultural growers' access to the H-2A nonimmigrant agricultural guest worker program, increase some of the labor protections that currently are afforded to vulnerable migrant farm workers, and provide an opportunity for many undocumented agricultural workers to adjust to permanent resident status after completing future agricultural work requirements.

It has been referred to the House Committee on the Judiciary.

Senate

Criminal Aliens

- **Protecting America's Communities Act:** Senator Saxby Chambliss (R-GA) has introduced S. 1071, a bill to protect the national security of the United States by limiting the immigration rights of individuals detained by the Department of Defense at Guantanamo Bay Naval Base.

As introduced, [S. 1071](#) would prohibit the United States from paroling into the United States any alien who was held at the Guantanamo Naval Base on January 1, 2009. The measure also would make Guantanamo detainees ineligible for asylum, bond. It would make Guantanamo detainees subject to mandatory detention. And it would provide the Secretary of Homeland Security the authority to detain an alien after the expiration of the removal period if no country is willing to accept the alien.

It has been referred to the Senate Committee on the Judiciary.

- **Prohibit the Release of Enemy Combatants into the United States:** Senator Lindsey Graham (R-SC) has introduced [S. 1081](#), a bill to prohibit the release of enemy combatants into the United States.

As introduced, S. 1081 would prohibit the release of enemy combatants into the United States.

It has been referred to the Senate Committee on the Judiciary.

Family-Based Immigration System

- **Reuniting Families Act:** Senator Robert Menendez (D-NJ) has introduced [S. 1085](#), a bill to amend the Immigration and Nationality Act to promote family unity, and for other purposes.

As introduced, [S. 1085](#) would make a number of changes to immigration law to make it easier for United States permanent residents to reunite with close family members who are still living abroad. More specifically, the measure would classify spouses and children under the age of 21 of lawful permanent residents as immediate relatives, making their admission outside of numerical limits; increase per-country ceilings from 7 percent to 10 percent of total admissions; permit widows, widowers and orphans whose sponsoring relatives dies while their visas are pending to receive the visa, notwithstanding the death of their sponsoring relative; recapture family-based visas that were lost between 1992 and 2007 because of processing delays and inefficiencies; reduce Filipino World War II veterans' children's waiting times for an immigrant visa; reduce backlogs in family preference visas; and provide equal treatment for stepchildren and biological children by allowing stepchildren under the age of 21 to immigrate upon their parents' marriage (current age limit is 18).

It has been referred to the Senate Committee on the Judiciary.

Legalization

- **Agricultural Job Opportunities, Benefits, and Security Act of 2009 or AgJOBS Act:** Senator Dianne Feinstein (D-CA) has introduced S. 1038, a bill to improve agricultural job opportunities, benefits, and security for aliens in the United States.

As introduced, [S. 1038](#) would ease seasonal agricultural growers' access to the H-2A nonimmigrant agricultural guest worker program, increase some of the labor protections that currently are afforded to vulnerable migrant farm workers, and provide an opportunity for many undocumented agricultural workers to adjust to permanent resident status after completing future agricultural work requirements.

It has been referred to the Senate Committee on the Judiciary. ◇

Bills in Development

The following is a listing of immigration- or refugee-related bills that are currently under development and that could soon be introduced in the Senate or House of Representatives. Items that were added or that have substantially changed since the previous edition of the Weekly Legislative Update was issued are marked with a double asterisk (**).

House

Foreign Assistance Reform: House Foreign Affairs Committee Chairman Howard L. Berman (D-CA) is reportedly working on a much slimmed down version of a foreign assistance reform bill that he may introduce in the House of Representatives as early as this week. According to Congressional Quarterly (CQ), Chairman Berman has set aside for the moment plans to introduce a comprehensive re-write of the Foreign Assistance Act of 1961, as it has been amended over the years. CQ reports that, instead, he will introduce legislation as soon as this week that would direct the Obama administration to create a global development strategy. The CQ report says that the Chairman will introduce a more complete re-write of the Foreign Assistance Act later this year.

Secure American through Verification and Enforcement Act: Representative Heath Shuler (D-NC) is planning to introduce a new version of [H.R. 4088](#), the "Secure America Through Verification and Enforcement Act of 2007" or "SAVE Act", which he introduced in the 110th Congress. The measure was strongly supported during the 110th Congress by the immigration restrictionist advocacy community and vociferously opposed by the pro-immigrant advocacy community. It generated 157 House cosponsors and was the object of a discharge petition that secured 190 signatures.⁶²²

Family-Based Immigration Backlogs:

Representative Mike Honda (D-CA) is working on legislation that would re-order the family preference immigration system and eliminate backlogs in family preference visas. The bill is reportedly based on [H.R. 6638](#), the "Reuniting Families Act", which he introduced in the 110th Congress. Reports indicate that Representative Honda is nearing the final stages of production on the bill and could introduced it soon.

Senate

REAL ID Act Mitigation Bill: A bipartisan group of senators is reportedly working on legislation that would repeal some of the mandates on states contained in the REAL

⁶²² See Pages 409-410 of the April 27, 2009, edition of the Weekly Legislative Update for a more detailed description of the immigration-related provisions in the 110th Congress' H.R. 4088

ID Act and replace them with a set of provisions that governors and state legislators would find less onerous.

The measure has a working title of “Providing for Additional Security in States’ Identification Act of 2009” or PASS ID Act. It reportedly is being negotiated between a number of governors and Secretary of Homeland Security Janet Napolitano. Reports indicate that the plan is for the bill to be introduced during the week of May 22, 2009, during the National Conference of State Legislators (NCLR) spring meeting in Washington, DC.

Secure and Safe Detention and Asylum Act: Senate Homeland Security and Governmental Affairs Committee Chairman Joseph Lieberman (I-CT) is planning to introduce a new version of [S. 3114](#), the “Secure and Safe Detention and Asylum Act”, which he introduced in the 110th Congress.⁶²³

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Over the Horizon ...

The following is a listing of several immigration- or refugee-related items that have either not yet been scheduled for action in Congress or on which it is anticipated that some Congressional will occur within the next several weeks.

Items added to this listing since the previous edition of the Weekly Legislative Update and items on the listing which have substantially changed since the last Weekly Legislative Update was issued are marked with a double asterisk (**).

Executive Branch

****President Schedules June Meeting with Members and Senators on Comprehensive Immigration Reform:** President Barack Obama will meet with Members and Senators on comprehensive immigration reform in early June. The meeting attendees will consist of Members and Senators from both parties and on both sides of the comprehensive immigration reform issue. It has been scheduled for Monday, June 8, 2009, at the White House.

House

****Full House to Take Up State Department Authorization Bill Containing Significant Refugee Reforms:** The full House is likely to take up [H.R. 2410](#), the Foreign Relations Authorization Bill for Fiscal Years 2010 and 2011 sometime in June. The measure was introduced by House Foreign Affairs Committee Chairman Howard L. Berman (D-CA) on Thursday, May 14, 2009. The Committee approved an amended version of the measure on

May 20, 2009, ordering that it be reported to the full House of Representatives.

As approved by the Committee, the measure contains numerous refugee-related provisions. Among them are those that would authorize \$1.557 BILLION for the Department of State’s Migration and Refugee Assistance (MRA) account; make a number of reforms to the refugee admissions program and process; provide for English instruction, cultural orientation, and work orientation for approved refugees prior to their departure for the United States; and direct the Department to State to take steps to assist refugees from and Internally Displaced persons within Iraq.

Senate

****Confirmation Hearings Yet to Be Scheduled for Several Key Immigration- and Refugee-related nominees:** Two nominees for key immigration- or refugee-related positions in the Obama Administration are pending in their respective committees:

- Bureau of Population, Refugees, and Migration. On April 23, 2009, President Obama announced his intention to nominate Eric P. Schwartz to be Assistant Secretary of State for Population, Refugees, and Migration (PRM). The Department of State’s Bureau of Populations, Refugees, and Migration administers nation’s refugee admissions and overseas refugee assistance programs.

According to materials released by the White House, at the time he was nominated to head PRM, Mr. Schwartz was Executive Director of the Connect U.S. Fund, a foundation/NGO initiative focused on foreign and international affairs, and Visiting Lecturer of Public and International Affairs at the Woodrow Wilson School at Princeton University.

Assistant Secretary-Designate Schwartz’s nomination will be handled by the Senate Committee on Foreign Relations. No official word has been released concerning the timing of the confirmation process for his nomination.

- U.S. Citizenship and Immigration Services. On April 24, 2009, President Obama announced his intention to nominate Alejandro Mayorkas, a Cuban-born trial lawyer, to be the new Director of the Department of Homeland Security’s U.S. Citizenship and Immigration Services (USCIS) bureau. [The United States Citizenship and Immigration Services](#) (USCIS) component of the Department of Homeland Security is responsible for adjudicating requests for immigration benefits, including applications for naturalization, applications for refugee status, and affirmative applications asylum.

According to materials released by the White House, Mayorkas is currently a partner at the law firm of O’Melveny and Myers. He previously served as the

⁶²³ See Page 410 of the April 27, 2009, edition of the Weekly Legislative Update for a more detailed description of the immigration-related provisions in the 110th Congress’ S. 3114

United States Attorney for the Central District of California.

Mr. Mayorkas' nomination will be handled by the Senate Committee on the Judiciary. No official word has been released concerning the timing of the confirmation process for his nomination. ◇

Next Week's Edition ...

Look for the following articles in the next edition of the Weekly Legislative Update:

- Fiscal Year 2009 War Supplemental. Next week's Weekly Legislative Update will preview conference committee action on the fiscal year 2009 war supplemental.
- Expiring Visa and E-Verify Programs. Next week's Weekly Legislative Update will preview expected House floor action on a bill to extend the Special Immigrant Nonminister Religious Worker Visa, the EB-5 Investor Visa Regional Center, the Conrad 30 Medically Underserved Area Physician Doctor Program, and the E-Verify Program.
- State Department Authorization Bill. Next week's Weekly Legislative Update will preview House floor action that could occur next week on H.R. 2410, the State Department Authorization bill, which contains a number of reforms to the refugee admissions process. ◇

Appendix

Text of Chambliss Guantanamo Detainee Amendment

On page 7, line 25, strike the period at the end and insert ``and, in order for the Department of Justice to carry out the responsibilities required by Executive Orders 13491, 13492, and 13493, it is necessary to enact the amendments made by section 203.

SEC. 203. IMMIGRATION LIMITATIONS FOR GUANTANAMO BAY NAVAL BASE DETAINEES.

(a) Short Title.--This section may be cited as the ``Protecting America's Communities Act''.

(b) Ineligibility for Admission or Parole.--Section 212 of the Immigration and Nationality Act (8 U.S.C. 1182) is amended--

(1) in subsection (a)(3), by adding at the end the following:

``(G) GUANTANAMO BAY DETAINEES.--An alien who, as of January 1, 2009, was being detained by the Department of Defense at Guantanamo Bay Naval Base, is inadmissible.''; and

(2) in subsection (d)--

(A) in paragraph (1), by inserting ``or (5)(B)''; and

(B) in paragraph (5)(B), by adding at the end the following: ``The Attorney General may not parole any alien who, as of January 1, 2009, was being detained by the Department of Defense at Guantanamo Bay Naval Base.''

(c) Detention Authority.--Section 241(a) of the Immigration and Nationality Act (8 U.S.C. 1231(a)) is amended--

(1) by striking ``Attorney General'' each place it appears, except for the first reference in paragraph (4)(B)(i), and inserting ``Secretary of Homeland Security''; and

(2) by adding at the end the following:

``(8) GUANTANAMO BAY DETAINEES.--

``(A) CERTIFICATION REQUIREMENT.--An alien ordered removed who, as of January 1, 2009, was being detained by the Department of Defense at Guantanamo Bay Naval Base, shall be detained for an additional 6 months beyond the removal period (including any extension under paragraph (1)(C)) if the Secretary of Homeland Security certifies that--

``(i) the alien cannot be removed due to the refusal of all countries designated by the alien or under this section to receive the alien; and

``(ii) the Secretary is making reasonable efforts to find alternative means for removing the alien.

``(B) RENEWAL AND DELEGATION OF CERTIFICATION.--

``(i) RENEWAL.--The Secretary may renew a certification under subparagraph (A) without limitation after providing the alien with an opportunity to--

``(I) request reconsideration of the certification; and

``(II) submit documents or other evidence in support of the reconsideration request.

``(ii) DELEGATION.--Notwithstanding section 103, the Secretary may not delegate the authority to make or renew a certification under this paragraph to an official below the level of the Assistant Secretary for Immigration and Customs Enforcement.

“(C) INELIGIBILITY FOR BOND OR PAROLE.--No immigration judge or official of United States Immigration and Customs Enforcement may release from detention on bond or parole any alien described in subparagraph (A).”.

(d) Asylum Ineligibility.--Section 208(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1158(a)(2)) is amended by adding at the end the following:

“(E) GUANTANAMO BAY DETAINEES.--Paragraph (1) shall not apply to any alien who, as of January 1, 2009, was being detained by the Department of Defense at Guantanamo Bay Naval Base.”.

(e) Mandatory Detention of Aliens From Guantanamo Bay Naval Base.--Section 236(c)(1) of the Immigration and Nationality Act (8 U.S.C. 1226(c)(1)) is amended--

(1) in each of subparagraphs (A) and (B), by striking the comma at the end and inserting a semicolon;

(2) in subparagraph (C), by striking “, or” and inserting a semicolon;

(3) in subparagraph (D), by striking the comma at the end and inserting “; or”; and

(4) by inserting after subparagraph (D) the following:

“(A) as of January 1, 2009, was being detained by the Department of Defense at Guantanamo Bay Naval Base.”.

(f) Statement of Authority.--

(1) IN GENERAL.--Congress reaffirms that--

(A) the United States is in an armed conflict with al Qaeda, the Taliban, and associated forces; and

(B) the entities referred to in subparagraph (A) continue to pose a threat to the United States and its citizens, both domestically and abroad.

(2) AUTHORITY.--Congress reaffirms that the President is authorized to detain enemy combatants in connection with the continuing armed conflict with al Qaeda, the Taliban, and associated forces until the termination of such conflict, regardless of the place at which they are captured.

(3) RULE OF CONSTRUCTION.--The authority described in this subsection may not be construed to alter or limit the authority of the President under the Constitution of the United States to detain enemy combatants in the continuing armed conflict with al Qaeda, the Taliban, and associated forces, or in any other armed conflict.



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