



# United States Conference of Catholic Bishops Government Relations

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## Weekly Update on Immigration and Refugee Legislative Matters 111<sup>th</sup> Congress, First Session

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*This week's most important legislative action on immigration- and refugee-related matters takes place outside of committee hearing rooms and off of the House and Senate floors. Among the significant action this week are behind-the-scenes negotiations in the Senate on health care reform, staff-level negotiations on the Fiscal Year 2010 Homeland Security Appropriations Bill, and formal consultations between Secretary of State Hillary Rodham Clinton and the House and Senate Judiciary Committee leadership on refugee admissions for fiscal year 2010. In the meantime, the Federation for American Immigration Reform (FAIR) and the U.S. Catholic Bishops descend on Capitol Hill this week to discuss immigration reform with Members and Senators, and the Congressional Hispanic Caucus Institute holds a conference at which immigration reform is expected to be featured.*

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### This Week's Hearings

At the time of this writing, two hearings were scheduled for this week at which significant immigration- or refugee-related matters could be discussed. One of them is taking place in the House and the other is in the Senate:

- **Hearing on the Secure Border Initiative Program.** A House Homeland Security panel has scheduled a hearing on the Secure Border Initiative program;
- **Oversight of the FBI.** The Senate Committee on the Judiciary has scheduled an oversight hearing on the operations of the FBI; and

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## *This Week's Hearings (continued)*

- **Refugee Admissions Consultations.** The Leadership of the House and Senate Judiciary Committees has scheduled separate meetings with Secretary of State Hillary Rodham Clinton on refugee admissions for fiscal year 2010.

## House

**House Panel to Hold Hearing on the Secure Border Initiative:** The House Homeland Security Subcommittee on Border, Maritime, and Global Counterterrorism has scheduled a hearing for this week on the Secure Border Initiative program. This week's hearing is scheduled to take place on Thursday, September 17, 2009, in Room 311 of the Cannon House Office Building.

**Anticipated Witnesses.** At the time of this writing, the list of witnesses at this week's hearing included the following:

- Chief David Aguilar, U.S. Border Patrol, U.S. Customs and Border Protection;
- Mark Borkowski, Executive Director, Secure Border Initiative, U.S. Customs and Border Protection;
- Roger A. Krone, President, Network and Space Systems, Integrated Defense Systems, The Boeing Company; and
- Richard Stana, Director, Homeland Security and Justice Issues, Government Accountability Office

**Background.** According to the Committee's hearing notice, this week's hearing will examine deployment of "virtual fence" technology after three years of the SBInet program and construction of border fencing under the Department of Homeland Security's Secure Border Initiative. ☀

## Senate

**Senate Judiciary Committee to Hold Oversight Hearing on the FBI:** The Senate Committee on the Judiciary has scheduled an oversight hearing for this week on the operations of the Federal Bureau of Investigation (FBI). This week's hearing is scheduled for Wednesday, September 16, 2009, in Room SD-226 of the Dirksen Senate Office Building.

While it is unlikely that immigration matters will be a big focus of this week's hearing, it is possible that among the many issues explored at the hearing will be the performance of the FBI in conducting timely background checks for persons seeking immigration benefits, including those who are seeking to become citizens or to be admitted to the United States as refugees.

**Anticipated Witnesses.** At the time of this writing, only one witness was scheduled to testify at this week's hearing:

- Robert S. Mueller, III, Director, FBI

**Background.** With regard to immigration, the major issue that is likely to be addressed at this hearing is the FBI's progress in reducing its backlog in clearing names through the [National Name Check Program](#) (NCCP).

For years, there has been a burgeoning backlog in adjudicating immigration benefit applications and petitions, including a large and increasing backlog in the adjudication of naturalization applications. Some attributed a part of the backlog to the inability of the FBI to conduct timely background checks on applicants. Director Mueller is expected to be questioned during this week's hearing about the FBI's performance in conducting background checks for persons seeking immigration benefits.

On March 20, 2009, the Department of Homeland Security's U.S. Citizenship and Immigration Services (USCIS) bureau announced that it had eliminated the backlog for FBI name checks pending more than six months.

In a statement released on March 20, 2009, Mike Aytes, Acting Deputy Director of USCIS, said that it had eliminated that backlog and that, "In doing so, we beat our publicly stated goal by almost two full weeks. With the milestone's completion, the FBI and USCIS have met or exceeded the first six milestones outlined last summer."

Aytes' March 20, 2009, statement went on to say that the Bureau was "on track to meet our May 31 milestone of completing name check requests pending longer than 90 days. By the end of June, the FBI will complete 98-percent of USCIS name check requests within 30 days and process the remaining two percent within 90 days."

Seeking to put his announcement in perspective, Aytes said that, "[a]t the beginning of November 2007, there were nearly

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### *This Week's Hearings (continued)*

350,000 pending name check requests. Of that total, more than 54,000 had been pending for more than two years. Another 55,000 had been pending for at least a year. Today, there's a grand total of 6,756 pending name check requests. And of that number, not one has been pending for more than six months. In fact as of that February 17 snapshot, the FBI was completing 99.2 percent of all requests in less than 30 days." Aytes said that "[t]he results speak for themselves. The U.S. citizenship and permanent residency in a more timely manner."

Senate Judiciary Committee Chairman Patrick Leahy (D-VT) and then-Ranking Republican Arlen Specter (D-PA) wrote about the National Name Check Program in their fiscal year

2009 budget views and estimates letter to the Senate Committee on the Budget. In that letter, the senators noted that the NNCPP receives millions of request for name checks annually and that more than 1.5 million of them are related to immigration cases from the Department of Homeland Security. The letter noted that, as of that date, 10 percent of the name checks can take years to complete, and that the difficulties in resolving the backlog of name checks had had an adverse impact on the timely processing of immigration benefits such as naturalization applications.

**Previous Hearings.** On February 28, 2008, House Judiciary Committee Chairman John Conyers, Jr. (D-MI) and Ranking Republican Lamar Smith (R-TX) sent a similar letter to the House Committee on the Budget. The Conyers/Smith letter expressed concerns about a backlog in FBI name checks requested by USCIS and the impact that the backlog had on the ability of applicants for immigration services to get their cases adjudicated in a timely way. The Committee expressed support for the Administration's request of \$12.4 MILLION in increased USCIS funds for fiscal year 2009 "to continue efforts to reduce the name check backlog at FBI."

On March 11, 2008, Emilio Gonzalez, who was then the Director of the Department of Homeland Security's U.S. Citizenship and Immigration Services (USCIS) bureau, testified before the House Appropriations Subcommittee on Homeland Security about the National Name Check Program. In his testimony, Director Gonzalez acknowledged that the FBI Name Check backlog "has clearly been a significant challenge contributing to processing delays; growing litigation; and, to our ability to deliver both good service and excellent security at the same time." He contended that significant time, personnel, and resources have been committed to fixing this problem. He claimed "significant pr on this issue in terms of our policies, plans, and operations." Among the items he listed as signs of progress are the commitment of \$14.5 MILLION to the FBI to expand their contract workforce, the hiring and training of 200 contractors, and a separate \$20 MILLION spending plan that he said "will

extend and expand this contractor workforce in FY 2008 through most of FY 2009."

Gonzalez said that USCIS and the FBI have "agreed to process improvements which refine the focus to concentrate on information within FBI files which is critical to adjudication decisions and security needs. For those persons with pending adjustment of status applications, such applications will be approved if the individual is otherwise eligible and no actionable derogatory or adverse information has been returned by the FBI within 180 days. Any applications that are approved under this policy will be closely monitored and should any actionable adverse information be returned from the FBI, DHS can immediately initiate removal proceedings." Gonzalez stated that he is confident "that over the next several months we will see dramatic progress in reducing FBI's pending name check request backlog. While we are finalizing performance targets and timelines with the FBI, we expect significant improvements in the processing of name checks by next summer with the increases in personnel and additional monies to FBI. Soon we will have a joint FBI and USCIS schedule to report to the Committee."

Director Mueller came under questioning about the Name Check program by House Judiciary Subcommittee on Immigration Chairwoman Zoe Lofgren (D-CA) at an April 23, 3008, House Judiciary Committee hearing.

During the April 23rd hearing, commented on how the Committee heard recently from the Department of Homeland Security that although in a 90-day period for permanent residence applications, if they don't hear from the FBI, they simply proceed, they are not doing that when it comes to naturalizations. She indicated that she does not argue with that policy but that "there are still many cases where apparently the name check function takes many, many months -- I mean, even years" and she wondered what the FBI was doing about that.

Director Mueller replied that "the problem in the backlog that we had is attributable to -- it goes back to 2002 when, in the wake of September 11th, USCIS resubmitted 2.7 million names which got us behind the eight ball." He said that, "[n]onetheless, in the past, they have completed 70 percent of them within 30 days, but that left the other 40 percent that was taking substantially longer."

Director Mueller asserted at the time that the FBI has taken a number of steps to deal with the problem, including—

- raising fees;
- revising the criteria to eliminate certain categories of records that have to be researched, prioritizing the workload;

- building a central records complex; and
- hiring over 200 contractors to work along with 40 FBI employees.

Director Mueller said that, as a result of its actions, “our expectation is that by July of this year we will have eliminated the backlog beyond two years. And by November of this year, we will have eliminated the backlog beyond one year.” He went on to assert that “by June of next year, 98 percent of the record checks will be done within 30 days.”

Representative Lofgren countered that 46,000 cases have been pending for more than two years. Director Muller indicated he wasn’t sure of that statistic but asserted that those cases would be closed out by June of 2008. Representative Lofgren next asked about the estimated 130,000 cases that have been pending for more than six month. Director Mueller indicated his commitment to having those cases (as well as all cases that are pending for more than a year) cleared by November of 2008.

Representative Lofgren next asked the Director about his plans to computerize the FBI’s records and operations in order to increase efficiency of the Name Check process. Director Mueller explained that many documents in paper files would not be digitized because it would be inefficient to do so. He said that, instead, the Bureau would digitize a file once it is called upon to retrieve it.

Representative Lofgren expressed disappointment with that answer, saying that “if Google can digitize Stanford University’s library in a few months, the FBI should be able to digitize its current records in an equivalent time if it were a priority.”

Director Mueller responded, asserting that “[w]e have prioritized it. It’s really a function of personnel and capability. And for the last five years, we have prioritized and gone throughout our country and digitized as many records as we could, given the personnel. And what will be tremendously important is the records retention facility that we are currently completing.”

Representative Lofgren concluded that “this is a force multiplier. If you digitize these records, you’re going to actually enhance the ability of your agents to perform. And therefore it’s worth an investment to enhance the capability of your entire workforce to be more effective.” She asked if the FBI has conducted a cost-benefit analysis and commented that “it seems to me clear that if you move into the modern age, your agents are going to be optimized in terms of their performance.”

Director Mueller agreed with the basic premise. However, he said that one of the FBI’s highest priority has been terrorism and that the FBI has digitized every counterterrorism, every terrorism file, every terrorism record.”

Ms. Lofgren concluded the exchange by urging the Committee to “get a full report on where we are on the computer system and on digitizing these records, what remains to be done, and, if it’s not a priority, why.” ☼ ◇

## *This Week’s Markups*

At the time of this writing, no markups that have implications for immigration- or refugee-related matters had been officially scheduled for this week in the House or Senate. Notwithstanding the lack of officially scheduled markups, however, the following four immigration-related bills have been approved by the House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law and could be marked up as soon as this week by the full House Committee on the Judiciary:

- [H.R. 3290](#), the "September 11 Family Humanitarian Relief and Patriotism Act of 2009";
- [H.J. Res. 26](#), proclaiming Casimir Pulaski to be an honorary citizen of the United States posthumously;
- [H.R. 42](#), the "Commission on Wartime Relocation and Internment of Latin Americans of Japanese Descent Act; and
- [H.R. 1425](#), the "Wartime Treatment Study Act".

## House

**House Judiciary Committee Could Markup Four Immigration Measures This Week:** While it had not been officially scheduled as of the time of this writing, the full House Committee on the Judiciary could as soon as this week markup four immigration-related bills that were approved prior to the August recess by the House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law. Should the full Committee markup take place, it is likely to occur at 10:00 am on Wednesday, September 16, 2009, in Room 2141 of the Rayburn House Office Building.

The Subcommittee approved the first three measures during markups that occurred on Thursday, July 23, 2009, and Friday, July 24, 2009.<sup>1364</sup> It approved the fourth bill in a markup that occurred on Friday, July 31, 2009.<sup>1365</sup>

<sup>1364</sup> See Pages 849-850 of the [July 27, 2009, edition of the Weekly Legislative Update](#) for an analysis of the immigration-related provisions in H.R. 3290, H.J. Res. 26, H.R. 42, three bills that were approved by the House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law during two days of markup beginning on July 23, 2009

<sup>1365</sup> See Pages 883-884 of the [August 3, 2009, edition of the Weekly Legislative Update](#) for an analysis of the immigration-related

The House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law approved several bills last week during a sometimes contentious markup, readying the measures for consideration by the full Committee on the Judiciary. Last week's Subcommittee action occurred in connection with [H.R. 3290](#), the "September 11 Family Humanitarian Relief and Patriotism Act of 2009"; [H.J. Res. 26](#), a joint resolution proclaiming Casimir Pulaski to be an honorary citizen of the United States posthumously; and [H.R. 42](#), the "Commission on Wartime Relocation and Internment of Latin Americans of Japanese Descent Act". The Subcommittee approved the three measures during two days of markups, beginning on Thursday, July 23, 2009 and continuing on Friday, July 24, 2009.

**Summary of Immigration- and Refugee-Related Appropriations Provisions.** The following summarizes the immigration- or refugee-related provisions of each of the four bills --

- **Honorary Citizenship Bill.** As approved by the House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, H.J. Res. 26 would convey honorary U.S. citizenship on Casimir Pulaski, a Polish citizen who fought on behalf of the United States during the Revolutionary War and died while in combat in 1779. It is a symbolic bill that does not have any impact on the legal status of surviving family or relatives.

The Subcommittee approved H.J. Res. 26 on Thursday, July 23, 2009, by a vote of 10-1.

- **September 11 Survivors Bill.** As approved by the House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, H.R. 3290 would permit aliens who lost a spouse or parent in the Sept. 11, 2001, terrorist attacks on the United States to adjust their status to that of legal permanent resident.

The measure would apply only to the family members of immigrants killed in the attacks who have already been identified as a beneficiary by the Sept. 11 Victims Compensation Fund.

It would require that alien beneficiaries of the measure not be inadmissible for a criminal offense and have satisfied all outstanding federal tax liability before their status can be adjusted.

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*provisions in H.R. 1425, which was approved by the House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law during its July 31, 2009, markup*

The Subcommittee approved H.R. 3290 on Thursday, July 23, 2009, by a vote of 7-5, after a contentious debate, during which Ranking Republican Steve King (R-IA) offered two amendments to the measure, both of which were rejected on party-line votes.

- **Commission on Wartime Relocation and Internment Bill.** As approved by the House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, H.R. 42 would establish a Commission on Wartime Relocation and Internment of Latin Americans of Japanese descent, which would be directed to extend the study of the Commission on Wartime Relocation and Internment of Civilians to investigate U.S. relocation, internment and deportation to Axis countries of Latin Americans of Japanese descent held in U.S. custody from December 1941 through February 1948.

The measure would require the Commission to recommend appropriate remedies to Congress.

The measure would terminate the commission 90 days after submission of its report to Congress.

The Subcommittee approved H.R. 42 on Friday, July 24, 2009, by a vote of 7-2, after a contentious debate, during which Subcommittee Ranking Republican Steve King offered four amendments. Each of the King amendments were rejected on party-line votes.

- **Commission on Wartime Treatment of European Americans and Jewish Refugees.** As approved by the House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, H.R. 1425 would establish two commissions:

1. **The Commission on Wartime Treatment of European Americans** would be charged with reviewing U.S. government wartime treatment of European Americans and European Latin Americans. More specifically, the Commission would be required to review--

- A. government actions with respect to European Americans and European Latin Americans pursuant to United States laws and directives, including the Alien Enemies Acts, Presidential Proclamations 2526, 2527, 2655, 2662, 2685, Executive Orders 9066 and 9095, and related directives pursuant to these and other pertinent laws, proclamations, or executive orders;

- B. registration requirements, travel and property restrictions, internment, and forced abandonment of property;

- C. participation by European Americans in the U.S. Armed Forces; and
- D. appropriate remedies, including public education programs and the creation of a comprehensive online database by the National Archives and Records Administration of documents related to the government's wartime treatment of European Americans and European Latin Americans during World War II.

As amended during the course of the Subcommittee markup, H.R. 1425 would require that the selection of the members of the European American Commission should be made so as to ensure the members can fairly review the facts and discharge the duties of the commission without bias. The measure also was amended during the markup to clarify that the European American Commission should include two members with professional expertise relating to the treatment of Italian-Americans and two members with professional expertise relating to the treatment of German-Americans.

2. **The Commission on Wartime Treatment of Jewish Refugees** would be charged with reviewing the U.S. government's refusal to allow entry into the United States of Jewish and other refugees fleeing persecution or genocide in Europe during World War II. It would direct the Commission to include reviews of--
  - A. the rationale for such refusal, its perceived benefit, and its impact on refugees; and
  - B. federal refugee policy concerning those fleeing persecution or genocide.

As amended during the course of the Subcommittee markup, the measure would require that the membership of the Jewish Refugee Commission should include two members with professional expertise relating to the treatment of Jewish refugees.

The Subcommittee approved H.R. 1425 on Friday, July 31, 2009, by a vote of 9-1, after considering several amendments to the measure.

**Outlook.** The House Committee on the Judiciary is expected to approve all four measures. However, H.R. 3290, H.R. 42, and H.R. 1425 are expected to be the subject of amendments that could prove contentious. ☼

## Senate

At the time of this writing, no bills containing significant immigration- or refugee-related provisions are expected to be the subject of a markup this week in the Senate. ◇

## *This Week's Floor Activity*

At the time of this writing, only one measure containing significant immigration- or refugee-related provisions is likely to see House or Senate floor action this week:

- **Appropriations for the Immigration Courts, Alternatives to Detention, and State Criminal Alien Assistance Program.** The full Senate could take up the Fiscal Year 2010 Commerce, Justice, Science, and Related Agencies Appropriations Bill.

## House

At the time of this writing, no floor actions were scheduled in the House for this week on measures containing significant immigration- or refugee-related provisions.

## Senate

**Senate to Take Up Bill Appropriating FY '10 Funds for the Immigration Court System:** While it had not yet been officially scheduled at the time of this writing, the full Senate could as soon as this week take up the Senate version of the fiscal year 2010 appropriations bill that funds the nation's immigration court system and federal reimbursements to states for the costs they bear in incarcerating criminal aliens. The measure that the Senate expects to take up would significantly increase funding for the Executive Office for Immigration Review (EOIR) and maintain funding for the State Criminal Alien Assistance Program (SCAAP), a program that the Obama Administration sought to terminate. This week's possible Senate action will occur in connection with the [Senate Appropriations Committee-reported version of H.R. 2847](#), the Fiscal Year 2010 Commerce, Justice, Science, and Related Agencies Appropriations Bill.<sup>1366</sup>

**Parliamentary Situation.** At the time of this writing, the parliamentary situation that will govern Senate floor consideration of H.R. 2847 was not yet known.

**Legislative History.** The following is a brief legislative history of H.R. 2847:<sup>1367</sup>

<sup>1366</sup> [S. Rept. 111-34](#), June 25, 2009

<sup>1367</sup> See Pages 603-604 of the [June 8, 2009, edition of the Weekly Legislative Update](#) for a summary of the June 4, 2009, House Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies markup of H.R. 2847

- **House Committee Actions.**

1. On June 4, 2009, the House Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies marked up its version of H.R. 2847, forwarding the measure to the full Committee on Appropriations.
2. On June 9, 2009, the full House Committee on Appropriations held a markup session, ordering that the bill be reported to the full House of Representatives as an original measure.
3. On June 12, 2009, the full House Committee on Appropriations formally reported H.R. 2847 to the House of Representatives.

- **House Floor Actions.**

1. On June 16, 2009, the full House of Representatives took up H.R. 2847, passing it on June 18, 2009, by a vote of 259-157.

- **Senate Committee Actions.**

1. On June 24, 2009, the Senate Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies marked up its version of H.R. 2847, forwarding the measure to the full Committee on Appropriations.
2. On June 25, 2009, the full Senate Committee on Appropriations held a markup session, ordering that the bill be reported to the full Senate as an original measure.
3. On June 25, 2009, the full Senate Committee on Appropriations formally reported its version of H.R. 2847 to the full Senate.

**Summary of Immigration- and Refugee-Related Provisions.** As reported by the Senate Committee on Appropriations, the Senate version of H.R. 2847 contains the following immigration- and refugee-related provisions:

- **Executive Office for Immigration Review.** The Senate Appropriations Committee-reported version of H.R. 2847 would appropriate \$300.685 MILLION for the Department of Justice's Administrative Review and Appeals section. The bulk of those funds are for the

Executive Office for Immigration Review (EOIR). This is the same amount requested by the Administration and approximately \$30.685 MILLION, or 11.2 percent, above the fiscal year 2009 appropriation.

Of the amount that the Senate bill would appropriate for EOIR, \$4 MILLION would be transferred from the Examinations Fee account and the remainder would be directly appropriated.

The committee report accompanying the Senate Appropriations Committee-reported version of H.R. 2847 contains a number of directives with regard to EOIR. They include the following—

1. **Personnel and Infrastructure Increases.** The Committee recommendation includes \$24.253 MILLION for personnel and infrastructure investments needed to efficiently process an increasing immigration adjudication caseload. Of this total, \$10.250 MILLION is for the eWorld document management system to improve EOIR's ability to store, distribute and archive its files.

2. **Legal Orientation Program (LOP).** The bill includes \$6.5 MILLION, an increase of \$2.5 MILLION, for the continued implementation and expansion of the LOP. The Committee report notes that the amount in the bill includes \$2 MILLION "for Legal Orientation Programs for custodians of unaccompanied alien children to address the custodian's responsibility for the child's appearance at all immigration proceedings, and to protect the child from mistreatment, exploitation, and trafficking.

- **State Criminal Alien Assistance Program.** The committee report accompanying the Senate Appropriations Committee-reported version of H.R. 2847 notes that the measure includes \$228 MILLION for the State Criminal Alien Assistance Program (SCAAP), a program for which the Obama Administration proposed zero funding. This would be a cut of \$172 MILLION in the amount appropriated for SCAAP in fiscal year 2009.

- **U.S. Marshall's Service.** The committee report accompanying the Senate Appropriations Committee-reported version of H.R. 2847 notes that the Committee "strongly supports the U.S. Marshal Service increase in funding for immigration enforcement." In justifying the increase in funding, the committee report stated that "[i]n the past, the U.S. Marshals Service was forced to divert resources from fugitive apprehension to address this growing, problem."

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See Pages 641-642 of the [June 15, 2009, edition of the Weekly Legislative Update](#) for a report on the June 9, 2009, full House Appropriations Committee markup of H.R. 2847

[House Roll Call No. 408](#), June 18, 2009

**Committee Consideration and Amendments.** The Subcommittee took up H.R. 2847 on Wednesday, June 24, 2009 and the Committee took up the measure on Thursday,

June 25, 2009. No immigration-related amendments were offered to the measure during either the Subcommittee's or full Committee's consideration of the measure.

**Administration's Views.** At the time of this writing, the Administration had not submitted formal views on the Senate Appropriations Committee-reported version of H.R. 2847.

**Anticipated Immigration- and Refugee-Related Floor Amendments.** No immigration- or refugee-related floor amendments had been noticed at the time of this writing. However, observers believe it is likely that several immigration enforcement-related amendments will be offered to H.R. 2847 during the Senate's floor consideration of the measure. ☼ ◇

### *This Week's Conference Activity*

At the time of this writing, only one measure containing significant immigration- or refugee-related provisions is pending before a conference committee:

- FY '10 Funding for Immigration Services, Immigration Enforcement, and Border Security. The full House and Senate have each passed their respective versions of H.R. 2892, the Fiscal Year 2010 Homeland Security Appropriations Bill and conference deliberations could begin at any time.

**Conferees Have Significant Differences on Immigration to Resolve on Fiscal Year 2010 Homeland Security Appropriations Bill:** Staff level conversations have begun between the House and Senate on resolving the differences on immigration policy and spending between the differing House- and Senate-passed versions of H.R. 2892, the Fiscal Year 2010 Homeland Security Appropriations Act. That measure funds immigration enforcement, immigration services, and border security departments, agencies, programs, activities, and functions of federal government. Congress must resolve the differing versions of the measure by October 1, 2009, the date on which fiscal year 2010 begins. The two versions of the measure differ significantly on immigration policy matters, as well as in appropriations for the U.S. Citizenship and Immigration Services component of the Department of Homeland security.

The significant policy differences between the two version of the bill include differences on the E-Verify System, SSA No-Match letters, border fencing, and visa programs for religious worker and doctors. Conferees could meet at any time, beginning this week, to begin the formal process of resolving differences between the two versions of the measure.<sup>1368</sup>

<sup>1368</sup> See Pages 928-932 of this week's edition of the *Weekly Legislative Update* for a detailed analysis of some of the key differences between the House-passed and Senate-passed versions of

However, it seems more likely that the conferees will not formally meet until next week or later.

**Legislative History.** The following is a brief legislative history of the [House-passed](#) and [Senate-passed](#) versions of the Fiscal Year 2010 Homeland Security Appropriations Act:

#### • **House Committee Actions**

1. On June 8, 2009, the House Appropriations Subcommittee on Homeland Security marked up its version of H.R. 2892, forwarding the measure to the full House Committee on Appropriations.<sup>1369</sup>
2. On June 12, 2009, the full House Committee on Appropriations held a markup session, ordering that the bill be reported to the full House of Representatives as an original measure.<sup>1370</sup>
3. On June 16, 2009, the full House Committee on Appropriations formally reported H.R. 2892 to the House of Representatives.<sup>1371</sup>

#### • **House Floor Actions**

1. On June 24, 2009, the full House of Representatives took up H.R. 2892, passing it by a vote of 389-37<sup>1372</sup>

#### • **Senate Committee Actions**

1. On June 17, 2009, the Senate Appropriations Subcommittee on Homeland Security marked up its version of S. 1298, forwarding the measure to the full Senate Committee on Appropriations.
2. On June 18, 2009, the full Senate Committee on Appropriations held a markup session, approving [S.](#)

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*H.R. 2892, the Fiscal Year 2010 Homeland Security Appropriations Act*

<sup>1369</sup> See Pages 634-641 of [June 15, 2009, edition of the Weekly Legislative Update](#) for a detailed report on the June 8, 2009, House Appropriations Subcommittee on Homeland Security markup of the fiscal year 2010 Homeland Security Appropriations bill

<sup>1370</sup> See Pages 634-641 of [June 15, 2009, edition of the Weekly Legislative Update](#) for a detailed report on the June 12, 2009, full House Appropriations Committee markup of the fiscal year 2010 Homeland Security Appropriations bill

<sup>1371</sup> See Pages 703-707 of the [June 29, 2009, edition of the Weekly Legislative Update](#) for a detailed report on the full House of Representatives' consideration of H.R. 2892

<sup>1372</sup> [House Roll Call No. 450](#), June 24, 2009

[1298](#)<sup>1373</sup> and formally reported the measure to the full Senate.<sup>1374</sup>

• **Senate Floor Actions**

1. On July 7, 2009, the full Senate took up H.R. 2892, considering the text of S. 1298 for the purposes of floor amendments.
2. On July 9, 2009, the full Senate passed its version of H.R. 2892 by a vote of 84-6, after three days of considering floor amendments to the measure.

**Key Immigration-Related Funding Differences.** There are a number of significant differences in the level of funding in the House- and Senate-passed bills for various bureaus and programs. The most prominent difference is found in the area of appropriations for U.S. Citizenship and Immigration Services (USCIS). The House-passed bill would appropriate \$2.8 BILLION for USCIS, including \$298 MILLION in directly appropriated funds. However, the Senate-passed bill would appropriate \$2.639 BILLION for USCIS, including only 135.7 MILLION in directly appropriated funds. The big difference between the two chambers on USCIS appropriations is that the House would fund close to half of the Obama Administration's \$201 MILLION request for direct appropriations to fund refugee and asylum adjudications. The Senate did not fund any of the Administration's request for that item.

**Key Immigration-Related Policy Differences.** There are enormous differences between the House- and Senate-passed bills on immigration policy matters. The only significant immigration policy provision that is contained in the House-passed version of the measure is a two year-long authorization of the controversial E-Verify program. However, the Senate-passed version of the bill includes numerous immigration-related policy provisions. For instance, the Senate-passed bill contains provisions that would permanently authorize the E-Verify System; make the use of the E-Verify System mandatory for federal contractors; permanently extend authorization for the EB-5 Regional Center Program; extend the Special Immigrant Non-Minister Religious Worker and Conrad State 30 J-1 Visa Waiver programs for three years; provide immigration relief to widows and orphans of deceased U.S. citizens and permanent residents; bar the Administration from taking certain actions with regard to the SSA No-Match letters; and increase

mandates with regard to construction of fencing along the U.S. border with Mexico.

Some of the policy matters included in the Senate-passed version of H.R. 2892 are highly controversial and will make for a number of difficult issues to address during the upcoming House-Senate conference committee deliberations.

**Side-by-Side Comparison.** See the Appendix section of this week's edition of the Weekly Legislative Update for a side-by-side comparison of some of the key immigration-related policy provisions that appear in the House- and Senate-passed versions of the Fiscal Year 2010 Homeland Security Appropriations Act. Next week's edition will contain a more complete side-by-side comparison of these two versions of the measure that focuses more completely on funding and enforcement matters that are addressed in the two versions of the measure. ◇

## *This Week's Executive Activity*

### **Secretary Clinton to Meet with Leadership of Judiciary Committees on FY '10 Refugee Admissions:**

Secretary of State Hillary Rodham Clinton has scheduled separate closed door meetings for this week with the leadership of the House and Senate Judiciary Committees to discuss the Department of State's proposed U.S. refugee admissions program for fiscal year 2010. Her meeting with the leadership of the Senate Judiciary Committee is scheduled for 9:30 am on Thursday, September 17, 2009, at the Department of State. Her meeting with the House Judiciary Committee leadership is scheduled for 11:30 am on the same day in the Capitol complex.

**Brief Description of the Refugee Admissions Process.** In its most recent World Refugee Survey, the U.S. Committee for Refugees reports that there are more than 14 million refugees and asylum seekers throughout the world. The United States has long been a country that has generously offered assistance to refugees in their countries of first asylum, and it also has been generous over the years in accepting refugees for admission to the United States.

The law governing the U.S. refugee admissions process is the Refugee Act of 1980, which has been codified in various sections of the Immigration and Nationality Act.<sup>1375</sup>

<sup>1373</sup> [S. Rept. 111-31](#), June 18, 2009

<sup>1374</sup> See Pages 673-678 of the [June 22, 2009, edition of the Weekly Legislative Update](#) for a detailed report on the June 18, 2009, Senate Appropriations Committee and the June 17, 2009, Senate Appropriations Subcommittee on Homeland Security markup of the Fiscal Year 2010 Homeland Security Appropriations bill

<sup>1375</sup> Section 101(a)(42) of the Immigration and Nationality Act (INA) defines a refugee. Section 207 of the INA governs the annual admission of refugees and admission of emergency situation refugees, including the consultation process. Section 208 and Section 235(b)(1) of the INA establish and govern the United States Asylum System. Section 209 of the INA governs the adjustment of status of refugees and asylees. Section 411, Section 412, Section 413, and Section 414 of the INA establish and govern the refugee resettlement system.

With so many refugees in the world, the United States generally accepts for resettlement refugees “of special humanitarian concern to the United States.”<sup>1376</sup> All refugees who are admitted to the United States are carefully selected and screened prior to their arrival in the United States.

Each year over the last several decades, the United States has admitted somewhere between 40,000 and just over 200,000 refugees from abroad, all of whom were either subjected to persecution or had “a well founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion...”<sup>1377</sup>

The process by which the United States determines how many refugees it will admit in a given year, identifies those refugees, and admits them into the United States is an orderly, multi-step process.

- **Step One – Consultation Process.** The refugee admissions process starts with a consultation that takes place between the Administration and Congress on the number and nature of refugees who will be admitted to the United States in the coming fiscal year. This “consultation process,” which is governed by Section 207 of the Immigration and Nationality Act, requires that “[b]efore the start of each fiscal year the President shall report to the Committee on the Judiciary of the House of Representatives and of the Senate regarding the foreseeable number of refugees who will be in need of resettlement during the fiscal year and the anticipated allocation of refugee admissions during the fiscal year.”<sup>1378</sup> It ultimately leads to a “Presidential Determination” on the number of refugees who are to be admitted to the United States in the coming fiscal year. This “Presidential Determination” must be released prior to admitting any refugees into the United States.

The law requires “discussions in person by designated Cabinet-level representatives of the President with members of the Committees on the Judiciary of the Senate and of the House of Representatives to review the refugee situation or emergency refugee situation, to project the extent of possible participation of the United States therein, to discuss the reasons for believing that the proposed admission of refugees is justified by humanitarian concerns or grave humanitarian concerns or is otherwise in the national interest, and to provide such members with the following information:

- (1) A description of the nature of the refugee situation.
- (2) A description of the number and allocation of the refugees to be admitted and an analysis of conditions within the countries from which they came.
- (3) A description of the proposed plans for their movement and resettlement and the estimated cost of their movement and resettlement.
- (4) An analysis of the anticipated social, economic, and demographic impact of their admission to the United States.
- (5) A description of the extent to which other countries will admit and assist in the resettlement of such refugees.
- (6) An analysis of the impact of the participation of the United States in the resettlement of such refugees on the foreign policy interests of the United States.
- (7) Such additional information as may be appropriate or requested by such members.”<sup>1379</sup>

The law requires the Administration, to the greatest extent possible, to provide the above information at least two weeks in advance of the consultation discussion. After the President initiates the consultation (and prior to the Presidential Determination on refugee admissions for the coming fiscal year), the House and Senate Judiciary Committees are supposed to publish the consultation information in the Congressional Record<sup>1380</sup> and hold a public hearing to examine the proposed Presidential Determination.<sup>1381</sup>

The law also requires the President to “provide for periodic discussions between designated representatives and members of such committees regarding changes in the worldwide refugee situation, the progress of refugee admissions, and the possible need for adjustments in the allocation of admissions among refugees.”

- **Step Two – Presidential Determination.** Following this consultation process, the Administration establishes a ceiling for the number and nature of refugees who will be admitted into the United States. This ceiling is established prior to the beginning of a fiscal year in a document known as the Presidential Determination (PD). The Determination is required by Section 207 of the Immigration and Nationality Act. It is necessary before refugees can be admitted into the United States. The

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<sup>1376</sup> *Section 207(a)(3) of the Immigration and Nationality Act*

<sup>1377</sup> *The complete definition of a refugee is found in Section 101(a)(42) of the Immigration and Nationality Act*

<sup>1378</sup> *Section 207(d)(1) of the Immigration and Nationality Act*

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<sup>1379</sup> *Section 207(e) of the Immigration and Nationality Act*

<sup>1380</sup> *Section 207(d)(2) of the Immigration and Nationality Act*

<sup>1381</sup> *Section 207(d)(3) of the Immigration and Nationality Act*

Presidential Determination usually includes:

1. an overall ceiling for refugees to be admitted during the fiscal year ,
2. a region-by-region ceiling on the number of refugees to be admitted during the year,
3. the number of persons previously been granted asylum who are expected to have their status adjusted to lawful permanent residence status during the year, and
4. a designation of those countries where the United States expects to conduct in-country refugee processing during the year.

Most attention focuses on the first two items: the overall ceiling on refugee admissions and the region-by-region breakdown on where those refugees will come from.

Over the years, the ceiling has ranged from more than 200,000 in the 1980s and early 1990s to a low of just over 26,000 for fiscal year 2002.

- **Step Three – Identification of the Refugees.** Subsequent to the establishment of the ceiling, the United States government works in partnership with international organizations and U.S.-based voluntary agencies to identify, admit, and resettle refugees into the United States.

The process of identifying refugees usually begins with the United Nations High Commission for Refugees (UNHCR) referring to the United States government refugees whom it believes are cases in need of resettlement. In very limited circumstances, individuals may also be referred for consideration as a refugee by U.S. embassies. Overseas processing entities (OPEs), some of which are United States private voluntary agencies, often help prepare cases for individuals prior to their interviews with DHS.

DHS has the role of decision-maker, determining who meets the requirements for refugee status and is otherwise admissible to the United States under United States law. Ultimately, it must interview each person and determine that he or she meets the definition of a refugee under United States law before he or she may be admitted to the United States as refugees.

The United States government employs a worldwide processing priority system for determining who among those who will be considered for admission to the United States as refugees. Being eligible under a priority establishes access to the program but does not guarantee resettlement.

There are five priorities in the system:

1. **Priority One.** UNHCR or, under specific limited circumstances, the U.S. Embassy-identified cases: persons facing compelling security concerns in countries of first asylum; persons in need of legal protection because of the danger of refoulement; those in danger due to threats of armed attack where they are located; persons who have experienced recent persecution because of political, religious, or human rights activities (prisoners of conscience); women-at-risk; victims of torture or violence; physically or mentally disabled persons; persons in urgent need of medical treatment not available in the first asylum country; and persons for whom other durable solutions are not feasible and whose status in the place of asylum does not present a satisfactory long-term solution.
2. **Priority Two.** Groups of Special Concern.
3. **Priority Three.** Spouses, unmarried sons and daughters, and parents of persons lawfully admitted to the United States as permanent resident aliens, refugees, asylees, conditional residents, and certain parolees; the over 21 year old unmarried sons and daughters of U.S. citizens; and parents of U.S. citizens under 21 years of age.
4. **Priority Four.** Spouses, unmarried sons and daughters, and parents of persons lawfully admitted to the United States as permanent resident aliens, refugees, asylees, conditional residents, and certain parolees; the over 21 year old unmarried sons and daughters of United States citizens; and parents of United States citizens under 21 years of age.
5. **Priority Five.** Uncles, aunts, nieces, nephews, first cousins of United States citizens and persons lawfully admitted to the United States as permanent resident aliens, refugees, asylees, conditional residents, and certain parolees.

In recent years, the United States government has only considered refugees meeting the first three of these priorities for admission into the United States.

Refugee processing procedures prior to DHS interviews vary. Some applicants are referred to the United States Refugee Program for resettlement consideration by officials of UNHCR. Others are eligible to apply for the USRP directly. Generally, the Department of State arranges for an Overseas Processing Entity (OPE) to conduct pre-screening interviews and prepare cases for submissions to DHS. This involves completing the required forms and compiling other necessary documents. In in-country refugee processing programs, applicants usually register by mailing completed

preliminary questionnaires to the appropriate processing entity. These include the Refugee Resettlement Section in Ho Chi Minh City for Vietnamese and the U.S. Interests Section in Havana for Cubans.

In order to be approved as a refugee, an applicant must establish that he or she has suffered past persecution, or has a well-founded fear of future persecution on the basis of race, religion, nationality, membership in a particular social group, or political opinion. This determination requires the examination of objective and subjective elements of an applicant's claim. A DHS officer conducts a personal interview of the applicant.

After the DHS interview, an applicant found eligible for refugee status must undergo a medical examination, a security check, and receive a sponsorship assurance. A refugee admission number deducted from the annual ceiling is allocated.

- **Step Four – Arrival and Resettlement in the United States.** Once a refugee has been approved for admission to the United States, transportation arrangements generally are made through the International Organization for Migration (IOM) and the refugee signs a promissory note to repay the cost of airfare. He or she is flown to the United States. At the U.S. port of entry, the DHS admits the refugee to the United States and authorizes employment.

After one year, a refugee is eligible to apply for adjustment of status to lawful permanent resident. Five years after admission, a refugee is eligible to apply for citizenship via naturalization.

**Systemic Problems with the Consultation Process.** Pro-refugee advocates contend that, over the years, a number of systemic problems have developed in the consultation process. They argue that, taken together, these problems have made the process irrelevant. Instead of being a true consultative process, they say, it has devolved into a mere “heads up” to Congress of what the Administration long-ago decided that it would do.

- **Process Takes Place Too Late to Be Meaningful.** For many years, now, the formal consultation meetings between Congress and the Department of State have taken place much too late in the year to be meaningful. The timing of the forthcoming fiscal year 2005 consultation meetings is a perfect example of this: those meetings are scheduled to take place on September 8, 2004, and September 13, 2004. These dates are just days before October 1, 2004, which is the first day of fiscal year 2005. Shortly after those meetings take place, the President is expected to make his Presidential Determination on the number of refugees to admit to the United States in the coming fiscal year.

Clearly, the Administration had made up its mind on the number of refugees it wishes to admit in the coming fiscal year long before scheduling the consultation meeting with Congress. Under these circumstances, it is clear that the meeting with Congress that takes place is merely a formality to fulfill the narrowest possible reading of the requirement in the law that there be a consultation meeting prior to the Presidential Determination.

An analysis of recent decades of actions on refugee admissions shows that, in reality, the Presidential Determination on refugee admissions has rarely differed from the number of refugee admissions that are assumed in the President's budget submission for the coming fiscal year, a submission that occurs nearly nine months before the Presidential Determination is made. Thus, pro-refugee advocates contend, the Administration has decided the most important features of the determination at least eight months prior to the consultation meeting.

- **Inadequate, Inconsistent, and Unfocused Congressional Oversight.** Some critics believe that Congress has not done all that it could to make the refugee consultation process more meaningful. For instance, some believe that Judiciary Committees of the Senate and the House of Representatives have not insisted strongly enough that the consultation process take place early in the year. They contend that the Committees have not regularly held hearings to keep themselves apprised of the progress (or lack thereof) of the Department of State in identifying and admitting enough refugees to meet the ceiling that is established each year. And they point out that, while the law requires that the Judiciary Committees of the Senate and House of Representatives hold public hearings *after* its consultation with the Department of State and *before* the Presidential Determination, it has been more than a decade since such a hearing has been held. Indeed, this has only occurred once in the last fifteen years, then the Senate Judiciary Committee held a hearing on refugee admissions for September 23, 2004, a week before the beginning of fiscal year 2005.

To be fair, a number of factors beyond the control of Congress might account for some of those factors.

One factor that may inhibit stronger oversight over the consultation and admissions processes is the lateness of the consultation meetings. This has made it difficult (if not impossible) for the Judiciary Committees to hold hearings prior to the release of the Presidential Determination. Nonetheless, the Committees generally have not held hearings on the consultation even *after* the Presidential Determinations are issued.

Another factor could be the fragmented congressional jurisdiction over refugee matters. For instance, the

House and Senate Judiciary Committees have jurisdiction over the DHS and the Department of Health and Human Services' Office of Refugee Resettlement; the Senate and House Foreign/International Relations Committees have jurisdiction over the Department of State's Bureau of Population, Migration, and Refugees; and six different House and Senate appropriations subcommittees have jurisdiction over the various appropriations matters relating to refugees. This fragmented jurisdiction means that, oftentimes, one authorizing committee has no idea what the other is doing with respect to refugees. And this often has resulted in poor coordination of oversight and legislation relating to refugees programs. It also makes it more likely that Congress' fragmented voice will speak with more than one mind on refugees. This certainly has been the case over the last eight years as the Chairmen of the House Judiciary Committee and of its Subcommittee on Immigration have opposed a robust refugee admissions program. It was the case during periods in the 1980s and 1990s in the Senate, as well.

Yet another factor could be that the need to attend to other, urgent legislative and oversight matters results in both Members and Staff for the various committees of jurisdiction placing refugee issues at a relatively low priority.

**General Concerns of the Refugee Advocacy Community about Refugee Admissions.**

The United States refugee advocacy community is a broad-based group of organizations that includes faith-based organizations such as the United States Conference of Catholic Bishops (USCCB), the Hebrew Immigrant Aid Society (HIAS), the Episcopal Migration Ministries (EMM), and the Lutheran Immigration and Refugee Service (LIRS); secular organizations such as the U.S. Committee for Refugees (USCR) and the International Rescue Committee (IRC); ethnic-based organizations such as the Ethiopian Community Development Council (ECDC); and human rights organizations such as the Lawyers Committee for Human Rights (LCHR).

The refugee advocacy community has been deeply troubled for years by chronic, long-term problems in the way the Department of State and, to a lesser degree, the Department of Homeland Security, has administered the refugee admissions program.

The community's concerns reflect a deep concern about a more than decade-long diminution of the United States' commitment to refugee protection.

More specifically, the community is deeply concerned by:

- the relatively small number of refugees that the Department of State recommends bringing into the United States for resettlement each year;

- the Department of State's failure until recently to bring in even the number of refugees that it has told Congress it would admit;
- the Department of State's failure to identify and admit particularly vulnerable refugees;
- the Department of State's halt in processing refugees with close familial ties to persons in the United States;
- the impact of material support to terrorism grounds of inadmissibility on refugee admissions; and
- the inadequacy of funding that current is being provided by both the Department of State's Bureau of Population, Refugees, and Migration (PRM) and the Department of Health and Human Services Office of Refugee Resettlement (ORR).

The refugee advocacy community believes the failure of Administrations over the years to both increase the refugee admissions ceiling and to admit the number of refugees established by the ceiling is due, in part, to a lack of respect for and commitment to the program by one or two long-term career professionals in the Department. The community believes that, instead of taking the position that the Department has a responsibility to establish mechanisms to find and then admit enough refugees to meet the ceiling established in the President's annual Presidential Determination, these career bureaucrats dig in their heels and refuse to use innovative approaches to accomplish that goal.

The refugee advocacy community, further, believes that there has been a lack of imagination and commitment on the part of past Administrations in refugee resettlement. They complain that the Administration never asks Congress for adequate funding for the Office of Refugee Resettlement, and that Congress never appropriates adequate funding for the Office. Moreover, the pro refugee advocacy community contends that the programs that provide for resettlement assistance to refugees are 30 years old and are in great need of reexamination.

**The Fiscal Year 1999-2009 Refugee Admissions Picture.**

The Department of State projects that approximately 75,000 refugees will be admitted to the United States in fiscal year 2009. If that projection holds true, the number of refugee admissions in fiscal year 2009 will be significantly higher than in previous years. Indeed, it would mark the first time in nine years that the United States has admitted 70,000 or more refugees. And it would be a nearly three-fold increase over the low water mark of 26,317 refugee admissions that was set in fiscal year 2002, the year that followed the September 11, 2001, terrorist attacks on the United States.

Notwithstanding the projected refugee admissions for fiscal year 2009, when refugee admissions over the last few years

are viewed in a larger historical perspective, the number of admissions is actually relatively small.

President Jimmy Carter established a refugee admissions ceiling of 91,000 in fiscal year 1998. The U.S. actually admitted 85,000 refugees that year. Since that time, the number of refugee admissions have experienced a precipitous decline. Indeed, in the nine years between fiscal year 2000 and fiscal year 2008, the U.S. refugee admissions program has fallen short of the ceiling by a total of 224,664 refugees.

President George W. Bush issued the first refugee admissions Presidential Determination of his presidency in 2001. In that PD, the President provided for a ceiling of 70,000 refugee admissions for fiscal year 2002, compared to a refugee admissions ceiling of 80,000 that had been set for fiscal year 2001. At the time, the Bush Administration contended that it was reducing the ceiling in order to improve the quality of the program, as well as improve its capacity to identify and admit a larger number of refugees in subsequent fiscal years. The Administration further stated at that time that it was its intention to grow the program by 5,000 additional refugees each year thereafter. Had the Administration followed that plan, it would have proposed a refugee ceiling of 105,000 for fiscal year 2009. The Bush Administration did not follow that plan, however. Not only did it establish a ceiling of 70,000 in each of the subsequent fiscal years, it also projected unusually large unallocated reserves during that period, further constricting the refugee admissions program.

Unfortunately, the Administration has not followed through with its stated intentions. Instead of establishing a ceiling of 75,000 for fiscal year 2003 and 80,000 in fiscal year 2004, as the Administration initially contended it would do in those years, the Administration actually reduced the ceiling to 50,000 allocated refugees in each of those years, while also planning for 20,000 unallocated refugee admissions.<sup>1382</sup>

Even while it reduced the refugee admissions ceiling in fiscal years 2003 through 2007, the Bush Administration failed in each of those years to admit enough refugees to meet those ceilings. Security concerns relating to the September 11, 2001, terrorist attacks on the United States delayed the fiscal year 2002 Presidential Determination establishing the refugee admissions ceiling until November 21, 2002, which was almost two months into that fiscal year. Accordingly, no refugees were admitted into the United States for fiscal year 2002 until December. Security considerations dramatically slowed down refugee admissions throughout the year and in

the subsequent years. For example, the United States went from 85,606 refugee admissions in fiscal year 1999 to only 26,313 admissions in fiscal year 2002, 28,422 admissions in fiscal year 2003, and numbers that have hovered in the 40,000-to-60,000 range in subsequent years.

**The Fiscal Year 2010 Consultation and Presidential Determination.** The Obama Administration has prepared its “Proposed Refugee Admissions for Fiscal Year 2010 Report to the Congress”, which was recently released to Congress. In the report, the Department of State, Department of Homeland Security, and Department of Health and Human Services review their collective performance in refugee admissions and resettlement over the past fiscal year and set forth their proposals for the coming one. The report reveals preliminary plans to establish a ceiling of 80,000 refugee admissions for fiscal year 2010. However, in establishing that ceiling, only 75,000 of the numbers would be allocated to the various regions of the world; the other 5,000 would comprise an “unallocated reserve.”

The following compares the Administration’s proposed ceiling for fiscal year 2010 with the ceiling that was established for fiscal year 2010:

**Refugee Admissions Ceilings  
FY 2009 and 2010**

Region	‘09 Ceiling	‘09 Projected	‘10 Ceiling
Africa	12,000	9,000	15,500
East Asia	20,500	19,500	17,000
Europe and Central Asia	2,500	2,500	2,500
Latin America/Caribbean	5,500	5,000	5,000
Near East/South Asia	39,500	39,000	35,000
<b>Regional Subtotal</b>	<b>80,000</b>	<b>75,000</b>	<b>75,000</b>
Unallocated Reserve <sup>1383</sup>			5,000
<b>Total</b>	<b>80,000</b>	<b>75,000</b>	<b>80,000</b>

Pro-refugee advocates are disappointed that the ceiling is being set at only 80,000. They want a ceiling of 125,000 refugee admissions, instead.

**What the Refugee Community Wants.** The refugee advocacy community wants:

- the President to set a ceiling for fiscal year 2010 of at least 125,000 refugee admissions;
- the Department of State to allocate all of the refugee

<sup>1382</sup> *The Bush Administration established a refugee admissions ceiling of 50,000 slots that were allocated among the various regions of the world and 20,000 unallocated slots for each of fiscal years 2003, 2004, and 2005. It established a refugee admissions ceiling of 60,000 allocated slots and 10,000 unallocated slots in fiscal year 2006. This formulation enabled the Administration to claim it was planning for 70,000 refugee admissions. But in reality, evidence shows that it never intended to meet the larger number and, instead, it was planning for 50,000 refugee admissions.*

<sup>1383</sup> *The Administration initially set aside an unallocated reserve of 5,000 refugee admissions for fiscal year 2009. However, during the course of the fiscal year, the Administration allocated all of these numbers to different regions*

ceiling to the various regions of the world rather than reserving some in an “unallocated reserve”;

- the Department of State to undertake aggressive and innovative efforts in fiscal year 2010 to bring in the number of refugees established in whatever ceiling that ultimately is adopted;
- the Administration to undertake efforts to build its capacity so it can consistently meet the refugee admissions ceiling established each year by the Presidential Determination, as well as ensure that the flow of refugees into the United States is more evenly distributed throughout the fiscal year;
- the Department of State to resume processing Priority 3 family reunification refugee applicants so that refugees who have close family members in the United States have a greater opportunity to be reunited with their family members in the United States;
- the Administration to take steps to identify and admit particularly vulnerable refugees, such as unaccompanied refugee minors, urban refugees, refugees who have been languishing in camps for five years or more, at-risk women, and refugees in Africa -- the world's largest refugee-producing continent;
- the Administration to engage in more meaningful consultations with Congress on the refugee admissions program in the future;
- the Department of State to increase the grant amount provided to domestic refugee resettlement agencies from \$900 per refugee to \$1,800 per refugee, in order to keep up with the costs of providing those resettlement services;
- the Department of Health and Human Services to increase the number of refugees served by the Matching Grant program, as well as increase the grant amount under the program;
- the Department of Health and Human Services to implement a number of grant programs to better assist refugees who are resettling in the United States, including programs to provide emergency housing assistance, refugee integration grants, and case management services;
- Congress to appropriate a minimum of \$556 MILLION in fiscal year 2010 for refugee admissions, which the community asserts would be enough to admit 125,000 refugees and increase the United States contributions to overseas refugee assistance. This would be \$220 MILLION, or 72 percent, more than the Administration requested for fiscal year 2010;

- Congress to appropriate a minimum of \$949 MILLION for the Department of Health and Human Services Office of Refugee Resettlement (ORR) in fiscal year 2010, which would be \$208.3 MILLION, or 28.2 percent, more than the Administration requested for fiscal year 2010; and
- Congress to engage in aggressive oversight of the refugee admissions program throughout the year. ☼ ◇

### ***Last Week's Legislative Activity***

There was no legislative activity last week in either the House or Senate on immigration- or refugee-related matters. ◇

### ***Last Week's Executive Activity***

There was no legislative activity last week in either the House or Senate on immigration- or refugee-related matters. ◇

### ***Recently Introduced Legislation***

No bills containing significant immigration- or refugee-related provisions were introduced last week in either the House of Representatives or Senate. ◇

### ***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**

#### **Representative Gutierrez Working on Comprehensive Immigration Reform Bill:**

Representative Luis V. Gutierrez (D-IL), who chairs the Congressional Hispanic Caucus' Immigration Task Force, has become the first member of the U.S. House of Representatives to stick his toe into the comprehensive immigration reform bill derby. Representative Gutierrez was quoted last week by the Capitol Hill newspaper Roll Call as saying he planned to draft a comprehensive immigration reform bill and would be ready to introduce it sometime in September. The newspaper reported that Representative Gutierrez intends to combine provisions from the bill that Senate Judiciary Subcommittee on Immigration, Refugees,

and Border Security Chairman Charles S. Schumer (D-NY) is drafting with provisions from [H.R. 1645](#), legislation that Gutierrez introduced during the 110th Congress along with Representative Jeff Flake (R-A) that was known as the "Security Through Regularized Immigration and a Vibrant Economy Act of 2007" Act, or the STRIVE Act.

There was no word at the time of this writing whether Representative Flake will join Representative Gutierrez in cosponsoring the measure that Mr. Gutierrez is planning to introduce during the 111th Congress.

**Members Working on Violence Against Women Technical Corrections Bill:** Representative Debbie Wasserman Schultz (D-FL) and Ted Poe (R-TX) are working on a measure that could contain several changes in law that would expand protections for aliens who are victims of domestic violence and sex trafficking. While no text was available at the time of this writing, the measure reportedly will be closely patterned after provisions in [S. 327](#), the "Improving Assistance to Domestic and Sexual Violence Victims Act of 2009", a measure that the Senate Committee on the Judiciary approved on May 7, 2009.<sup>1384</sup>

As reported by the Senate Committee on the Judiciary, S. 327 contains four provisions that would expand protections for aliens who are victims of domestic violence and sex trafficking.

More specifically—

- **Extension of T Nonimmigrant Status.** Section 114 of S. 327 would amend section 214(o)(7) of the Immigration and Nationality Act to allow an alien to apply for an extension of her T nonimmigrant visa retroactively after the expiration of the visa.<sup>1385</sup>

Advocates contend that the provision is necessary because a number of aliens who received T visas were unable to adjust their status in a timely way because it took the Department of Homeland Security (and its predecessor agency, the Immigration and Naturalization Service) eight years to issue regulations providing for adjustment of status of T visa holder.

- **T and U Nonimmigrant Protections.** Section 115 would amend section 107(b)(1)(E)(i)(II)(aa) of the Trafficking Victims Protection Act of 2000 to permit U visa victims to get work authorization while their case is

<sup>1384</sup> See Pages 475-477 of the [May 11, 2009, edition of the Weekly Legislative Update](#) for a detailed report on the Senate Judiciary Committee's markup of S. 327

<sup>1385</sup> The T nonimmigrant visa is available for up to 5,000 victims of "severe forms of trafficking" per year. Severe forms of trafficking include: the use of force, fraud, or coercion for sex trafficking and/or involuntary servitude, peonage, debt bondage, or slavery.

being adjudicated if they can show prima facie evidence that they meet the qualifications of the visa. This would lower the standard in current law, which currently requires them show bona fide evidence.

- **Nonimmigrant Adjustment of Status.** Section 116 would amend Section 245(m)(3) of the Immigration and Nationality Act to permit an unmarried sibling (under the age of 18) of a U visa holder to adjust her status along with the victim.<sup>1386</sup>
- **Housing Assistance for Qualified Aliens.** Section 117 would amend Section 214 of the Housing and Community Development Act of 1980 to permit alien victims of domestic violence to remain eligible for public housing if the perpetrators of violence against them have been evicted from or otherwise have left public housing.

## Senate

**Chairman Schumer Working on Comprehensive Immigration Reform Bill:** Senate Judiciary Subcommittee on Immigration, Refugees, and Border Security Chairman Charles S. Schumer (D-NY), has said that he will have a broad outline of a comprehensive immigration reform bill available for inspection sometime in September. Chairman Schumer is working with Senator Lindsey Graham (R-SC) to draft the measure. Last week's comments last represent somewhat of a retrenchment of an earlier assertion that he made, in which he had pledged to have a comprehensive immigration reform bill ready for introduction by Labor Day. It is, however, in sync with remarks made by President Obama last week and this week, in which the President indicated a bill would be drafted by the end of 2009 and could be taken up by Congress in early 2010.

**Principles Embodied in the Schumer Bill.** In a June 24, 2009, speech that he made at the Sixth Annual Immigration and Law Policy Conference sponsored by the Migration and Policy Institute, Chairman Schumer outlined seven principles that would be embodied in his bill:

- Illegal immigration is wrong, and a primary goal of comprehensive immigration reform must be to dramatically curtail future illegal immigration.

<sup>1386</sup> The U nonimmigrant visa is available for up to 10,000 victims of specific crimes per year who cooperate in the investigation or prosecution of the persons charged with the criminal activity. Crimes covered include: rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact; prostitution; sexual exploitation, female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.

- Operational control of our borders--through significant additional increases in infrastructure, technology, and border personnel--must be achieved within a year of enactment of legislation.
- A biometric-based employer verification system—with tough enforcement and auditing—is necessary to significantly diminish the job magnet that attracts illegal aliens to the United States and to provide certainty and simplicity for employers.
- All illegal aliens present in the United States on the date of enactment of our bill must quickly register their presence with the United States Government—and submit to a rigorous process of converting to legal status and earning a path to citizenship—or face imminent deportation.
- Family reunification is a cornerstone value of our immigration system. By dramatically reducing illegal immigration, we can create more room for both family immigration and employment-based immigration.
- We must encourage the world's best and brightest individuals to come to the United States and create the new technologies and businesses that will employ countless American workers, but must discourage businesses from using our immigration laws as a means to obtain temporary and less-expensive foreign labor to replace capable American workers; and finally
- We must create a system that converts the current flow of unskilled illegal immigrants into the United States into a more manageable and controlled flow of legal immigrants who can be absorbed by our economy.

**Additional Details.** Since his June 24, 2009, address to the Migration Policy Institute, Chairman Schumer and his staff have revealed a few more details about the effort they are undertaking. Among them are the following:

- His bill will be bipartisan and more than a half-dozen Republican Senators will be involved in drafting it.
- His bill will be more generous to highly skilled immigrant workers than those who are lower skilled
- His bill will be tough on future waves of illegal immigration.
- Disagreements between labor and business interests on the flow of legal foreign workers can be worked out.
- The U.S. should encourage legal immigration and find some kind of path for people now here to find a way to legal citizenship.

- The U.S. has "a shortage maybe of engineers here or Ph.D's in physics, but we probably don't have a shortage of people who can do construction work."

### **Chairman Kerry Working on Foreign Relations**

**Authorization Bill:** Senate Foreign Relations Committee Chairman John F. Kerry (D-MA) is working on the Senate version of the Foreign Relations Authorization Act, which he reportedly plans to introduce shortly after Congress returns from its week-long Independence Day recess.

The House of Representatives passed [H.R. 2410](#), the House version of Foreign Relations Authorization Act, Fiscal Years 2010 and 2011, on Wednesday, June 10, 2009. As passed by the House, the measure contains among its many provisions numerous provisions making reforms to the United States refugee admissions process.<sup>1387</sup>

It was unclear at the time of this writing to what degree the bill that Chairman Kerry is planning to introduce will replicate the refugee admissions reform provisions in the House-passed version of H.R. 2410. ◇

### ***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 (\*\*).

The immigration- and refugee-related matters that Congress will likely address beginning this week includes--

- **Health Care Reform.** The fate of legal immigrants, legal nonimmigrants, and undocumented aliens in the health insurance reform debate;
- **The E-Verify System.** The fate of several pending legislative provisions that would extend and revise authorization for the E-Verify System, including Senate-passed proposals to permanently extend the program, require its use by federal contractors, and permit employers to use the system to verify the employment eligibility of existing employees.

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<sup>1387</sup> See Pages 642-650 of the [June 15, 2009, edition of the Weekly Legislative Update](#) for a detailed report on the refugee-related provision that are included in the House-passed version of H.R. 2410

- **SSA No-Match Letters.** The fate of a Senate-passed proposal to force the Administration to issue SSA No-Match letters to employers when Social Security Administration data conflicts with tax data.
- **Fencing Between the U.S. and Mexico.** The fate of a Senate-passed provision that would reduce the Administration's flexibility in building fencing between the U.S. and Mexico and authorize the construction of additional fencing between the two countries;
- **Expiring Immigration Programs.** The fate of provisions passed by either the House or Senate to extend the Conrad State 30 visa program that serves medically underserved communities, the Special Immigrant Non-Minister Religious Worker Visa program, and the EB-5 Investor Visa Regional Centers program;
- **Refugee Appropriations.** The amount of funding that will be included in the regular appropriations bills for refugee admissions, overseas refugee assistance, and domestic refugee resettlement; and
- **Refugee Admissions Consultation.** The number and nature of refugees whom the United States will admit in fiscal year 2010.

In addition, beginning this week, Congress is expected to resume its consideration of more than a dozen other bills containing significant immigration- or refugee-related provisions that either have been marked up in a subcommittee, marked up in a full committee, or passed by either the House or Senate. Finally, beginning this week, Members and senators may begin to bring more clarity to efforts that are underway in both chambers to draft a comprehensive immigration reform bill.

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 action 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 (\*\*).

## Bicameral

**Conferees Have Significant Differences on Immigration to Resolve on Fiscal Year 2010 Homeland Security Appropriations Bill:** Staff members for the House and Senate Committees on Appropriations are engaged in negotiations on how to resolve the significant differences on immigration policy and spending between the differing House- and Senate-passed versions of H.R. 2892, the Fiscal Year 2010 Homeland

Security Appropriations Act. That measure funds immigration enforcement, immigration services, and border security departments, agencies, programs, activities, and functions of federal government. Congress must resolve the differing versions of the measure by October 1, 2009, the date on which fiscal year 2010 begins. The two measures have significant differences on immigration policy provisions, including differences on the E-Verify System, SSA No-Match letters, border fencing, and visa programs for religious worker and doctors. Conferees could meet at any time after Congress returns to begin to resolve the differences between the two versions of the measure.

**Legislative History.** The following is a brief legislative history of the [House-passed](#) and [Senate-passed](#) versions of the Fiscal Year 2010 Homeland Security Appropriations Act:

- **House Committee Actions.**

4. On June 8, 2009, the House Appropriations Subcommittee on Homeland Security marked up its version of H.R. 2892, forwarding the measure to the full House Committee on Appropriations.<sup>1388</sup>
5. On June 12, 2009, the full House Committee on Appropriations held a markup session, ordering that the bill be reported to the full House of Representatives as an original measure.<sup>1389</sup>
6. On June 16, 2009, the full House Committee on Appropriations formally reported H.R. 2892 to the House of Representatives.<sup>1390</sup>

- **House Floor Actions.**

2. On June 24, 2009, the full House of Representatives took up H.R. 2892, passing it by a vote of 389-37<sup>1391</sup>

- **Senate Committee Actions.**

3. On June 17, 2009, the Senate Appropriations Subcommittee on Homeland Security marked up its

<sup>1388</sup> See Pages 634-641 of [June 15, 2009, edition of the Weekly Legislative Update](#) for a detailed report on the June 8, 2009, House Appropriations Subcommittee on Homeland Security markup of the fiscal year 2010 Homeland Security Appropriations bill

<sup>1389</sup> See Pages 634-641 of [June 15, 2009, edition of the Weekly Legislative Update](#) for a detailed report on the June 12, 2009, full House Appropriations Committee markup of the fiscal year 2010 Homeland Security Appropriations bill

<sup>1390</sup> See Pages 703-707 of the [June 29, 2009, edition of the Weekly Legislative Update](#) for a detailed report on the full House of Representatives' consideration of H.R. 2892

<sup>1391</sup> [House Roll Call No. 450](#), June 24, 2009

version of S. 1298, forwarding the measure to the full Senate Committee on Appropriations.

4. On June 18, 2009, the full Senate Committee on Appropriations held a markup session, approving [S. 1298](#)<sup>1392</sup> and formally reporting the measure to the full Senate.<sup>1393</sup>

- **Senate Floor Actions.**

3. On July 7, 2009, the full Senate took up H.R. 2892, considering the text of S. 1298 for the purposes of floor amendments.
4. On July 9, 2009, the full Senate passed its version of H.R. 2892 by a vote of 84-6.

**Key Immigration-Related Funding Differences.** There are a number of significant differences in the level of funding in the House- and Senate-passed bills for various bureaus and programs. The most prominent difference is in U.S. Citizenship and Immigration Services (USCIS). The House-passed bill would appropriate \$2.8 BILLION for USCIS, including \$298 MILLION in directly appropriated funds. However, the Senate-passed bill would appropriate \$2.639 BILLION for USCIS, including only 135.7 MILLION in directly appropriated funds. The big difference between the two chambers on USCIS appropriations is that the House would fund close to half of the Obama Administration's \$201 MILLION request for direct appropriations to fund refugee and asylum adjudications. The Senate did not fund any of the Administration's request for that item.

**Key Immigration-Related Policy Differences.** There are enormous differences between the House- and Senate-passed bills on immigration policy matters. Included in the House-passed measure is a two year-long authorization of the controversial E-Verify program. However, the Senate-passed bill included numerous immigration-related policy provisions. For instance, the Senate-passed bill contains provisions that would permanently authorize the E-Verify System; make the use of the E-Verify System mandatory for federal contractors; permanently extend authorization for the EB-5 Regional Center Program; extend the Special Immigrant Non-Minister Religious Worker and Conrad State 30 J-1 Visa Waiver programs for three years; provide immigration relief to widows and orphans of deceased U.S. citizens and permanent residents; bar the Administration from taking certain actions with regard to the SSA No-Match

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<sup>1392</sup> [S. Rept. 111-31](#), June 18, 2009

<sup>1393</sup> See Pages 673-678 of the [June 22, 2009, edition of the Weekly Legislative Update](#) for a detailed report on the June 18, 2009, Senate Appropriations Committee and the June 17, 2009, Senate Appropriations Subcommittee on Homeland Security markup of the Fiscal Year 2010 Homeland Security Appropriations bill

letters; and increase mandates with regard to construction of fencing along the U.S. border with Mexico.

Some of the policy matters included in the Senate-passed version of H.R. 2892 are highly controversial and will make for a number of difficult issues to address during the upcoming House-Senate conference committee deliberations.

**Side-by-Side Comparison.** See the Appendix section of this week's edition of the Weekly Legislative Update, which is found beginning on page 960 of this week's edition for a side-by-side comparison of some of the key immigration-related policy provisions that appear in the House- and Senate-passed versions of the Fiscal Year 2010 Homeland Security Appropriations Act. ☼

## House

### Two Committee-Approved Immigration-Related Measures Await Consideration by the Full House:

The following measures containing significant immigration- or refugee-related provisions have been approved by various House committees and are awaiting consideration by the full House of Representatives:

- **House Committee on Financial Services.** The House Committee on Financial Services has approved [H.R. 3045](#), the "Section 8 Voucher Reform Act of 2009", after first approving an amendment aimed at ensuring that illegal immigrants not make use of such housing.

At the time of this writing, the Committee had yet to formally report the measure to the full House.<sup>1394</sup>

- **House Energy and Commerce; House Ways and Means; and House Education and Labor Committees.** The House Committee on Energy and Commerce, House Committee on Ways and Means, and House Committee on Education and Labor have all approved differing versions of [H.R. 3200](#), the "America's Affordable Health Choices Act of 2009". The measure is popularly referred to as the House Health Care Reform Bill.

As approved by each of the three committees, H.R. 3200 would bar both undocumented aliens and most nonimmigrants from receiving health care benefits pursuant to the bill or from having federal funds spent on their behalf under the bill. The bill would, however, include nonimmigrants, undocumented aliens, and legal immigrants in the list of persons who would either have to purchase health insurance or face a tax penalty for not having done so.

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<sup>1394</sup> See Page 847 of the [July 27, 2009, edition of the Weekly Legislative Update](#) for an analysis of the immigration-related provisions in House Financial Services Committee-approved version of H.R. 3045

At the time of this writing, none of the three committees that have acted on the measure had formally reported the measure to the full House of Representatives.

The House Democratic Leadership is expected to fashion a single bill out of the provisions of the differing versions of H.R. 3200 that have been approved by the House Committee on Energy and Commerce, House Committee on Ways and Means, and House Committee on Education and Labor. ☼

**Six Immigration- or Border Security-Related Measures Await Consideration in House Committees:** The following measures containing significant immigration-, refugee-, or border security-related provisions have been approved by subcommittees and are awaiting consideration in their full committees:

- **House Committee on the Judiciary.** The House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law has approved four bills that contain significant immigration-related provisions and now await consideration by the full House Committee on the Judiciary:
  - [H.R. 3290](#), the "September 11 Family Humanitarian Relief and Patriotism Act of 2009";
  - [H.J. Res. 26](#), a joint resolution proclaiming Casimir Pulaski to be an honorary citizen of the United States posthumously;
  - [H.R. 42](#), the "Commission on Wartime Relocation and Internment of Latin Americans of Japanese Descent Act; and
  - [H.R. 1425](#), the "Wartime Treatment Study Act".

The Subcommittee approved the first three measures during markups that occurred on Thursday, July 23, 2009, and Friday, July 24, 2009.<sup>1395</sup> It approved the last bill in a markup that occurred on Friday, July 31, 2009.

No full committee markup had been scheduled at the time of this writing. However, it is possible that some or all of the bills could be scheduled for markup in the House Judiciary Committee as soon as this week.<sup>1396</sup>

<sup>1395</sup> See Pages 849-850 of the [July 27, 2009, edition of the Weekly Legislative Update](#) for an analysis of the immigration-related provisions in H.R. 3290, H.J. Res. 26, H.R. 42, three bills that were approved by the House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law during two days of markup beginning on July 23, 2009

<sup>1396</sup> See Pages 883-884 of the [August 3, 2009, edition of the Weekly Legislative Update](#) for an analysis of the immigration-related

- **House Committee on Homeland Security.** The House Homeland Security Subcommittee on Border, Maritime and Global Counterterrorism has approved two bills containing significant border security provisions:

1. [H.R. 1726](#), the "Border Security Search Accountability Act of 2009", which would require the Secretary of Homeland Security to issue a rule with respect to border security searches of electronic devices; and
2. [H.R. 3239](#), a bill to require the Secretary of Homeland Security, in consultation with the Secretary of State, to submit a report on the effects of the Merida Initiative on the border security of the United States.

The Subcommittee approved both measures during markups that occurred on Wednesday, July 22, 2009, and Friday, July 24, 2009. No full committee markup of the bills had been scheduled at the time of this writing.<sup>1397</sup>

## Senate

### **\*\*Senate Finance Committee to Markup Health Care Reform Bill Containing Yet-to-Be-Specified Immigrant Restrictions:**

Senate Committee on Finance Chairman Max Baucus (D-MT) last week announced plans to mark up a health care reform bill that will contain yet-to-be-specified restrictions on the eligibility of noncitizens to participate in and benefit from the bill's provisions. Chairman Baucus is expected to release the text of his bill on or before Wednesday, September 16, 2009, and the Senate Committee on Finance is expected to begin to markup the measure next week. It was not known at the time of this writing what immigration-related provisions will be in the bill. Word of the impending introduction and markup of the Baucus bill comes as the issue of noncitizens' eligibility for benefits and services under the various pending health care reform bills has exploded into public consciousness.

Chairman Baucus has said that his bill will be closely patterned after an 18 page-long "[Framework for Comprehensive Health Reform](#)" that he released on Tuesday, September 8, 2009. Since the release of that document, the

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*provisions in H.R. 1425, which was approved by the House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law during its July 31, 2009, markup*

<sup>1397</sup> See Page 848 of the [July 27, 2009, edition of the Weekly Legislative Update](#) for an analysis of the immigration-related provisions in H.R. 1726 and H.R. 3239, two bills that were approved by the House Homeland Security Subcommittee on Border, Maritime and Global Counterterrorism during its July 22, 2009, markup session

Chairman has engaged in stepped up negotiations with a bipartisan group of Senate Finance Committee members known as the "Gang of Six."<sup>1398</sup> Chairman Baucus hopes that he can win bipartisan support within the Gang of Six for his health care reform proposal and that that support will provide the impetus for a larger bipartisan coalition in the Senate on health care reform.

#### **Treatment of Noncitizens in the Baucus Framework.**

Chairman Baucus' health care reform Framework addressed the treatment of noncitizens in two ways.

- First, the Framework makes it clear that "illegal immigrants" would not be eligible to "benefit from the health care tax credits" that are provided for in the plan.
- Second, the Framework would require all "legal residents" (as well as all U.S. citizens) "to purchase health insurance or have health coverage from an employer, through a public program (i.e., Medicare, Medicaid, or CHIP), or through some other source that meets the minimum creditable coverage standard."

The Baucus Framework is silent on the question of whether low-income legal immigrants would be eligible under the Baucus plan for federal subsidies for purchasing health insurance. It also does not address the question of whether legal immigrants would continue to have their eligibility for Medicaid and Medicare tied to the length of time that they have been in the United States and the income and resources of their sponsors. And the Framework is silent on the question of whether illegal immigrants would be eligible under the Baucus plan to purchase life insurance from private companies using their own funds.

In the short time since Chairman Baucus released his Framework, however, the issue of immigrant eligibility for benefits under health care reform has exploded into public consciousness. This has prompted Chairman Baucus, his colleagues on the Senate Committee on Finance, his fellow members of the Gang of Six, and the White House staff to become much more specific about both immigrants' and illegal immigrants' eligibility for benefits and services under health care reform legislation. Accordingly, it is anticipated that the Baucus bill will address all of the immigration-related eligibility matters on which the Framework is silent.

**Key Alienage-Related Health Care Reform Issues.** There are at least six key issues with regard to noncitizens and health care reform that must eventually be addressed: whether they will be covered under the health insurance mandate,

whether they will be eligible for federal affordability subsidies or tax credits, what will be their access to the Medicaid program, access to the health insurance exchange, access to the public or nonprofit insurance option, and what regime will be used to verify immigration status.

The following summarizes some of the major questions on each of those six issues--

- **Health Insurance Mandate.** All of the Democratic health care reform plans that have been produced so far include a mandate that virtually everyone in the United States obtain health insurance. Such a provision raises questions, however, about the degree to which various sectors of noncitizens should have to comply with the mandate.

The Baucus Framework would require all legal residents to purchase health insurance. By implication, it appears to exempt illegal immigrants from the mandate.

H.R. 3200, the House health care reform bill, would mandate that both legal and illegal immigrants obtain health insurance.

Both the pro-immigrant advocacy and the immigration restrictionist communities have been largely silent on the question of whether legal and illegal immigrants should be covered under the mandate that persons have health insurance coverage. The pro-immigrant advocacy community, however, has expressed concern about what would happen to immigrants if they are under a mandate but who cannot afford to purchase insurance.

- **Health Insurance Exchange.** All of the Democratic health insurance plans that have been produced so far would establish an entity referred to as a "health insurance exchange", which private sector insurance companies (as well as any nonprofit health entities that wish to provide health insurance) would use to make their health insurance products available to consumers. Neither the Baucus Framework nor H.R. 3200 provides enough specificity for analysts to determine whether the health insurance exchange would be operated by the federal government or by a non-federal entity.

The inclusion of a health insurance exchange in health care reform legislation raises a number of questions with respect to noncitizens. First and foremost among them is whether illegal immigrants would be permitted to use their own funds to purchase health insurance products listed in the health insurance exchange.

The Baucus Framework is silent on the question of whether illegal immigrants would be eligible to participate in the health insurance exchange.

H.R. 3200 is silent, as well, on the question. Its silence

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<sup>1398</sup> The "Gang of Six" includes Finance Committee Chairman Baucus, Finance Committee Ranking Republican Charles Grassley (R-IA); Democratic Senators Jeff Bingaman (D-NM) and Kent Conrad (D-ND); and Republican Senators Mike Enzi (R-WY), and Olympia Snowe (R-ME).

on the matter has been interpreted as permitting illegal aliens to participate in the exchange so long as they use their own funds to purchase health insurance.

Extrapolating from statistics contained in a Pew Hispanic Center April report, 4.9 million of the approximately 12 million illegal immigrants in the United States currently have health insurance and about 7.1 million do not. Thus, if illegal immigrants are precluded from spending their own funds to purchase health insurance, nearly 5 million currently insured illegal immigrants could lose their health insurance coverage.

The White House and Department of Health and Human Services have weighed in over the last several days on the matter. In a combative exchange from the podium of the White House briefing room, White House Press Secretary Robert Gibbs said on Thursday, September 10, 2009, that President Obama opposes permitting illegal immigrants to participate in the health insurance exchange. This was the first time that the Administration articulated that position.

Immediately after he made his comments from the podium of the White House briefing room, many in the pro-immigrant advocacy community expressed disbelief and a hope that Mr. Gibbs was speaking from an ill-informed perspective on the matter. However, in a Sunday, September 13, 2009, appearance on NBC News' Meet the Press, Mr. Gibbs made a stronger and less ambiguous assertion that President Obama opposes permitting illegal immigrants to make use of the proposed new health insurance exchanges.

Mr. Gibbs was joined on September 13 by Secretary of Health and Human Services Kathleen Sebelius who, during an appearance on ABC News' This Week confirmed that President Obama opposes allowing illegal immigrants to participate in the exchange.

The pro-immigrant advocacy community is opposed to barring illegal immigrants from using their own funds to purchase private health insurance. They contend that should such a proposal be enacted into law, this could well be the first time that illegal immigrants would be barred from purchasing a product. And they assert that this would make all of Americans less healthy and drive up the costs of health care for everyone. Finally, the pro-immigrant advocacy community contends that in order to bar illegal immigrants from using their own funds to purchase health insurance, the federal government would have to impose an unwieldy, unworkable, and dangerous verification regime on all persons in the United States -- citizens and noncitizens, alike.

The immigration restrictionist community strongly supports barring illegal immigrants from participating in the health insurance exchange. It also strongly supports

a rigorous verification regime to enforce such a bar.

- **Affordability Subsidy.** All of the Democratic health insurance plans that have been produced so far contain some form of a federal affordability subsidy or tax credit for individuals and families whose income is not so low that they must rely on Medicaid but is too low to afford to purchase health insurance.

The inclusion of such a provision in health care reform legislation raises questions of whether legal and illegal immigrants should be eligible for the affordability subsidies or tax credits.

The Baucus framework explicitly makes illegal immigrants ineligible for the federal subsidy, as does H.R. 3200. Both the Baucus Framework and H.R. 3200 are silent, however, on whether and under what circumstances legal immigrants would be eligible for federal affordability subsidies or tax credits.

The pro-immigrant advocacy community is not pushing Congress to make affordability subsidies or tax credits available to illegal immigrants. They do support, however, making those subsidies or credits available to legal immigrants on the same basis as they are available to United States citizens.

The immigration restrictionist community is opposed to providing affordability subsidies or tax credits to both illegal immigrants and legal immigrants. Moreover, that community insists on a strict citizenship/immigration status verification regime for everyone who receives an affordability subsidy or tax credit to ensure that illegal immigrants do not receive or benefit from federal affordability subsidies or tax credits.

- **Access to Medicaid and Medicare.** All of the Democratic plans that have been produced so far would maintain and expand the Medicaid and Medicare programs. They also would preserve current law that generally bars illegal immigrants from participating in the two programs;<sup>1399</sup> bars legal immigrants from participating in the two programs for the first five years after entry; and deems the income and resources of most legal immigrants' sponsors to be available to them for the purposes of determining their eligibility for the two programs.

The Baucus Framework is silent on the question of legal and illegal immigrants' eligibility for the Medicaid and Medicare programs.

The pro-immigrant advocacy community is not pushing to make illegal immigrants eligible for the Medicaid and

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<sup>1399</sup> *The one exception to this is that current law does not bar Medicaid funding to treat illegal immigrants in emergency, life-threatening situations*

Medicare programs. However, it is lobbying Congress to ease eligibility criteria under current by permitting legal immigrants to access the two programs without having to first wait five years and without having the income and resources of their sponsors deemed to be theirs, as well.

The immigration restrictionist community opposes easing Medicaid and Medicare eligibility requirements for legal immigrants.

- **Public/Nonprofit Insurance Option.** All of the Democratic health insurance reform plans that have been produced so far contain an option for consumers to choose a health insurance plan run by the federal government rather than one that is run by private insurance companies.

The Baucus Framework does not contain the option for consumers to choose a federally-run health insurance policy. Instead, it contains an option for consumers to choose a health insurance plan run by a nonprofit cooperative.

The existence of a federally-run health insurance option raises questions with regard to noncitizens. The first is whether illegal immigrants would be eligible to participate in a public plan. The second is whether there should be restrictions on the ability of legal immigrants to participate in the public plan.

- **Verification Regime.** While all of the Democratic health insurance reform plans would bar illegal immigrants from some aspects of their plans, none of them contain a specific regime for verifying whether a participating individual is lawfully present in the United States.

Both the House Committee on Ways and Means and the House Committee on Energy and Commerce rejected amendments that were offered to H.R. 3200 during their respective markups that sought to impose immigration status verification requirements. In opposing such an amendment in his committee, House Energy and Commerce Committee Chairman Henry Waxman (D-CA) contended that "the people who have been harmed by the existing law have been U.S. citizens, oftentimes from poor, rural areas where they don't have their birth certificate or they don't have their passport."

While the Baucus Framework did not contain any immigration status verification regime, there are strong indications that the Baucus bill will require some sort of Social Security Number/Department of Homeland Security document check.

**Seeds of the Explosion.** The issue of the eligibility of illegal immigrants for benefits and services under the various health insurance reform bills has exploded into the public

consciousness over the last week. While the issue has only come under intense scrutiny in the media over the last week, the seeds of last week's explosion were planted months ago.

Despite protestations to the contrary by the House Democratic Leadership, President Obama, and impartial fact check organizations, immigration restrictionist organizations, led by the Federation for American Immigration Reform (FAIR) and its partners in the conservative media have for months contended that illegal immigrants will benefit from the various Democratically-written health care reform bills. Things came to a head on Thursday, September 10, however, during President Obama's address to a joint meeting of Congress on health care reform. Representative Joe Wilson (R-SC) interrupted the President during his address and called him a liar for asserting that his health care reform bill would not provide benefits to illegal aliens. The firestorm that erupted as a result of Representative Wilson's outburst began a national conversation on the subject of immigrant eligibility for health insurance benefits and services that left pro-immigrant advocates deeply troubled. Participants in that conversation included White House Press Secretary Robert Gibbs, Senate Finance Committee Chairman Max Baucus (D-MT), and Senator Kent Conrad (D-ND). And that conversation culminated at week's end with a number of assertions by White House Press Secretary Robert Gibbs, Secretary of Health and Human Services Kathleen Sebelius, Chairman Baucus, and others.

- **Robert Gibbs.** White House Press Secretary Robert Gibbs, in response to questions posed to him on Thursday, September 10, 2009, said that "the proposal that the president outlined covers American citizens. I think he was clear for almost everyone that the legislation does not cover -- his plan would not cover illegal immigrants."

Under repeated follow-up questioning, Gibbs went on to say that illegal immigrants "would not be covered under the health care exchange in the proposal" and answered, "that's my impression" when he was specifically asked if, the President's health insurance plan "would expressly prohibit illegal immigrants from buying private insurance on this exchange?"

Gibbs went on to say from the podium that he did not know whether the President's plan would undo current law that requires emergency facilities to provide emergency services under Medicaid for illegal aliens.

Mr. Gibbs expanded on his comments on Sunday, September 13, during an appearance on NBC News' Meet the Press, asserting that illegal immigrants would not be eligible to participate in the health insurance exchange but saying they would remain eligible for emergency care under the Medicaid program.

- **Secretary Kathleen Sebelius.** In a Sunday, September

13, 2009, appearance on ABC News' This Week, Secretary of Health and Human Services Kathleen Sebelius indicated that illegal immigrants would be ineligible under the President's plan to participate in the health insurance exchange.

- **Senator Kent Conrad.** Senator Kent Conrad (D-ND), who is a member of the Senate Committee on Finance and one of the "Gang of Six" members, said he and other senators in the group spent time Thursday trying to figure out "how we absolutely assure that those who are here illegally would not get the benefit of any of these initiatives."

Senator Conrad has said that in order to prevent illegal immigrants from getting federal subsidies to buy health insurance or receiving other federal assistance, the government would require a check of Social Security numbers to determine eligibility. He said that people who are in the country legally but might not have Social Security cards could provide visas or other documentation showing their eligibility.

With regard to permitting illegal aliens to purchase private insurance policies, Senator Conrad said that nothing would keep illegal immigrants from buying private insurance on their own. About that subject, Senator Conrad said, You can't prevent somebody from buying an insurance policy, but it would not be one that is federally assisted."

- **Senator John Cornyn.** Senator John Cornyn (R-TX), who sits on the Senate Committee on Finance and is Ranking Republican on the Senate Judiciary Subcommittee on immigration, Refugees, and Border Security s quoted as saying "We're going to have a lot of amendments ... I'd say that [the immigration issue] hasn't been finally resolved."
- **Senator Pat Roberts.** Senator Pat Roberts (R-KS) noted that there was language barring illegal immigrants from getting federal assistance already in the various versions of the House bill. But he said that, as written in the House bill, the language is meaningless. "How do you implement? How do you enforce it? We have no means to enforce it," he said.
- **House Minority Leader John Boehner.** House Minority Leader John Boehner (R-OH) has asserted that H.R. 3200, the House version of health care reform legislation, does not contain any restrictions on noncitizens participating in and paying for coverage available through its proposed health care exchange, whether the noncitizens are legally or illegally present or in the United States temporarily or permanently. He said that "there were two opportunities, in committee, for House Democrats to make clear that illegal immigrants would not be covered by putting in requirements to show

citizenship. Both of those amendments were in fact rejected."

One of the great ironies of this year's health insurance reform debate is that it could well leave immigrants worse off than they are under current law. Barring illegal immigrants from participating in the proposed health insurance exchange could render nearly 5 million persons who currently possess health insurance unable to obtain coverage. And verification regimes could render many legal immigrants who have unlawfully present family members in danger of losing coverage for their family members. ☼

#### **\*\*Senate Panel Postpones Hearing on Violence Along the U.S.-Mexico Border:**

The Senate Committee on Homeland Security and Governmental Affairs had scheduled a hearing for this week on Southern Border Violence at the U.S.-Mexico Border, at which Secretary of Homeland Security Janet Napolitano was among those who were scheduled to testify. The hearing had been scheduled for 2:00 pm on Wednesday, September 16, 2009, in Room SD-342 of the Dirksen Senate Office Building. However, the hearing has been postponed to a date that is yet to be determined. ☼

#### **Six House-Passed Immigration-Related Measures are Awaiting Consideration by the Full Senate:**

The following measures containing significant immigration- or refugee-related provisions have been passed by the House and are awaiting consideration in the Senate:

- **Fiscal Year 2010 Immigration- and Refugee-Related Appropriations Bills.** The House of Representatives has passed three fiscal year 2010 appropriations bills that still await floor consideration in the Senate:
  1. **Fiscal Year 2010 Appropriations for Refugee Resettlement and Unaccompanied Alien Children.** The House of Representatives has passed H.R. 3293, the Fiscal Year 2010 Labor, Health and Human Services, Education, and Related Agencies Appropriations Bill (Labor, HHS Appropriations Bill), which funds the federal government's refugee resettlement, trafficking victims assistance, torture victim assistance, and unaccompanied alien child programs.

[The House-passed version of H.R. 3293](#)<sup>1400</sup> would appropriate \$432,000 less in ORR funding in fiscal year 2010 compared to the total fiscal year 2009 ORR appropriation.<sup>1401</sup> The House-passed measure

<sup>1400</sup> [H. Rept. 111-220](#), July 22, 2009

<sup>1401</sup> *The total fiscal year 2009 appropriation for ORR was \$715.4 MILLION. This includes \$633.4 MILLION that was appropriated in the regular fiscal year 2009 appropriations process and an*

would increase funding for ORR's resettlement activities by of \$50.1 MILLION, or 10 percent, when compared to the amount appropriated for ORR's resettlement activities in fiscal year 2009.<sup>1402</sup>

The Senate Committee on Appropriations reported [the Senate Appropriations Committee-approved version of H.R. 3293](#)<sup>1403</sup> on August 4, 2009. It would appropriate more funding for refugee resettlement than would the House-passed bill. However, it would not fully fund the Administration's request for ORR.

The Senate could take up the Senate Appropriations Committee-approved version of H.R. 3293 at any time. However, at the time of this writing, there was no word on when that will occur.

2. **Fiscal Year 2010 Appropriations for the Immigration Court System.** The House of Representatives has passed [H.R. 2847](#), the Fiscal Year 2010 Commerce, Justice, Science, and Related Agencies Appropriations Bill (C-J-S Appropriations Bill), which funds the immigration court system, as well as a grant program that reimburses states for the cost they incur in incarcerating criminal aliens.

Included in the bill is a substantial increase in spending for the Executive Office for Immigration Review (EOIR); increased funding for legal orientation presentations to detained aliens; and continued funding for the State Criminal Alien Assistance Program (SCAAP), which the Obama Administration has proposed ending.<sup>1404</sup>

The Senate Committee on Appropriations has approved the [Senate version of H.R. 2847](#), reporting it to the full Senate.<sup>1405</sup>

The Senate could take it up the Senate Appropriations Committee-approved version of H.R. 2847 at any time. However, at the time of this

writing, there was no word on when the full Senate will take up the measure.<sup>1406</sup>

3. **Fiscal Year 2010 Appropriations for Refugee Admissions and Overseas Refugee Assistance.**

The House of Representatives has passed [H.R. 3081](#), its version the Fiscal Year 2010 State, Foreign Operations, and Related Programs Appropriations Bill, which contains among its many provisions those that fund the federal government's refugee admissions and overseas refugee assistance programs.

Included in the House-passed measure are substantial increases in funding for Migration and Refugee Assistance (MRA) and International Disaster Assistance (IDA), relative to appropriations for those accounts during the regular fiscal year 2009 appropriations cycle. However, when supplemental fiscal year 2009 appropriations spending is taken into account, the House-passed measure would actually appropriate less in fiscal year 2010 for the MRA account than the total amount that was appropriated for that account in fiscal year 2009.<sup>1407</sup>

The Senate Committee on Appropriations has approved [S. 1434](#), the Senate version of the Fiscal Year 2010 State, Foreign Operations, and Related Programs Appropriations Bill.<sup>1408</sup> It would provide substantially more for the MRA account than is contained in the House-passed version of the bill.

The Senate could take up the Senate Appropriations Committee-approved version of H.R. 3081 at any time.<sup>1409</sup> However, at the time of this writing, there was no word on when the full Senate will take up the measure.

- **Torture Victims Assistance.** The House of Representatives has passed [H.R. 1511](#), the "Torture Victims Relief Reauthorization Act of 2009", which

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*additional \$82 MILLION that was appropriated in the fiscal year 2009 war supplemental appropriations bill*

<sup>1402</sup> See Pages 850-858 of the [July 27, 2009, edition of the Weekly Legislative Update](#) for an analysis of the immigration- and refugee-related provisions in the House-passed version of H.R. 3293

<sup>1403</sup> [S. Rept. 111-66](#), August 4, 2009

<sup>1404</sup> See Pages 681-682 of the [June 22, 2009, edition of the Weekly Legislative Update](#) for a detailed report on the full House of Representatives' consideration of H.R. 2847

<sup>1405</sup> [S. Rept. 111-34](#), June 25, 2009

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<sup>1406</sup> See Pages 702-703 of the [June 29, 2009, edition of the Weekly Legislative Update](#) for a detailed report on the June 25, 2009, Senate Appropriations Committee markup of H.R. 2847

<sup>1407</sup> [H. Rept. 111-187](#), June 26, 2009

<sup>1408</sup> [S. Rept. 111-44](#), July 9, 2009

<sup>1409</sup> See Pages 772-743 of the [July 13, 2009, edition of the Weekly Legislative Update](#) for an analysis of the House-passed version of the Fiscal Year 2010 State, Foreign Operations, and Related Programs Appropriations Bill

would fund programs to assist the victims of torture who are resettled in the United States.<sup>1410</sup>

Following House passage of the measure, it was referred to the Senate Committee on Foreign Relations.

- **Reforms to the Refugee Admissions Process.** The House of Representatives has passed [H.R. 2410](#), the Foreign Relations Authorization Act, Fiscal Years 2010 and 2011, which contains among its many provisions numerous ones that would make reforms to the United States refugee admissions process.<sup>1411</sup>

Following House passage of the measure, it was referred to the Senate Committee on Foreign Relations. Senate Foreign Relations Committee Chairman John F. Kerry (D-MA) is working on a version of the bill of his own that he could introduce as soon as late July.<sup>1412</sup>

- **Increased Penalties for Alien Smuggling.** The House of Representatives has passed [H.R. 1029](#), the “Alien Smuggling and Terrorism Prevention Act of 2009” It would increase penalties for alien smuggling and make other changes in law that the bill’s proponents contend will help combat the crime of alien smuggling.

While there was no organized opposition to H.R. 1029 during House consideration of the measure, several pro-immigrant and pro-refugee advocacy organizations expressed concerns about the potential impact that the measure would have on good Samaritans and refugees. Those concerns were expressed behind the scenes in the House but are expected to be voiced more vociferously should the Senate take up the measure.

The measure has been referred to the Senate Committee on the Judiciary.

It was widely believed at the time that the House acted that the Senate Committee on Commerce, Science, and Transportation would address the issues that are included in H.R. 1029 when it took up [S. 1194](#), the Coast Guard Authorization Act for Fiscal Years 2010 and 2011. The Committee marked up the measure on Wednesday, July

8, 2009, however, without including any immigration-related provisions.<sup>1413</sup> That measure now awaits Senate floor consideration, where the issues embodied in H.R. 1029 could come up. ☼

### **Five Committee-Approved Immigration-Related Measures are Awaiting Consideration by the Full Senate:**

The following measures containing significant immigration- or refugee-related provisions have been approved by various committees and are awaiting consideration by the full Senate:

- **Senate Committee on Appropriations.** The Senate Committee on Appropriations has approved three appropriations bills that contain significant immigration- or refugee-related provisions and that await consideration by the full Senate:

1. **Fiscal Year 2010 Appropriations for Refugee Resettlement and Unaccompanied Alien Children.**

The Senate Committee on Appropriations has approved its version of H.R. 3293, the Fiscal Year 2010 Labor, Health and Human Services, Education, and Related Agencies Appropriations Bill (Labor, HHS Appropriations Bill), which funds the federal government’s refugee resettlement, trafficking victims assistance, torture victim assistance, and unaccompanied alien child programs.

The Senate Appropriations Committee-approved version of the measure would restore much of the cut in funding for the Department of Health and Human Services Office of Refugee Resettlement (ORR) contained in a measure passed last month by the full House of Representatives. However, the Senate Appropriations Committee-approved measure would still cut funding relative to the Administration’s request.<sup>1414</sup>

The Senate could take up the measure at any time after it returns from its August recess.

2. **Fiscal Year 2010 Appropriations for the Immigration Court System.**

The Senate Committee on Appropriations has approved the [Senate version of H.R. 2847](#),<sup>1415</sup> the Fiscal Year

<sup>1410</sup> See Page 858 of the [July 27, 2009, edition of the Weekly Legislative Update](#) for an analysis of the House-passed version of H.R. 1511

<sup>1411</sup> See Pages 642-650 of the [June 15, 2009, edition of the Weekly Legislative Update](#) for a detailed report on the refugee-related provisions in the House-passed version of H.R. 2410, the Foreign Relations Authorization Act, 2010 and 2011

<sup>1412</sup> See Pages 642-650 of the [June 15, 2009, edition of the Weekly Legislative Update](#) for a detailed report on the refugee-related provision that are included in the House-passed version of H.R. 2410

<sup>1413</sup> See Page 383 of the [April 20, 2009, edition of the Weekly Legislative Update](#) for a detailed report on the full House of Representatives’ consideration of H.R. 1029

<sup>1414</sup> See Pages 876-881 of the [August 3, 2009, edition of the Weekly Legislative Update](#) for a detailed analysis of the immigration- and refugee-related provisions in the Senate Appropriations Committee-approved version of H.R. 3293

<sup>1415</sup> [S. Rept. 111-34](#), June 25, 2009

2010 Commerce, Justice, Science, and Related Agencies Appropriations Bill (C-J-S Appropriations Bill), which funds the immigration court system, as well as funding a grant program that reimburses states for the costs they incur in incarcerating criminal aliens.

The Senate Appropriations Committee-reported version of H.R. 2847 would significantly increase funding for the Executive Office for Immigration Review (EOIR) and maintain funding for the State Criminal Alien Assistance Program (SCAAP), a program that the Obama Administration has sought to terminate.<sup>1416</sup>

The Senate could take up the measure at any time after it returns from its August recess.

3. **Fiscal Year 2010 Appropriations for Refugee Admissions and Overseas Refugee Assistance.** The Senate Committee on Appropriations has approved [S. 1434](#), the Senate version of the Fiscal Year 2010 State, Foreign Operations, and Related Programs Appropriations Bill,<sup>1417</sup> which contains among its many provisions those that fund the federal government's refugee admissions and overseas refugee assistance programs.

The Senate Appropriations Committee-approved version of the measure would appropriate substantially more for the Migration and Refugee Assistance account than is contained in the House-passed version of the bill.<sup>1418</sup>

The Senate could take up the measure at any time after it returns from its August recess.

- **Senate Committee on the Judiciary.**

1. **Eased Visa Requirements for Victims of Domestic Violence.** The Senate Committee on the Judiciary has approved [S. 327](#), the "Improving Assistance to Domestic and Sexual Violence

Victims Act of 2009", which contains four provisions that would amend the Immigration and Nationality Act, the Trafficking Victims Protection Act of 2000, and the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 to expand protections for aliens who are victims of domestic violence and sex trafficking.

S. 327 has been hotlined. Reports indicate that it has been cleared by the Senate Democratic cloakroom. However, those reports indicate that it has not yet been cleared by the Senate Republican cloakroom.

It is anticipated that once the bill has been cleared by both the Democratic and Republican cloakrooms, the Senate will take it up by unanimous consent.<sup>1419</sup>

- **Senate Committee on Homeland Security.**

1. **Revision of the REAL ID Act's Driver's License Provisions.** The Senate Committee on Homeland Security and Governmental Affairs has approved [S. 1261](#), the "Providing for Additional Security in States' Identification Act of 2009", or PASS ID Act, which would retain many of the alienage-related mandates that are found in the REAL ID Act.

Under S. 1261, states would still be required to deny driver's licenses and state-issued identification cards to aliens who are in the United States illegally, they would still be required to obtain identification to verify an applicant's immigration status, and they still would be required to limit the period during which a driver's license or state-issued identification card is valid so that the period of its validity matches the period that an alien is authorized to be in the United States.

S. 1261 would make a number of changes to the alienage-based restrictions on states' issuance of driver's licenses and identification cards. Some would ease those restrictions. Others would make them more rigorous.<sup>1420</sup>

The Senate could take the measure up at any time after it returns from its August recess. ◇

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<sup>1416</sup> See Pages 702-703 of the [June 29, 2009, edition of the Weekly Legislative Update](#) for an analysis of the immigration- and refugee-related provisions in the Senate Appropriations Committee-approved version of H.R. 2847

<sup>1417</sup> [S. Rept. 111-44](#), July 9, 2009

<sup>1418</sup> See Pages 764-767 of the [July 13, 2009, edition of the Weekly Legislative Update](#) for an analysis of the immigration- and refugee-related provisions in the Senate Appropriations Committee-approved version of the Fiscal Year 2010 State, Foreign Operations, and Related Programs Appropriations Bill

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<sup>1419</sup> See Pages 475-477 of the [May 11, 2009, edition of the Weekly Legislative Update](#) for a detailed report on the Senate Judiciary Committee's markup of S. 327

<sup>1420</sup> See Pages 881-882 of the [August 3, 2009, edition of the Weekly Legislative Update](#) for a more detailed analysis of the immigration-related provisions in the Senate Homeland Security and Governmental Affairs Committee-approved version of S. 1261

***Next Week’s Edition ...***

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

- **FY '10 Appropriations for the Immigration Court System.** Next week’s Weekly Legislative Update will report on any Senate floor action that occurs this week on H.R. 2847, Fiscal Year 2010 Commerce, Justice, Science, and Related Agencies Appropriations Bill, which funds the nation's immigration court system and federal reimbursements to states for the costs they bear in incarcerating criminal aliens.
- **Homeland Security Appropriations Conference.** Next week’s Weekly Legislative Update will report on any formal or informal action Congress undertakes to resolve differences between the House- and Senate-passed versions of H.R. 2892, the Fiscal Year 2010 Homeland Security Appropriations Bill, which funds immigration enforcement, immigration services, and border security departments, agencies, programs, activities, and functions of federal government. Congress must resolve the differing versions of the measure by October 1, 2009, the date on which fiscal year 2010 begins. The two versions of the measure differ significantly on immigration policy matters, as well as in appropriations for the U.S. Citizenship and Immigration Services component of the Department of Homeland security.
- **Refugee Admissions Consultation.** Next week’s Weekly Legislative Update will report on this week’s scheduled refugee admission consultation between Secretary of State Hillary Rodham Clinton and the leadership of the House and Senate Judiciary Committees.
- **Treatment of Immigrants and Nonimmigrants in Health Care Reform.** Next week’s Weekly Legislative Update will report on any action in the Senate that bears on the treatment of immigrants and nonimmigrants under pending health care reform legislation.
- **Oversight Hearing on the Secure Border Initiative.** Next week’s Weekly Legislative Update will report on this week’s House Homeland Security Panel hearing on the Secure Border Initiative.
- **Oversight Hearing on the Operations of the FBI.** Next week’s Weekly Legislative Update will report on an immigration-related issues that come up at this week’s Senate Judiciary Committee oversight hearing on the operations of the FBI.
- **House Judiciary Committee Markup of Immigration Bills.** Next week’s Weekly Legislative Update will report on any action that occurs in the House Judiciary Committee on four immigration bills that it could markup this week. ◇

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***Appendix***

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**Summary of Key Immigration-Related Differences between the House- and Senate-Passed Versions of H.R. 2892, the Fiscal Year 2010 Homeland Security Appropriations Act**

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Last Updated: Monday, September 13, 2009

The chart that follows compares selected immigration- or refugee-related policy and appropriations provisions in the House- and Senate-passed versions of the Fiscal Year 2010 Homeland Security Appropriations Act.

**Side-by-Side Comparison of Selected Immigration- and Refugee-Related Appropriations and Policy Matters Addressed in the Fiscal Year 2010 Homeland Security Appropriations Act**

Item	Issue	House Bill	Senate Bill
1.	Funding for Immigration Services Ombudsmen	The House-passed version of H.R. 2892 would appropriate \$6.685 MILLION for the Citizenship and Immigration Services Ombudsman.  The committee report accompanying the House bill notes that this would be \$250,000 less than the amount the Administration requested and	The Senate-passed version of H.R. 2892 would appropriate \$6.685 MILLION for the U.S. Citizenship and Immigration Services Ombudsman.  The committee report accompanying the Senate bill notes that this would be \$250,000 less than the amount the Administration requested and

Item	Issue	House Bill	Senate Bill
		\$214,000 more than was provided in fiscal year 2009 for that purpose.	\$214,000 more than was provided in fiscal year 2009 for that purpose.  The report defended the Committee's decision by noting that "[f]unds are decreased below the request due to the delay in filling full-time permanent positions within this office." <sup>1421</sup>
2.	Direct Appropriations for Refugee and Asylum Adjudications	The committee report accompanying the House version of H.R. 2892 notes that the measure would directly appropriate \$100 MILLION in fiscal year 2010 for refugee and asylum adjudications, which is \$106 MILLION less than the Administration requested and \$206 MILLION than was appropriated for this purpose in fiscal year 2009.  Language in the House committee report precludes USCIS from using those funds until it publishes a new final rule implementing a new schedule of fees for immigration applications. <sup>1422</sup>	The committee report accompanying S. 1298, the Senate version of H.R. 2892, notes that the Committee rejected the Administration's proposal that refugee and asylum adjudications be funded by a direct appropriation of \$201 MILLION rather than by continuing the current practice of assessing a surcharge on fees paid by applicants for other immigration services.  Language in the Senate committee report indicates that the Committee was directing the Department of Homeland Security "to submit a reprogramming within 30 days after the date of enactment of this act, to reflect the continuation of these activities as fee funded." <sup>1423</sup>
3.	Direct Appropriations for Military Naturalizations	The committee report accompanying the House version of H.R. 2892 notes that the bill has rejected the Administration's request that military naturalizations be funded through directly appropriated funds. Instead the Committee stated its expectation that the \$5.1 MILLION cost for military naturalizations should be borne by seeking a reimbursement from the Department of Defense. <sup>1424</sup>	The committee report accompanying S. 1298 notes that the Committee supports the Administration's request that military naturalizations be funded through directly appropriated funds. In approving the request, the committee report notes that the Committee "supports appropriations to support those men and women serving this Nation in the military and has included \$5,000,000, as requested, for military naturalizations." <sup>1423</sup>
4.	Immigration Integration Programs	The committee report accompanying the House version of H.R. 2892 notes that the bill is providing \$11 MILLION for the promotion of legal paths to U.S. citizenship and outreach to immigrant communities in fiscal year 2010.  The committee report notes that this would be an increase of \$9.2 MILLION in fiscal year 2010 compared to the \$1.9 MILLION that was provided for this purpose in fiscal year 2009, and that it is \$1 MILLION more than the Administration requested. <sup>1425</sup>	The committee report accompanying S. 1298 notes that the Committee has rejected the Administration's request for \$10 MILLION for immigrant integration programs, opting, instead to continue funding at \$1.2 MILLION, the amount provided in fiscal year 2009.  In support of the committee's position, the committee report states, "[t]he Committee notes that the current year grant applications are still being evaluated and that the 2009 funds have yet to be awarded. The Committee does not recommend the \$10,000,000 requested in the

<sup>1421</sup> [S. Rept. 111-31, Page 10](#)

<sup>1422</sup> [H. Rept. 111-157, Pages 128-131](#)

<sup>1423</sup> [S. Rept. 111-31, Page 117](#)

<sup>1424</sup> [H. Rept. 111-157, Pages 128-131](#)

<sup>1425</sup> [H. Rept. 111-157, Pages 131-132](#)

**Weekly Immigration and Refugee Legislative Update (continued)  
Monday, September 14, 2009**

Item	Issue	House Bill	Senate Bill
			<p>budget for a new immigrant integration activity. The Committee notes that the Office of Citizenship Services has long provided admirable services to assist those individuals seeking to become U.S. citizens or otherwise legally adjust their status and will have \$6,400,000 of carry forward balances to continue these efforts. This makes a total of \$7,600,000 available for immigrant services and integration grants."<sup>1423</sup></p>
5.	Basic Pilot/E-Verify Program	<p>The House-passed version of H.R. 2892 would appropriate a total of \$162 MILLION for the Basic Pilot/E-Verify Program, \$50 MILLION more than the Administration requested.<sup>1426</sup></p> <p>In addition to appropriating funds for the E-Verify program, the House-passed version of H.R. 2892 would--</p> <ul style="list-style-type: none"> <li>• Extend the program for three years</li> <li>• Make reforms to protect the Social Security Administration.</li> </ul> <p>The committee report accompanying the House version of H.R. 2892 notes that the most recent audit of the system “shows an unacceptably high rate of individuals falsely identified as ineligible to work.” It noted that “[o]f particular concern is the report’s conclusion that nearly 1 in 10 naturalized citizens is reported by Basic Pilot/E-Verify as non-work authorized.” The report strongly urges USCIS “to update and publish regular Basic Pilot/E-Verify accuracy and performance audits, so that Congress and Administration policy makers can remain informed of the system’s strengths and weaknesses.”</p>	<p>The Senate-passed version of H.R. 2892 would appropriate a total of \$118.5 MILLION for the Basic Pilot/E-Verify Program, \$6.5 MILLION more than the Administration requested.</p> <p>In addition to appropriating funds for the E-Verify program, the Senate-passed version of H.R. 2892 would--</p> <ul style="list-style-type: none"> <li>• Permanently extend the program<sup>1428</sup></li> <li>• Formally rename it the E-Verify Program<sup>1428</sup></li> <li>• Require federal contractors to use the E-Verify program to verify the employment eligibility of their employees<sup>1428</sup></li> <li>• Permit employers using the E-Verify System to use it to verify the work eligibility of existing employees, not just new-hires.<sup>1429</sup></li> </ul> <p>The committee report accompanying the Senate version of H.R. 2892 includes an extensive write-up on the E-Verify program, defending and expressing support for it. After explaining why it thinks USCIS has made great improvements in the program, the report goes on to state that, “[g]iven the concerns by some of the general public with E-Verify, the Committee urges USCIS to continue to work to enhance the system to further improve performance, to continue its public outreach and education campaign, and to perform a new, independent evaluation of the system during the first quarter of fiscal year 2010.”</p>

<sup>1426</sup> This includes \$112 MILLION that was provided in the bill as it was reported by the House Appropriations Committee and an additional \$50 MILLION that was added by the Rogers Motion to Recommit that the House of Representatives agreed to on June 24, 2009

<sup>1428</sup> As reported by the Senate Committee on Appropriations, S. 1298, the Senate version of the Fiscal Year 2010 Homeland Security Appropriations Act, would have extended the E-Verify program for three years. On Wednesday, July 8, 2009, the Senate agreed to Sessions Amendment 1371 to H.R. 2892, which would permanently extend the E-Verify Program. The Senate agreed to the Sessions amendment by a voice vote after first rejecting a Schumer motion to table it by a vote of 44-53

<sup>1429</sup> This provision was not in the Senate Appropriations Committee-reported version of S. 1298, the Senate version of the Fiscal Year 2010 Homeland Security Appropriations Act. It was added to the measure on the Senate floor by Grassley Amendment 1415, which the Senate agreed to by a voice vote

Item	Issue	House Bill	Senate Bill
		<p>The report also expresses the Committee’s strong support for efforts by USCIS “to establish a compliance group to monitor use of the Basic Pilot/E-Verify system and to ensure that companies enrolled in the program are not using it to take inappropriate or illegal employment actions.” The draft report notes that the Committee-approved bill will accommodate the Administration’s request to hire 40 Monitoring and Compliance staff “to ensure the system is not used for prohibited purposes.”<sup>1427</sup></p>	
6.	EB-5 Regional Centers	There is no provision in the House-passed version of H.R. 2892 relating to EB-5 Regional Centers	Sec. 549 of the Senate-passed version of H.R. 2892 would permanently extend the EB-5 Regional Center Program. <sup>1430</sup>
7.	Special Immigrant Non-Minister Religious Worker Visas Program	There is no provision in the House-passed version of H.R. 2892 relating to the Special Immigrant Non-Minister Religious Worker Visas Program.	Sec. 571(a) of the Senate-passed version of H.R. 2892 would extend for three years the Special Immigrant Non-Minister Religious Worker Visa Program, extending it through September 30, 2012. The provision also would require U.S. Citizenship and Immigration Services to conduct a study and report on certain aspects of the program. <sup>1431</sup>
8.	Conrad State 30 J-1 Visa Program	There is no provision in the House-passed version of H.R. 2892 relating to the Conrad State 30 J-1 Visa Program.	Sec. 571(b) of the Senate-passed version of H.R. 2892 would extend for three years the Conrad State 30 J-1 Visa Waiver Program <sup>1432</sup> , extending it through September 30, 2012. <sup>1430</sup>
9.	Relief for Widows and Orphans	There is no provision in the House-passed version of H.R. 2892 relating to relief for widows and orphans.	Sec. 571(c) of the Senate-passed version of H.R. 2892 would protect widows, widowers and orphans of deceased U.S. citizens and legal permanent residents who are in the family immigration system by allowing widows, widowers and orphans, to immigrate on a family-based visa despite the death of a petitioner. <sup>1430</sup>

<sup>1427</sup> [H. Rept. 111-157](#), June 16, 2009, Page 131

<sup>1430</sup> This section was not in the Senate Appropriations Committee-reported version of the Fiscal Year 2010 Homeland Security Appropriations Act. It was added to the measure on the Senate floor on July 8, 2009, by Leahy Amendment 1407, a second degree amendment to the Sessions E-Verify Amendment. The Senate agreed to the Leahy amendment by a voice vote. The Senate went on to agree to the Sessions amendment by a voice vote after first rejecting a Schumer motion to table it by a vote of 44-53

<sup>1431</sup> This section was not in the Senate Appropriations Committee-reported version of the Fiscal Year 2010 Homeland Security Appropriations Act. It was added to the measure on the Senate floor on July 9, 2009, by Hatch Amendment 1428, which the Senate agreed to by unanimous consent

<sup>1432</sup> The Conrad State 30 / J-1 Visa Waiver Program is used to place international medical graduates who have completed their medical education in the United States in underserved areas of the state. Normally, upon completion of their education, these international medical graduates are required to return to their country of nationality for at least two years before returning to the United States. However, under the Conrad State 30/J-1 Visa Waiver Program this home residency requirement can be waived for up to thirty (30) J-1 physicians annually. In exchange, the J-1 physicians must agree to practice medicine full time at a Delaware pre-approved sponsoring site for a minimum of three years. These practice sites must be located in federally designated Health Professional Shortage Area (HPSA) or a Medically Underserved area (MUA).

**Weekly Immigration and Refugee Legislative Update (continued)**  
**Monday, September 14, 2009**

Item	Issue	House Bill	Senate Bill
10.	Fencing Along the U.S. Border with Mexico	There is no provision in the House-passed version of H.R. 2892 relating to fencing along the U.S. border with Mexico	<p>Sec. 560 of the Senate-passed version of H.R. 2892 would impose a number of restrictions and mandates on the Administration with regard to fencing being constructed along the U.S. border with Mexico.</p> <p>More specifically, Sec. 560 of the Senate-passed version of H.R. 2892 would --</p> <ul style="list-style-type: none"> <li>• require that construction of the mandated 700 miles of fencing be completed by December 31, 2010;</li> <li>• provide that fencing that does not effectively restrain pedestrian traffic (such as vehicle barriers and virtual fencing) may not be used to meet the 700-mile fence requirement under the law; and</li> <li>• provide that funds for fence construction may not be withheld for failure to comply with consultation requirements.</li> </ul> <p>Sec. 560 of the Senate-passed version of H.R. 2892 also would impose reporting requirements on the Administration with regard to the construction of fencing along the U.S. border with Mexico.<sup>1433</sup></p>
11.	SSA No-Match Letters	There is no provision in the House-passed version of H.R. 2892 relating to SSA No-Match Letters	Sec. 561 of the Senate-passed version of H.R. 2892 provide that none of the amounts made available under the Act may be used to implement changes to the final rule describing the process for employers to follow after receiving a “no match” letter in order to qualify for “safe harbor” <sup>1434</sup>

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<sup>1433</sup> This section was not in the Senate Appropriations Committee-reported version of the Fiscal Year 2010 Homeland Security Appropriations Act. It was added to the measure on the Senate floor on July 9, 2009, by DeMint Modified Amendment 1399, which the Senate agreed to by a vote of 54-44

<sup>1434</sup> This section was not in the Senate Appropriations Committee-reported version of the Fiscal Year 2010 Homeland Security Appropriations Act. It was added to the measure on the Senate floor on July 8, 2009, by Vitter Modified Amendment 1375, which the Senate agreed to by a voice vote