



United States Conference of Catholic Bishops Government Relations

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

Monday, February 2, 2009

(Revised on February 8, 2009)

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This Week's Hearings

At the time of this writing, no hearings were anticipated this week at which immigration-, refugee-, border security-, or visa security-related matters were likely to be discussed. ◇

consideration of legislation expanding and reauthorizing the State Children's Health Insurance Program.

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This Week's Markups

At the time of this writing, at least seven actions impacting immigration or refugee matters could take place this week in House or Senate committees.

This includes the following potential actions:

- **Legislation:** At the time of this writing, one measure containing significant immigration- or refugee-related provisions were scheduled to be marked up this week in House or Senate Committees:
 1. **State Children's Health Insurance Program.** The House Committee on Rules has scheduled a markup for this week on a rule providing for House floor

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This Week's Markups (continued)

- Cabinet Nominations: At the time of this writing, the following Senate committees could vote this week on the following of President Barack Obama's nominees to head departments that have significant immigration- or refugee-related functions:
 2. Secretary of Health and Human Services. While it had not been scheduled and appeared unlikely at the time of this writing, the Senate Committee on Finance could vote this week on the nomination of former Senate Majority Leader Tom Daschle (D-SD) to be Secretary of Health and Human Services.
- Committee Organizing Meetings. At the time of this writing, the following committee organizing meetings were possible this week:
 3. House Homeland Security Committee. The House Committee on Homeland Security has scheduled its 111th Congress organizing meeting for this week.
 4. Senate Committee on Foreign Relations. The Senate Committee on Foreign Relations has scheduled its 111th Congress organizing meeting for this week.
 5. Senate Committee on the Judiciary. The Senate Committee on the Judiciary could hold its 111th Congress organizing meeting as soon as this week.
 6. Senate Committee on Appropriations. The Senate Committee on Appropriations could hold its 111th Congress organizing meeting as soon as this week.
 7. Senate Committee on Homeland Security. The Senate Committee on Homeland Security and Governmental Affairs could hold its 111th Congress organizing meeting as soon as this week.

House

House Rules Committee to Markup Resolution Providing for the Consideration of SCHIP Expansion Bill:

The House Committee on Rules has scheduled a markup for this week of a resolution providing for the consideration of the Senate Amendments to the House-passed version of H.R. 2, a measure extending and expanding the State Children's Health Insurance Program (SCHIP). This week's markup is scheduled for 5:00 pm on Tuesday, February 3, 2009, in Room H-313 of the Capitol Building. ☀

House Homeland Security Committee to Hold 111th Congress Committee Organizing Meeting:

The House Committee on the Homeland Security is expected this week to hold its organizing meeting for the 111th Congress. This week's markup is scheduled for 10:30 am on

Wednesday, February 4, 2009, in Room 311 of the Cannon House Office Building. ☀

Senate

Senate Foreign Relations Committee to Hold 111th Congress Organizing Meeting:

The Senate Committee on Foreign Relations has scheduled its 111th Congress organizing meeting for this week. It is scheduled for Thursday, February 5, 2009, in Room S-116 of the Capitol Building. However, at the time of this writing, the time for the meeting had not yet been publicly released. ☀

Senate Judiciary Committee Could Hold 111th Congress Committee Organizing Meeting:

The Senate Committee on the Judiciary could hold its organizing meeting for the 111th Congress as soon as this week. At the time of this writing, the Committee's organizing meeting had not yet been noticed. The Committee usually holds its business meetings on Wednesdays at 10:00 am. Accordingly, it is anticipated that this week's meeting will be held at 10:00 am on Wednesday, February 4, 2009, in Room SD-521 of the Dirksen Senate Office Building. ☀

Senate Appropriations Committee Could Hold 111th Congress Committee Organizing Meeting:

The Senate Committee on Appropriations could hold its 111th Congress organizing meeting this week. At the time of this writing, no meeting date or time had been scheduled. ☀ ◇

This Week's Floor Activity

At the time of this writing, at least five actions impacting immigration or refugees could take place this week on the House or Senate floor.

This includes possible floor actions on three legislative measures containing significant immigration- or refugee-related provisions and on as many as two nominations to head cabinet agencies that have jurisdiction over significant immigration- or refugee-related functions.

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This Week's Floor (continued)

This includes potential floor actions on two legislative measures containing significant immigration- or refugee-related provisions and on as many as two nominations to head cabinet agencies that have jurisdiction over significant immigration- or refugee-related.

- **Legislation:** The following floor actions on legislation containing significant immigration- or refugee-related provisions could take place this week:
 1. **State Children's Health Insurance Program.** The full House could clear legislation to reauthorize and expand the State Children's Health Insurance Program (SCHIP) for the President's consideration.
 2. **Economic Stimulus Package.** The full Senate is expected to take up its version of the economic stimulus package, which includes a number of immigration-related provisions, including several that are controversial.
 3. **Fiscal Year 2009 Omnibus Appropriations.** The full House could take up a pre-negotiated version of the fiscal year 2009 Omnibus Appropriations Bill.
- **Cabinet Nominations:** The full Senate could take up the final of President Barack Obama's nominees to head departments that have significant immigration- or refugee-related functions:
 4. **Attorney General of the United States.** The full Senate this week could take up the nomination of Eric H. Holder, Jr., to be Attorney General of the United States.
 5. **Secretary of Health and Human Services.** The full Senate could vote on the nomination of former Senate Majority Leader Tom Daschle (D-SD) to be Secretary of Health and Human Services.

House

House Could Take Up Omnibus Appropriations

Bill: The full House of Representatives could take up an omnibus fiscal year 2009 appropriations bill containing funding for the nation's refugee admissions, overseas refugee assistance, and refugee resettlement programs as early as this week. While no official notice had emerged as of the time of this writing, informed sources indicated it was possible, though unlikely, that the House could take up the yet-to-be-introduced omnibus appropriations measure, which it has named the "Consolidated Appropriations Act for Fiscal Year 2009", as soon as Wednesday, February 4, 2009.

Background. When the 110th Congress adjourned in December, 2008, it left most of its fiscal year 2009 appropriations work undone, including leaving undone the appropriations bills that fund the operation of the nation's refugee admissions, overseas refugee assistance, and refugee resettlement programs. Those programs are being funded in a continuing appropriations resolution, which is set to expire on March 6, 2009.

For some time now, it has been known that one of the first legislative orders of business for the 111th Congress would be completing the appropriations bills for fiscal year 2009. That process could begin officially this week.

Summary of Immigration- and Refugee-Related

Provisions. The draft Consolidated Appropriations Act for Fiscal Year 2009 has not been publicly released. Accordingly, at the time of this writing, virtually nothing was publicly known about its provisions. Indeed, virtually no one on Capitol Hill who is not associated with the Leadership or the Appropriations Committee knew much about the bill's contents at the time of this writing.

The bill will contain fiscal year 2009 appropriations for the following departments that administer significant immigration- and refugee-related functions:

- **Department of State.** The Department of State, which administers the nation's refugee admissions and overseas refugee assistance programs through its Bureau of Population, Refugees, and Migration (PRM);
- **Department of Health and Human Services.** The Department of Health and Human Services, which administers the nation's refugee resettlement, unaccompanied alien child, trafficking victims assistance, and torture victims assistance programs through its Office of Refugee Resettlement (ORR); and
- **Department of Justice.** The Department of Justice, which administers the Board of Immigration Appeals (BIA), Executive Office for Immigration Review (EOIR), and the nation's immigration court system.

While the bill may contain supplemental fiscal year 2009 funding for immigration enforcement, the bulk of the funding for those functions were contained in the Fiscal Year 2009 Homeland Security Appropriations Bill, which is one of the three regular fiscal year 2009 appropriations bills that have already been enacted into law.

It is widely believed that, in the area of appropriations for refugees and immigration, the "Consolidated Appropriations Act for Fiscal Year 2009" will closely follow the fiscal year 2009 appropriations bills that the House and Senate Committee on Appropriations produced last summer but they did not ultimately move through the 110th Congress.

A summary of the immigration- and refugee-related provisions of those bills follow:

- **Migration and Refugee Assistance.** The House and Senate Appropriations Committees each produced their versions of the Fiscal Year 2009 State, Foreign Operations, and Related Agencies Appropriations bill last summer. However, in the case of the House, because of disputes with the administration of President George W. Bush and disagreements with Committee Republicans, the bill language and committee reports associated with those measures were never publicly revealed. The Senate, on the other hand, actually released its bill to the public, introducing it on July 17, 2008, as [S. 3288](#).⁸⁴

The Senate Appropriations Committee-reported FY '0-State-Foreign Operations bill would have appropriated \$1.1 BILLION for the Department of State's Migration and Refugee Assistance (MRA) account, the account that funds the bulk of Department's refugee admissions and overseas refugee assistance programs.

The proposed appropriation of \$1.1 BILLION for the MRA account would have represented an increase of \$336 MILLION over the Bush Administration's fiscal year 2008 budget request. It was \$76.8 MILLION more than the fiscal year 2008 enacted level.

While the House Appropriations Subcommittee on State-Foreign Operations marked up its version of the fiscal year 2009 State-Foreign Operations appropriations bill last July, the measure never moved to the full Committee and no committee report was ever filed. It has been rumored that the bill would have appropriated \$823 MILLION for the MRA account. But that number has not been confirmed.

- **Refugee Resettlement.** The House and Senate Appropriations Committees each produced their versions of the Fiscal Year 2009 Labor, Health and Human Services, and Education Appropriations bill last summer. However, because of disputes with the administration of President George W. Bush and Committee Republicans, the bill language and committee reports associated with those measures were never publicly revealed.

The chart that follows compares the actual amount appropriated for fiscal year 2008 with the amount requested by the Bush Administration and the amounts that were contained in the House and Senate draft Fiscal Year 2009 Labor, HHS, Education Appropriations bills from last summer:

Fiscal Year 2009 Appropriations for the Office of Refugee Resettlement

ITEM	'08 ACT'AL	'09 BUSH	'09 HOUSE	'09 SENATE
Transitional & Medical	\$ 296.1	\$ 287.0	\$ 287.0	\$ 287.0
Social Services	\$ 154.0	\$ 154.0	\$ 154.0	\$ 154.0
Preventive Health	\$ 4.7	\$ 4.7	\$ 4.7	\$ 4.7
Targeted Assistance	\$ 48.6	\$ 48.6	\$ 48.6	\$ 48.6
SUBTOTAL	\$ 503.4	\$ 494.3	\$ 494.3	\$ 494.3
Trafficking Victims	\$ 9.8	\$ 9.8	\$ 9.8	\$ 9.8
Torture Victims	\$ 9.8	\$ 9.8	\$ 10.8	\$ 10.8
Unaccompanied Alien Children	\$ 132.6	\$ 114.1	\$ 126.2	\$ 120.0
TOTAL ORR	\$ 655.631	\$ 628.044	\$ 641.144	\$ 635.044

Millions of Dollars

In addition to the appropriating language, the draft Fiscal Year 2009 House and Senate Appropriations Committee bills from last summer contained extensive report language on the following refugee resettlement matters:

1. **Matching Grant Program.** The draft House committee report from last summer addressed the Matching Grant Program, recognizing "the positive outcomes of the Voluntary Agency Matching Grant Program, which has experienced success in facilitating economic self-sufficiency for newly arriving refugees within a short period of time." The Committee requested "that ORR include information in its fiscal year 2010 budget justification estimating funding allocations, and the corresponding number of refugees served, for the Voluntary Matching Agency Grant Program for fiscal years 2008, 2009, and 2010."
2. **Family Preservation for Unaccompanied Refugee Minors.** The draft House committee report from last summer addressed family preservation for unaccompanied refugee minors. In the draft report, the Committee commended "the initial steps taken by ORR to address the problem of separated children and refugee family breakdown by piloting a family preservation specialist initiative in the URM Program." The Committee went on to "urge ORR to consider expanding this initiative to each of the 18 URM programs in the country." In addition, the Committee requested "that ORR provide adequate

⁸⁴ [S. Rept. 110-425, July 18, 2008](#)

funding to URM programs for capacity development so that they have the necessary infrastructure to accommodate increasing numbers of unaccompanied and separated refugee children.” Finally, the Committee requested ORR “to provide estimates of the number of family preservation specialists funded, along with the corresponding estimates of the numbers of URM, for fiscal years 2008, 2009, and 2010 in the fiscal year 2010 budget justification.”

3. Victims of Trafficking. The draft House committee report from last summer addressed ORR efforts to assist victims of trafficking. The draft report expressed the Committee’s concern that “in fiscal year 2007, this program certified only 303 child trafficking victims.” The Committee recommended “that ORR significantly expand its efforts to identify, assist, and certify human trafficking victims.” The Committee went on to express its support for “efforts to ensure that child trafficking victims do not remain trapped in life-threatening situations out of fear of being interrogated by law enforcement authorities.” Finally, the Committee requested the Department “to expedite letters of eligibility so that minor victims may be connected to benefits without delay.”
4. Torture Victims. The draft Senate committee report from last summer noted that “a large proportion of the increasing numbers of Iraqi refugee arrivals have experienced trauma, torture, and severe violence.” The report expressed the Committee’s recommendation for an increase of \$1 MILLION over the Administration’s request “will help address the unique mental health needs of these refugees as they attempt to rebuild their lives in the United States.”
5. Unaccompanied Alien Children. The draft House committee report from last summer addressed issues related to unaccompanied alien children. More specifically—
 1. Transportation of Unaccompanied Alien Children. Both the House and Senate Appropriations Committees address the issue of the cost of transporting children in their draft committee reports from last summer.

The draft House committee report expressed the House Committee’s understanding that “Immigration and Customs Enforcement agency (ICE) proposes to transfer to ORR in fiscal year 2008 its responsibility for the transportation of unaccompanied alien children from the point of Department of Homeland Security apprehension to the initial placement in an ORR facility.”

The House Committee indicated in its draft report from last summer that it “does not support this proposal.” It explained that “ORR was not allocated a budget to carry out these transportation services and does not have the necessary infrastructure in place.” The draft House committee report indicated that the Committee “believes that transferring this responsibility precipitously without proper planning could potentially create a chaotic situation that is not in the best interest of the children.” The House Committee, further expressed its belief in the draft committee report from last summer “that ORR shall accept this function only if it is able to assume this responsibility and the transfer is cost-effective, ICE reimburses ORR for the cost of this function as determined by an independent entity, and a joint transition plan for the orderly reassignment of this function is developed by ICE and ORR.”

The draft Senate committee report from last summer also noted its awareness of an imminent transfer of the responsibility for transporting UACs from ICE to ORR. The draft Senate report indicated that this transfer was not anticipated in previous Administration budget requests, expressed concern, and directed “the Departments to present to the Committee a joint report with OBM and DHS no later than March 1, 2009, with a recommendation for which agency is the most appropriate to fund the transportation of UACs to ORR facilities.”

2. Prompt Transfers of Children. The draft Senate committee report from last summer indicated that the Committee “is committed to ensuring that UACs are expeditiously transferred from the point of DHS apprehension to initial placement in ORR facilities where they can receive the care and services they need.” The Committee “direct[ed] ORR to respond to DHS’ initial call for placement by identifying the ORR placement facility to DHS within 6 hours, on average, of receiving the DHS call.” The draft Senate committee report from last summer also “direct[ed] ORR to continue to work with DHS to expedite the transfer and placement of those children with special needs to the most appropriate ORR facility as quickly as possible.”
3. Pro Bono Pilot Program. Both the draft House committee report from last summer and the draft Senate committee report from last summer addressed the Pro Bono pilot program.

The draft House committee report from last summer commended ORR “for implementing a pro bono pilot program for UACs.” The draft House report indicated that ORR’s appropriation contained \$5.1 MILLION within the UAC program “to continue this initiative to ensure legal representation for all UACs.” The Committee expressed its intent that the funds be used “to train attorneys, to detect abuse, mistreatment, labor exploitation, and trafficking of these children.” In addition, the Committee indicated that it “expects a portion of these funds to be used to train attorneys in methods that will ensure the appearance of children at all immigration court hearings.” Finally, the Committee report requested “a report be included in its fiscal year 2010 budget justification on the effectiveness of this initiative, including the number and proportion of UACs provided pro bono legal representation.”

The draft Senate committee report from last summer indicated that ORR’s appropriation contained \$5 MILLION for the program. The draft Senate committee report went on to state its expectation that ORR would “use part of the funding provided to assess the overall impact of the pro bono legal services initiative.”

4. Breakdown of Costs. The draft House committee report from last summer requested “that ORR include in its fiscal year 2010 budget justifications a detailed breakout of actual and estimated costs for shelter, medical, legal, transportation, administrative, and other activities for the UAC program for fiscal years 2008, 2009, and 2010.”

- Non-Appropriations Immigration-Related Items. In addition to appropriating funds for refugee admissions, overseas refugee assistance, refugee resettlement, and the nation’s immigration court system, it is possible that The House and Senate Appropriations Committees will include several non-appropriations immigration-related provisions in the bill that the House takes up this week or next.

Among the candidates to be included are the following:

1. Immigration Extenders. When Congress completed work last year on the fiscal year 2009 continuing appropriations resolution, it included within it a temporary extension of three expiring immigration programs. The programs are the Conrad 30 program for foreign-born doctors, the E-Verify employment verification program, and a program relating to the EB-5 Investor visa program. The continuing

appropriations resolution extended these three programs through March 6, 2009, the length of the continuing appropriations.

Congress subsequently extended through March 6, 2009, another expiring immigration program, the special immigrant non-minister religious worker visa program.

All four of these programs will face either extinction or extension in the 111th Congress, and appropriators could include temporary extensions of any or all of them in the “Consolidated Appropriations Act for Fiscal Year 2009” that they are putting together for consideration this week or next.

2. Undoing of Immigration-Related Regulations. In the waning hours of the Bush Administration, officials issued controversial rules relating to the H-2A and H-2B nonimmigrant temporary worker programs. It is possible that appropriators could include provisions in the “Consolidated Appropriations Act for Fiscal Year 2009” that would stay or alter those regulations.

Outlook. It was uncertain at the time of this writing whether the House would take up the “Consolidated Appropriations Act for Fiscal Year 2009” this week. Senate appropriators have been lobbying their colleagues to wait until after the Senate passes its economic stimulus bill, which is not expected to occur until Thursday or Friday of this week. And the House will not be in session this week after the close of business on Wednesday.

Moreover, it was unclear at the time of this writing what immigration- and refugee-related appropriations provisions and legislative riders will be included in the measure. ☼

House to Clear Measure Expanding Immigrant Eligibility for Federally Funded Health Benefits:

The full House of Representatives this week is expected to clear legislation expanding legal immigrants’ eligibility for federally funded health benefits. This week’s floor action is scheduled to occur on Wednesday, February 4, 2009, in connection with H.R. 2, the “Children’s Health Insurance Program Reauthorization Act of 2009”.

As a technical matter, the House this week will take up the Senate Amendments to a House-passed version of H.R. 2. The House is expected to pass the Senate Amendments to H.R. 2 without change, thus, clearing the measure for the President’s consideration.

As passed by the Senate, the Senate Amendments to H.R. 2 would reauthorize the State Children’s Health Insurance Program (SCHIP) for four-and-a-half years, increase its benefits, and expand eligibility for the program. The measure

would be paid for, in part, by increasing the federal tax on cigarettes by 61 cents.

Parliamentary Situation. The House Committee on Rules is expected to markup a rule that will provide for no floor amendments to the measure and for a motion to recommit.

Legislative History. The 111th Congress is taking up H.R. 2 as one of its first orders of business. During the 110th Congress, the House and Senate sent two similar bills to President George W. Bush, who vetoed both of them.

One of the major differences between the 111th Congress version of H.R. 2 and the two SCHIP bills that President Bush vetoed during the 110th Congress is that H.R. 2 contains provisions expanding immigrants' access to SCHIP and Medicaid benefits.

The House took up H.R. 2 on January 14, 2009, bypassing the House Committee on Energy and Commerce. It passed the bill on January 24 by a vote of 289-139.^{85 86}

The Senate Committee on Finance marked up [S. 275](#), its version of the measure, on January 16, 2009, reporting it to the Senate as an original measure. The Senate Committee on Finance action occurred after a bruising debate on immigration. The Committee added two immigration-related provisions to the measure and rejected numerous other immigration-related amendments during its consideration of the measure. Among the amendments added to the bill during the Senate Finance Committee's consideration was a provision that would give states the option of providing SCHIP and Medicaid benefits to legal immigrant children and pregnant women without having to wait until the immigrants have been in the United States for five years.⁸⁷

The full Senate took up the House-passed version of H.R. 2 beginning on Monday, January 26, 2009, replacing it with the text of S. 275, and subjecting that measure to amendment on the Senate floor throughout the week.

The Senate passed the Senate Amendments to H.R. 2 on Thursday, January 29, 2009, by a vote of 66-32.^{88 89}

⁸⁵ [House Roll Call No. 16](#), January 14, 2009

⁸⁶ See Pages 81-83 of the January 19, 2009, edition of the *Weekly Legislative Update*, for a report on and analysis of House consideration of H.R. 2.

⁸⁷ See Pages 78-81 and 87-91 of the January 19, 2009, edition of the *Weekly Legislative Update* for a report and analysis of the debate in the Senate Committee on Finance of the immigration-related provisions in S. 275 and the amendments offered in Committee to the measure.

⁸⁸ [Senate Roll Call No. 31](#), January 29, 2009

Summary of the Bill's Immigration- and Refugee-Related Provisions. As passed by the Senate, H.R. 2 contains the following immigration- or refugee-related provisions:

- State Option to Provide SCHIP and Medicaid Benefits. Sections 214(a) and (b) of the measure would—
 1. Give states the option of providing SCHIP and Medicaid benefits to legal immigrant children and pregnant women without waiting until the immigrant has been in the United States for five years or more;
 2. Waive the requirement under current law that the income and resources of an immigrant's sponsor be deemed to be that of the immigrant for the purposes of determining the immigrant's eligibility for SCHIP and Medicaid; and
 3. Relieve sponsors of affidavit of support obligations with regard to Medicaid and SCHIP benefits.

The Congressional Budget Office estimated that this provision would result in \$3.9 BILLION of additional spending from fiscal year 2009 through fiscal year 2019.

- Eased Citizenship Verification for States. Section 211(a) would provide an alternative citizenship verification process for states when determining Medicaid eligibility. Instead of presenting satisfactory documentary evidence as required under the Deficit Reduction Act of 2005, states could submit the name and Social Security number of the individual to the Commissioner of Social Security. The Commissioner would then determine whether the name and Social Security number provided by the state is consistent with information in the records maintained by the Commissioner. If the information is not consistent, the state would make a reasonable effort to address the causes of the inconsistency. If the inconsistency cannot be resolved, the individual would be disenrolled from the program. The bill also would apply the verification process to the Children's Health Insurance Program;
- Strengthened Citizenship Verification for SCHIP. Section 211(b) would extend to SCHIP a 2005 Medicaid citizenship documentation requirement that advocates have found problematic because it has resulted in barring many eligible persons from the program;
- Bar on Provision of Benefits to Illegal Immigrants. Section 605 would explicitly provide that nothing in the Act allows Federal payments for individuals who are not lawfully residing in the United States; and

⁸⁹ See Pages 137-140 of this week's *Weekly Legislative Update* for a detailed summary and analysis of last week's Senate consideration of H.R. 2

- **Annual Immigration Status Checks.** The proposed new Section 1903(v)(4)(C) of the Social Security Act, as added by Section 214(a)(2) of the bill, would require states to acquire documented evidence of immigrants' lawful immigration status for immigrants receiving benefits pursuant to a state's decision to exercise its option to waive the five-year waiting period for immigrant eligibility for Medicaid and SCHIP benefits. Under the provision, states would be required to acquire this documentation when they conduct their annual redetermination of eligibility.

Differences Between House and Senate Bills. There is only one difference between the immigration-related provisions in the two bills. The Senate amendments to H.R. 2 contains a provision, found in the proposed new Section 1903(v)(4)(C) of the Social Security Act, as added by Section 214(a)(2) of the bill, that would require states to acquire documented evidence of immigrants' lawful immigration status for immigrants receiving benefits pursuant to a state's decision to exercise its option to waive the five-year waiting period for immigrant eligibility for Medicaid and SCHIP benefits.

There was no such provision in the House-passed version of the measure.

This provision was added to the bill in the Senate Committee on Finance by an amendment to the measure that was offered by Senator Charles Grassley (R-IA). The Committee agreed to the Grassley amendment on January 15, 2009, by a voice vote.

Outlook. The House is expected to pass the Senate Amendments to H.R. 2 this week, clearing the measure for the President's consideration. ☼

Senate

Senate Could Face Votes on E-Verify as it Takes Up Economic Stimulus Bill: The full Senate this week is scheduled to take up an economic stimulus measure that could become a target for controversial immigration amendments, including at least two potential amendments that would, alternatively, extend and then greatly expand the mandatory use of the controversial E-Verify program. This week's Senate floor action is expected to occur beginning on Monday, February 2, 2009, in connection with the Senate version of H.R. 1, an economic stimulus package. The Senate is expected to continue its consideration of H.R. 1 throughout much of the week.

The version of H.R. 1 that the Senate will take up is an \$888 BILLION package that is based on proposals put together by President Barack Obama and Senate Democratic Leaders. It is an unusual measure, in that it combines discretionary spending provisions, entitlement spending provisions, revenue measures, and authorization provisions. In all, the measure contains \$365 BILLION in discretionary spending increases, \$180 BILLION in entitlement spending increases,

and \$342 BILLION in tax cuts, and. It was assembled after three separate House committees held markups to put their stamps on the measure.

Parliamentary Situation. The Senate has reached a unanimous consent agreement to take up H.R. 1 beginning at 2:00 pm on Monday, February 2, 2009. However, there is no unanimous consent agreement in place governing the amendatory process.

Senate Majority Leader Harry Reid (D-NV) has signaled a willingness to allow amendments to be offered to the measure so long as those amendments do not become obstructive. There is no word on whether or when he will file a cloture petition to bring debate to a close and shutdown nongermane amendments to the measure.

Majority Leader Reid may, indeed, wind up filing a cloture petition on the measure or undertaking other hardball tactics to move the bill, however. A number of Senate Republicans have vowed to block the bill if it does not contain more tax cuts. And several Democrats have joined with most Republicans in criticizing some of the measure's spending provisions because, in their view, they are not simulative.

Legislative History. The Senate version of H.R. 1 is a companion to the [House-passed version of H.R. 1](#), the "Economic Recovery and Reinvestment Act of 2009", which the House of Representatives passed on January 28, 2009, by a vote of 244-188.⁹⁰ However, the Senate version of H.R. 1 differs in significant ways from the House-passed measure.

The Senate version of H.R. 1 is the product of two committees' work: the Senate Committee on Appropriations and the Senate Committee on Finance. The Senate Finance Committee approved its part of the measure on January 27, 2009, by a vote of 14-9.⁹¹ The Senate Appropriations Committee also approved its part of the measure on January 27, 2009, ordering it reported to the Senate as [S. 336](#)⁹², by a vote of 21-9.

Summary of Immigration- and Refugee-Related Provisions. As approved by the Senate Appropriations and Senate Finance Committees, the Senate version of H.R. 1 contains the following immigration- or refugee-related provisions:

- **Funding for U.S. Customs and Border Protection.**

⁹⁰ [House Roll Call No. 46, January 28, 2009](#)

⁹¹ [Click Here](#) to see the text of the legislation approved by the Senate Committee on Finance

⁹² [Click Here](#) to see the text of S. Rept. 111-3, the report accompanying the Senate Appropriations Committee-approved version of S. 336

1. Border Facilities. an appropriation of \$1.2 BILLION for the for construction and repair of border stations;
 2. CBP Salaries and Expenses. An appropriation of \$198 MILLION for U.S. Customs and Border Protection salaries and expenses, including \$100.8 MILLION for the procurement and deployment of non-intrusive inspection systems to improve port security and \$ 97.2 MILLION for procurement and deployment of tactical communications equipment and radios.
 3. Border Fencing and Technology. an appropriation of \$200 MILLION for Border Security Fencing, Infrastructure, and Technology, to be used for expedited development and deployment of border security technology on the Southwest border.
 4. Port of Entry Construction. an appropriation of \$800 MILLION for Construction, to be used to construct, alter, enhance, expand, repair, and/or improve CBP-owned land border ports of entry.
- Funding for U.S. Customs and Immigration Enforcement.
 1. Automation Modernization. an appropriation of \$27.8 MILLION for automation modernization to be used for the procurement and deployment of tactical communications equipment and radios.
 - Tax Provisions.
 1. Making Work Pay Tax Credits. The new Section 36A(d)(1)(A) of the Internal Revenue Code, added by Section 1001(a) of the Finance Committee approved bill, would make nonresident aliens ineligible for the Making Work Pay Tax Credits.

Potential Immigration-Related Floor Amendments. At the time of this writing, at least two immigration- or refugee-related amendments appeared likely to be offered on the Senate floor. And at least one more was being contemplated.

- MANDATORY USE OF E-VERIFY.--Senators Ben Nelson (D-NE) and Jeff Sessions (R-AL) have implied that they intend to offer an amendment to H.R. 1 that would require entities receiving stimulus money to use the E-Verify system to verify the work eligibility of their employees.

Senators Nelson and Sessions put the Senate on notice of their intended amendment in a letter that they sent to Senate Majority Leader Harry Reid (D-NV) and Senate Minority Leader Mitch McConnell (R-KY) on Thursday, January 29, 2009. In their letter, the two senators wrote,

“An important step toward guaranteeing that new and existing jobs are for U.S. citizens is to require businesses benefiting from the stimulus package to use the E-Verify program. Currently, E-Verify is a voluntary program that allows for the quick comparison of an employee’s personal information with over 444 million records in the SSA database and more than 60 million records in the DHS immigration database. Such an analysis is a useful and efficient tool to determine lawful citizenship. We are encouraged by the fact that close to 2,000 new businesses register to use the E-Verify system each week. And, with the implementation of Executive Order 12989 on January 15, 2009, all federal contractors and subcontractors are required to use the E-Verify system.

“The stimulus package is intended to help ease the pain of the current recession and restore growth to our economy. If passed, it will be paid for by the American taxpayers and we believe that Congress should do all it can to ensure that American taxpayers are the intended beneficiaries of its efforts.”

The House-passed version of H.R. 1 contains a controversial mandatory E-Verify provision.

- EXTENSION OF THE E-VERIFY PROGRAM.— Senator Charles Grassley (R-IA) is reportedly considering offering an amendment that would reauthorize the E-Verify Program, which is set to expire on March 6, 2009.

The House-passed version of H.R. 1 contains provisions extending the E-Verify Program through 2016.

It was not clear at the time of this writing whether Senator Grassley would offer an E-Verify extension amendment or what form it would take. However, during the 110th Congress, Senator Grassley introduced [S. 3093](#), legislation during the 110th Congress that would have permanently authorized the program and made several other changes in law. In addition to reauthorizing the program, S. 3093 would have required all federal contractors to make use of the program; given employers the option to verify the status of all employees, not just new hires; allowed the Department of Homeland Security to require companies to use the E-Verify program if a pattern of illegal hiring is found; required USCIS to provide monthly reports to Immigration and Customs Enforcement listing the non-authorized checks E-Verify finds that should be investigated; required USCIS to create a pilot project providing opportunities for small businesses and other rural areas without internet access to use the E-Verify program; required employers to re-verify employees who

are in the United States on temporary status; and formally changed the name of the program from the Basic Pilot program to the E-Verify. Program.

Other immigration- or refugee-related amendments are possible, as well. For instance, pro-refugee advocates are attempting to find a senator to submit an amendment to increase funding in the bill for the Department of Health and Human Services Office of Refugee Resettlement to assist refugees in the United States who be facing economic dislocations because of the economic crisis.

Outlook. While the road will likely be a bit bumpy, the Senate is expected to approve an economic stimulus bill by week's end and then begin the process of reconciling what will be differing House and Senate versions of the measure. It was not possible at the time of this writing to predict what the Senate will do in response to efforts to require entities receiving funds under the bill to use the E-Verify program to verify the work eligibility of their employees. ☼

Full Senate to Take Up Nomination of Eric Holder to be Attorney General of the United States: The Senate this week is expected to take up the nomination of Eric H. Holder, Jr., to be Attorney General of the United States. Senate floor action on the nomination is scheduled to begin at 3:15 pm on Monday, February 2, 2009, with a vote occurring at 6:15 pm.

The Senate Judiciary Committee approved the nomination on Wednesday, January 28, 2009, by a vote of 17-2.

DOJ Jurisdiction Over Immigration. Prior to 2003, most of the federal government's immigration- and refugee-related functions were carried out by the Department of Justice. Beginning in 2003, most of these functions were transferred to the newly established Department of Homeland Security (DHS), including all of the functions that had previously been carried out by the now-defunct Immigration and Naturalization Service (INS). The transfer of the INS and its functions to DHS left the Department of Justice with jurisdiction over four immigration-related agencies:

- [The Executive Office for Immigration Review \(EOIR\).](#) EOIR was established first administratively and later legislatively in the Homeland Security Act of 2002. EOIR administers and interprets Federal immigration laws and regulations through the conduct of immigration court proceedings, appellate reviews, and administrative hearings in individual cases. EOIR carries out these responsibilities through its three main components:

1. The Board of Immigration Appeals (BIA or Board), which hears appeals of decisions made in individual cases by Immigration Judges, Department of Homeland Security District Directors, or other immigration officials.

2. The Office of the Chief Immigration Judge (OCIJ), which oversees all the Immigration Courts and their proceedings throughout the United States; and
3. The Office of the Chief Administrative Hearing Officer (OCAHO), which adjudicates cases concerning employer sanctions, document fraud, and immigration-related employment discrimination.

- [Office of Special Counsel for Immigration-Related Unfair Employment Practices \(OSC\).](#) OSC was established in 1986 as part of the Civil Rights Division of the Department of Justice. OSC investigates and prosecutes employers charged with national origin and citizenship status discrimination, as well as document abuse and retaliation under the antidiscrimination provision of the Immigration and Nationality Act (INA).
- [Office of Immigration Litigation \(OIL\).](#) OIL was established in 1983 as part of the Civil Division of the Department of Justice. It has jurisdiction over all civil immigration litigation and is responsible for the nationwide coordination of immigration matters before the federal district courts and circuit courts of appeals. OIL has both affirmative and defensive litigation responsibilities, and its attorneys work closely with United States Attorneys' offices on immigration cases.

OIL provides support and counsel to all federal agencies involved in the admission, regulation, and removal of aliens under our immigration and nationality statutes, as well as related areas of border enforcement and national security. OIL fulfills its litigation responsibilities directly before the courts and through outreach activities including training, conferences, and publications.

- [Office of Special Investigations \(OSI\).](#) OSI was established administratively in 1979 within the Criminal Division of the Department of Justice. Up to now, OSI has been responsible for detecting and investigating individuals who took part in Nazi-sponsored acts of persecution abroad before and during World War II, and who subsequently entered, or seek to enter, the United States illegally and/or fraudulently. It then takes appropriate legal action seeking their exclusion, denaturalization and/or deportation.

The recently enacted "Intelligence Reform and Terrorism Prevention Act of 2004" established OSI legislatively and expanded its mandate to include the investigation and denaturalization of aliens who have participated in Nazi persecution, genocide, torture, or extrajudicial killing abroad and consultation with the Secretary of Homeland Security regarding actions to prosecute or extradite such aliens

In addition to having formal jurisdiction over EOIR, OIL, OSC, and OSI, the Department of Justice performs a number

of other, less formal roles that impact immigration policy. The Federal Bureau of Investigation (FBI), for instance, conducts security clearance investigations of aliens seeking admission to the United States; the Bureau of Prisons (BOP) houses many aliens who are in detention; and the Attorney General plays a key role in the development of legislation that can have both direct and tangential impacts on immigrants.

Attorney General-Designate Holder's Position on Refugee Matters.



Attorney General-Designate Holder served in the Clinton Administration as Deputy Attorney General under then-Attorney General Janet Reno.

Prior to the beginning of his confirmation process, there was little in the public record about Attorney General-Designate Holder's views or actions on immigration- or refugee-related matters. His views on immigration were filled out a bit during the confirmation process, however, as he answered a number of immigration-related questions either during the course of his public hearing or, later, for the hearing record.

The Attorney General-Designate revealed during questioning his unqualified disagreement with former Attorney General Michael Mukasey on the question of whether aliens are entitled to effective assistance of counsel during removal proceedings, his support for collecting DNA from immigration detainees, and his pledge to review the BIA streamlining regulations issued by the Administration of President George W. Bush. At the same time, Attorney General-Designate Holder was more equivocal on such questions as the efficacy of 287(g) programs and the value of Operation Streamline, pledging to assess both programs.

The following briefly summarizes the questions and answers on immigration that Attorney General-Designate Holder faced during his confirmation process:

- **BIA STREAMLINING REGULATIONS.**—Senator Dick Durbin (D-IL) derided the “so-called streamlining regulations of this administration,” which he said had “drastically reduced the time that immigration judges devote to each case, increasing the number of decisions issued with no written opinion, and resulting in a huge backlog of cases in the federal appeals courts.”

Senator Durbin quoted Judge Richard Posner, who said, “[t]he adjudication of immigration case[s] at the administrative level has fallen below the minimum standards of legal justice.” Senator Durbin asked the Attorney General-Designate what his views were about the streamlining regulations, the administrative reviews, the delays, and the backlogs. More specifically, he asked if the Attorney General-Designate if he believes that the

streamlining regulations has compromised the basic standards of justice in America?

Attorney General-Designate Holder responded, “I believe that in any proceeding in which the United States is a participant, we have to be fair, and we have to be perceived as being fair, whether it is a criminal proceeding where death is a possibility as an option for a convicted defendant, or we're making a determination about what the immigration status is of somebody.” He continued, saying that, “[w]e have to make sure that people are given, if not a technical, legal due process -- all the technical, legal due process that somebody might get in a trial -- we have to make sure that using that word, that phrase expansively, that everybody gets due process -- we are true to ourselves, true to our nation, true to who we are as a people, if we do that. We cannot hold ourselves out as better than other nations -- and I think we are -- unless we do those kinds of things and commit ourselves to doing it. The Attorney General-Designate went on, saying that, “[i]t's not easy. It necessarily means an expenditure of resources. This is a difficult time for us, trying to figure out where limited resources are going to go. And yet, that in some ways is the ultimate test.” He said, “[i]t's an easy thing to adhere to your values in times that are non-stressful, where the money is flowing. This is really the test, when we are at war in a couple places around the world, when we have budgetary concerns. This is the test for America. Are you really who you say you are? I believe we are. And I believe, with the appropriate leadership, we can handle and deal with the issues that you're talking about.”

When pressed by Senator Durbin whether his comments meant that he would consider reviewing the policies and regulations that led to the current situation involving the review of immigration cases, Attorney General-Designate Holder replied, “more than that, what I'd like to do is work with the members of this committee, to come up with ways in which we are true to ourselves, true to our values, and come up with the necessary resources, so that we are able to do that.”

- **DNA OF IMMIGRATION DETAINEES.**—Senator Jon Kyl (R-AZ) asked Holder if he would enforce a Justice Department regulation that requires federal agencies to collect DNA samples from individuals who are arrested under federal authority and from illegal immigrants who are being deported.

Attorney General-Designate Holder responded that he would enforce the regulation.

- **ELIAN GONZALEZ.**—Several senators, including Senator Mel Martinez (R-FL), Jeff Sessions (R-AL), and Arlen Specter (R-PA), asked Attorney General Designate Holder about the case of Elian Gonzalez, a child who eventually was forcibly returned to his father in Cuba

after having first been brought to the United States when the water craft he and his mother used to escape Cuba became unseaworthy, killing his mother and leaving him alone.

1. Why Gonzalez was Returned to Cuba. Senator Mel Martinez (R-FL) asked what factors led to the decision to return Gonzalez to Cuba.

Attorney General-Designate Holder replied, "The decision to have federal agents enter a private residence is a serious one, and in the case of Elian Gonzalez that decision was made after careful consideration. We had determined that Elian should be returned to his father as a matter of parental rights, and a federal court had determined that the INS should have custody pending its review of the INS' decision on his asylum petition. We had also come to believe that his Miami relatives were taking every possible action to delay his return and in fact did not intend to return him. On this basis, we made the difficult decision to forcibly enter his relatives' home and take custody of him."

Holder also said, "[i]t is worth noting that the 11th Circuit ultimately concluded that the INS had acted properly in denying asylum to Elian, and recognized that the decision to respect his father's wishes was a matter of foreign policy that needed to be determined by the Executive branch and no other branch of government."

2. Federal vs. State Jurisdiction. Senator Martinez asked whether the Attorney General-Designate believed the Florida family court, which had given custody of Gonzalez to his American relatives, was ill-equipped to handle the Gonzalez matter.

Attorney General-Designate Holder replied that "the Florida family court had no authority to adjudicate his immigration status." He went on to say that, "[w]hile the Florida family court was competent to adjudicate the narrow child custody issue, and while that issue in certain cases could affect the outcome of the immigration proceeding, it was neither competent nor authorized to consider the related immigration questions. A federal court had already ordered that his custody be placed with the INS pending resolution of his asylum petition. Whether it was appropriate for him to be in the United States was a threshold question that needed to be resolved independently of the family court proceeding. Since Elian had no legal basis to be in the United States and his father sought his return, it was appropriate for the Department to take and maintain custody of him."

3. Need for a Court Order for Immigration Raids. Senator Martinez asked if the Gonzalez case meant that, in the absence of an imminent risk, armed federal agents can enter a residence without a court order.

Attorney General-Designate Holder replied, "I continue to believe that the immigration function affords substantial powers to the federal government. At the time, Elian's family in Miami was continuing to defy both the federal court and his father's wishes, facts given short shrift by many who were critical of the INS' actions. At the time, we did have an administrative warrant to take custody of Elian, a search warrant to enter his relative's home and also authority from the federal court to assume custody over Elian. These provided sufficient legal basis to enter his relative's home and take custody, and also would under current law."

Senator Specter asked a similar question, pointing to criticism of the immigration raid by Professor Lawrence Tribe of Harvard Law School

Attorney General Holder replied, "I have tremendous respect for Professor Tribe and for his analysis of constitutional questions. However, Professor Tribe makes a distinction that the law does not recognize in the immigration context by disputing the authority of an administrative warrant. An administrative warrant has no less force than one issued by a federal magistrate. The INS' taking of Elian into custody rested on solid legal pillars: 1) the court's order that INS take custody of Elian; 2) the administrative warrant for his seizure; 3) a judicial search warrant for his relatives' home; and 4) his family members' refusal to release him. Also, notwithstanding Professor Tribe's argument, there is no dispute that if the INS had encountered Elian in a public environment, they could have taken custody of him. Once they had the lawful right to be in the relatives' home, they had the right to take custody even if one disputes the authority of the administrative warrant. One may have a fair debate whether the law should require more, but his seizure was certainly constitutional and lawful."

4. Why the Federal Government Conducted the Raid. Senator Martinez asked why the Federal government intervened to remove Gonzalez from the home of his uncle.

Attorney General-Designate replied, "As time passed we became increasingly concerned about the deterioration of conditions within the house where Elian was staying. We were in contact with child psychologists in that regard. The rescue only occurred after long months of court proceedings,

unsuccessful negotiations with the family and after it was authorized by judicial officers.”

5. Federal Intervention in Custody Case. Senator Martinez asked under what circumstances Holder believes that the Justice Department should supersede or intervene in a state family court to settle a custody dispute involving a minor child.

Attorney General-Designate Holder replied, “The question of when a federal court should supervene a state court in a custody proceeding is never a simple matter. Frequently, the immigration question and the related custody question are entwined. However, in a case where the child has a competent parent, who is not the subject of any allegations or evidence that he or she has abused or neglected the child, the immigration question should ordinarily be resolved in accordance with the will of that parent.”

- IDENTIFY THEFT BY ILLEGAL ALIENS.—Senator Charles Grassley (R-IA) asked several questions about identify theft.

More specifically, Grassley asked, If you are confirmed as Attorney General, would you support the use of criminal penalties for individuals that have stolen the identity of another individual though the fraudulent use of Social Security numbers? Why or why not? Do you believe that criminal sanctions are an effective tool that prosecutors should have available to them when an investigation uncovers the fraudulent use of actual Social Security numbers? Do you think the Justice Department should restrict the use of criminal charges against illegal aliens who claim they lacked knowledge that the false documents they used were those of a real individual? Why or why not?

Attorney General-Designate Holder replied, “I support identity theft prosecutions in appropriate cases. The decision of when to prosecute those kinds of cases needs to occur as part of a comprehensive and fully resourced strategy developed jointly between DHS and DOJ.”

Holder replied, further, that “I do think that in appropriate cases, prosecutors should pursue criminal sanctions against those who use the personal information of another person for fraudulent ends.”

Finally, Holder responded that, “Department of Justice policies should prioritize enforcement resources where they can have the most impact. One factor in such decisions is the degree of available proof of the requisite intent in identity theft cases.”

- ILLEGAL ENTRY.—Senator Jeff Sessions (R-AL) asked if the Attorney General-Designate considered illegal entry by unlawful means an important national

issue and, if confirmed, would the Attorney General-Designate make it a Justice Department priority to further reduce illegal entries into the United States.

Attorney General-Designate Holder replied, “I share the national consensus that the integrity of our borders is an important priority. I support a comprehensive strategy to address immigration issues that addresses not only illegal entry itself but also its causes. A number of weapons need to be deployed and reinforced, including improved enforcement against employers, increased use of smart technology to police the Southwestern border, and enhanced resources for the adjudication process.”

- LEGAL REPRESENTATION AT IMMIGRATION PROCEEDINGS.—Senators Russell Feingold (D-WI) and Orrin Hatch (R-UT) asked the Attorney General-Designate of his opinion of a recent ruling by then-Attorney General Michael Mukasey that aliens cannot raise a constitutional challenge to a deportation based on claim of ineffective assistance by their lawyers.

Attorney General Designate Holder replied, “[t]he Constitution guarantees due process of law to those who are the subjects of deportation proceeding. I understand Attorney General Mukasey’s desire to expedite immigration court proceedings, but the Constitution requires that those proceedings be fundamentally fair. For this reason, I intend to reexamine the decision should I become Attorney General.”

- OPERATION STREAMLINE.—Several senators asked Attorney General-Designate Holder about Operation Streamline, which places repeat illegal border crossers in jail for 30 days.

1. Additional Resources for Operation Streamline. Senator Jon Kyl (R-AZ) asked Holder if he would support the appointment of the additional judges, magistrates, U.S. marshals, prosecutors, defense attorneys, as well as the hearing space and detention facilities necessary in order to expand Operation Streamline for as long as we may need that along our southern border in order to help deter illegal immigration.

Attorney General-Designate Holder responded that he was not aware of Operation Streamline before Senator Kyl mentioned it to him. He said that, “it’s a pretty interesting concept and, I think, one that ought to be explored and I’d want to work with you all to see if it’s something that can be expanded.”

Holder went on to say that, “I think that is something that is worth looking at. One of the things that has always worried me is that a disproportionate share of what is a national problem is borne by the states along our southern border.

Resources that need to be directed to what is, in essence, a national problem are too often not sent to the place where it is really needed. The states of Arizona and the other states along that border. So my commitment would be to try to work with you, as I think we have in the past, to try to determine what resources are necessary and what programs would be good to try to affect a reduction in the number of illegal immigrants who come across those borders.”

2. Expansion of Operation Streamline. Senator Jeff Sessions (R-AL) asked Holder if he would support expanding Operation Streamline.

Attorney General-Designate Holder replied, “Together with the Secretary of Homeland Security, I intend to closely review all aspects of immigration enforcement to make sure that our enforcement resources and policies are fully coordinated and effective. Programs like Operation Streamline have a role to play in reducing illegal entry at certain border crossings and in curtailing criminal behavior in border cities. It is critical that they be part of an integrated enforcement strategy that takes account of judicial resources and detention space.”

- POLITICIZATION IN THE HIRING IMMIGRATION JUDGES.—Senator Russell Feingold (D-WI) complained about the politicization of the hiring of prosecutors, immigration judges, and personnel in the Department of Justice’s Civil Rights Division and asked the Attorney General-Designate what he would do about not just ending the practices but also in addressing “the lingering effects of that misconduct.”

Attorney General-Designate Holder replied that “one of the things I’m going to be to do, I think so, as attorney general in short order is to make -- basically do a damage assessment and understand in a way that I do not know how has the institution been harmed by the activities that were uncovered by these inspector general reports.” He said he would try to determine what the lasting impact has been. He said that “[t]here’s certainly been damage to the department’s reputation. I’d want to know if, as a result of those actions, has there been any structural damage to the department.” Holder went on to say, “I will be more than glad to come back to this committee and share with you what I have found and, perhaps, with some suggestions that I might work out with you all, how we might prevent those kinds of things from happening in the future.”

- REFUGEES.—Senator Arlen Specter (R-PA) noted that the Clinton Administration, which Holder was a part of, used Guantanamo Bay to hold refugees from Cuba to prevent their entry to the United States. He asked if Holder agreed with the Clinton Administration and the

11th Circuit Court of Appeals that refugees who are held on Guantanamo Bay enjoy no cognizable rights – be they the substantive right against repatriation or procedural due process rights such as the right to counsel – and that refugees there derive no enforceable rights from the Immigration and Nationality Act or Article 33 of the 1951 United Nations Convention Relating to the Status of Refugees.

Attorney General-Designate Holder acknowledged that Guantanamo Bay “was used before and during the Clinton administration to hold persons trying to gain access to the United States.” He said, however, that the use during the Clinton Administration was “different than the facility’s use during the Bush administration.” Holder went on to say that, Guantanamo “is a special case because it is U.S. administered and controlled. As a party to the 1967 Protocol relating to the Status of Refugees, the U.S. has an obligation not to return refugees under Article 33 of the 1951 Convention relating to the Status of Refugees.”

- ROLE OF DOJ IN IMMIGRATION ENFORCEMENT.—Senator Jeff Sessions (R-AL) asked Holder his view of the responsibility of the Attorney General in the enforcement of immigration law.

Attorney General-Designate Holder replied, “The Attorney General has considerable responsibility for enforcement of both civil and criminal immigration laws. Adjudication of many categories of immigration cases is the responsibility of the Attorney General delegated to the immigration courts and the Board of Immigration Appeals (BIA). Significant resources in the Department’s Civil Division are dedicated to defending the decisions of the BIA as well as various immigration-related decisions of the Department of Homeland Security. Finally, the United States Attorney’s Offices prosecute a considerable number of criminal immigration offenses. In short, the Attorney General is involved in practically every aspect of immigration enforcement, a responsibility that I take seriously and intend to fulfill, if confirmed.”

- STATE AND LOCAL ENFORCEMENT OF CIVIL IMMIGRATION LAW.—Senator Jeff Sessions (R-AL) found a 1998 quote from then-Deputy Attorney General Holder in which he said that federal and state law enforcement officers, “must work together to attack both border issues and local law enforcement problems.” Sessions also quoted Holder saying, “[t]he border is not exclusively a federal or state obligation. The border is a shared responsibility among federal, state, and local authorities, and we have only begun to work out a systematic way to manage it together.”

Senator Sessions went on to ask Holder if he supported a role for state and local law enforcement, consistent with

federal law, of federal immigration laws, if he would support further cooperative efforts, and if he would commit appropriate DOJ resources to working with, and training of, state and local governments in enforcing our immigration laws.

Attorney General-Designate Holder replied, "Immigration is a federal authority and responsibility. At the same time, in many parts of our country, there is a correlation between illegal immigration and criminal activity. In this respect, I think there is a role for state and local law enforcement, consistent with federal and state law, to support federal enforcement of immigration laws." He went on to say that, "[b]ased on the above, I support further cooperative efforts to the extent that state and local law enforcement authorities determine that they are in their interest." Holder, further, responded that "[t]he 287(g) program has now been in effect for several years. Many of the jurisdictions that participate in the program report positive results from that participation, a fact that supports continuing and perhaps expanding the program. However, given the small number of jurisdictions that have elected to participate, this is an important juncture to also evaluate the overall national impact of the 287(g) program both from the federal perspective of immigration control and from the state and local perspective of street crime control."

Outlook. While there likely will be a few votes in opposition, Attorney General-Designate Holder's confirmation seems assured. ☼ ◇

This Week's Conference Activity

No bills containing significant immigration- or refugee-related provisions are currently in conference. ◇

This Week's Executive Activity

President Expected to Sign Bill Expanding Immigrant Eligibility for Federally-Financed Health Benefits: While it is more likely to occur next week, it is possible that President Barack Obama this week will sign into law legislation expanding immigrant eligibility for the SCHIP and Medicaid programs.

The House is scheduled to take up the Senate Amendments to H.R. 2, the "Children's Health Insurance Program Reauthorization Act of 2009", on Wednesday, February 4, 2009. Should the House, as expected, pass the measure without further amendment, that action would clear the measure for the president's consideration.

The decision on when the President will sign the measure could be impacted by the fact that House Democrats are scheduled to leave Washington on Thursday for a three-day Democratic Caucus retreat. ☼ ◇

Organization of the 111th Congress

The Senate and House of Representatives will continue over the next several weeks in a transition of their own as they as they organize the 111th Congress. This section of the Weekly Legislative Update is devoted to chronicling the impact that the 111th Congress' organizational efforts will have on immigration- and refugee-related legislation, as well as examining the impact that those actions and decisions will have on Congressional oversight of the executive branch's immigration- and refugee-related functions.

This section will continue in this publication until all 111th Congress organizational actions have been completed.

House

House Foreign Affairs Committee Organizes for the 111th Congress: The House Committee on Foreign Affairs held its 111th Congress organizing meeting last week, finalizing its subcommittee structure and rosters, adopting its committee rules, and agreeing to the Committee's oversight plan for the 111th Congress. Last week's organizing meeting occurred on Wednesday, January 28, 2009.

During the course of last week's organizing meeting, Representative Howard L. Berman (D-CA), who is beginning his first full term as chairman of the Committee, indicated that the Committee will assert its role in making foreign policy and in enacting foreign policy legislation, particularly with regard to the State Department Authorization Bill, a measure that traditionally has been used to promote refugee protection but that has become almost impossible to get enacted into law in recent years.

Committee Jurisdiction. The House of Representatives will continue to split jurisdiction over immigration and refugee legislation and oversight during the 111th Congress. The bulk of legislative and oversight jurisdiction over immigration and refugee matters will continue to be split among three committees:

- House Foreign Affairs Committee. The re-named House Committee on Foreign Affairs reportedly will continue to have jurisdiction over aspects of visa issuance, the Department of State' Bureau of Population, Refugees, and Migration.
- House Judiciary Committee. The House Committee on the Judiciary reportedly will continue to have jurisdiction

over immigration policy and non-border enforcement of the immigration laws, including over refugee policy.

- **House Homeland Security Committee.** The House Committee on Homeland Security reportedly will have jurisdiction over functions of the Department of Homeland Security relating to border and port security (except immigration policy and non-border enforcement).

Committee Chairman. Returning as chairman of the House Committee on Foreign Affairs in the 111th Congress is Representative Howard L. Berman (D-CA), who is a longtime supporter of pro-immigrant and pro-refugee advocacy community's legislative agenda. Chairman Berman took over the chairmanship of the House Committee on Foreign Affairs in the middle of the 110th Congress upon the death of the late Chairman Tom Lantos (D-CA). He will have an opportunity to place his stamp on the Committee as it takes on the task of organizing for the 111th Congress.



Chairman Berman has rarely voted against the pro-immigrant advocacy community's position on a key, contested immigration- or refugee-related vote. Indeed, he also has either sponsored or cosponsored some of the iconic legislation advocated by the pro-immigrant and pro-refugee advocacy communities, including AgJOBS legislation and the DREAM Act.

Representative Berman is a longtime member of both the House Committee on the Judiciary as well as the House Committee on Foreign Affairs. His recent work on the Judiciary Committee is so well known that, up until recently, many casual observers didn't know that, prior to 1995, when Republicans took control of the House of Representatives. Representative Berman chaired the subcommittee of the House Foreign Affairs Committee that had jurisdiction over the Department of State's refugee programs. As subcommittee chairman during that time, he pushed for maximum authorizations possible for those programs.

Ranking Minority Member. Returning as the Ranking Republican of the House Committee on Foreign Affairs in the 111th Congress will be Representative Ileana Ros-Lehtinen (R-FL), a naturalized United States citizen who was born in Havana, Cuba and escaped the island country during the early days of Fidel Castro's regime. Her election to the United States House of Representatives in 1989 made her the first Hispanic woman and the first Cuban-American elected to the United States Congress.



Representative Ros-Lehtinen has been a strong supporter of the pro-immigrant and pro-refugee advocacy communities' agenda. As the 110th Congress drew to a close, she had

supported those communities' positions on about 85 percent of the key contested immigration- and refugee-related votes that she had cast during her House career, giving her the third highest level of support of all sitting House Republicans and one of only three Republicans who have supported the communities' positions more than 80 percent of the time.

Representative Ros-Lehtinen is one of the co-founders of the Bipartisan Congressional Refugee Caucus. However, in what could be an ominous sign, she signaled during the 110th Congress a willingness to use her position to place restrictions on the furnishing of U.S. refugee assistance to countries that are state sponsors of terrorism. Pro-refugee advocates expressed concern at the time that enactment of such a provision would mean that, in some instances, the United States would not be able to provide overseas refugee assistance to refugees who are being hosted by some countries.

New Party Ratio. As the 110th Congress drew to a close, the ratio of Democrats-to-Republicans on the House Committee on Foreign Affairs was 27-Democrats-to-23-Republicans. While final word will not be public until next week, it appears that the Committee ratio during the 111th Congress will be 28-Democrats-to-19-Republicans.

Departed Committee Members. Seven Members who sat on the Committee during the 110th Congress have left the Committee in the 111th Congress.

Four of the departed Committee Members are Democrats. Three of the departed Members are Republicans.

The four departed Committee Democrats are:

- Lynn Woolsey (D-CA)
- Ruben Hinojosa (D-TX)
- David Wu (D-OR)
- Linda Sanchez (D-CA).

The three departed Republicans are:

- Steve Chabot (R-OH)
- Tom Tancredo (R-CO)
- Luis Fortuño (R-PR).

New Committee Members. Five Members who were not on the Committee during the 110th Congress have joined it in the 111th Congress, including two freshmen. All of the new Members are Democrats.

The five new Committee members are:

- Gerald Connolly (D-VA)
- Michael E. McMahon (D-NY).
- Shelley Berkeley (D-NV)
- Mike Ross (D-AR)
- Keith Ellison (D-MN)

Subcommittee Structure. One of the key organizing decisions that the leadership of the House Committee on Foreign Affairs made at the beginning of the 110th Congress was to assign jurisdiction over the Department of State's Bureau of Population, Refugees, and Migration (PRM), to the full committee rather than to a subcommittee. The 110th Congress' Democratic leadership also decided that the full committee would handle trafficking legislation rather than assigning jurisdiction over those matters to a subcommittee. That Subcommittee structure and jurisdiction has been replicated in the 111th Congress.

Oversight Plan. Rule X, clause 2(d) of the Rules of the House of Representatives requires all standing committees to adopt an oversight plan by February 15 of the first session of a new Congress.

The House Foreign Affairs Committee last week adopted an ambitious, 28-page oversight plan for the 111th Congress.⁹³ As adopted by the Committee, the plan includes only two references to refugees, displaced persons, or visa matters.

While the House Foreign Affairs Committee oversight plan makes numerous references to trafficking, only one such reference related to the recently enacted "William Wilberforce Trafficking Victims Reauthorization Act of 2008". Most of the other references to trafficking involved overseeing efforts to prevent trafficking from various countries throughout the world.

The following excerpts several of the significant references to refugees, displaced persons, and trafficking victims (or plans that could impact such persons) from the House Foreign Affairs Committee's 111th Congress oversight plan:

- Priority Oversight Matters.

Iraq—U.S. involvement in Iraq is one of the most critical issues for U.S. foreign policy. The Committee will review all aspects of U.S. policy, including: the U.S. military presence; implementation of the Strategic Framework and Status of Forces Agreement between the United States and Iraq; internal political developments and trends including Iraq's prospects for transition to a secure and stable democracy; U.S. reconstruction and economic assistance; U.S. security assistance; development of the Iraqi security forces, from perspectives of size, effectiveness, and ethnic integration; regional and international diplomatic efforts to help stabilize Iraq and re-integrate Iraq into various regional and international organizations and fora; efforts to assist over four million displaced Iraqis; and the role of external financial and material support for insurgents, militias and terrorist groups in Iraq.

North Korea—The Committee will review the nuclear and missile threat posed by North Korea, its continuing human rights violations, and U.S. efforts to assist North Korean refugees. The Committee will review the status of the Six-Party Talks, the implementation of the dismantlement and disarmament agreement, and examine next steps in U.S. policy to address the North Korean threat.

Foreign Assistance Reform and Program Implementation—The Committee will review the planning, budgeting, programming and implementation of U.S. foreign assistance. The Committee will consider possible reforms to the Foreign Assistance Act of 1961. The Committee will review the ongoing issues related to the implementation of U.S. foreign assistance programs and projects, as well as issues related to coordination between the U.S. Agency for International Development (USAID) and other agencies and departments involved in carrying out U.S. foreign assistance. In addition, the Committee will review the decreased role of USAID in developing foreign assistance policy, the implementation issues facing the Millennium Challenge Corporation (MCC), including existing and potential compacts and threshold programs, the role of U.S. missions and embassies in the planning, budgeting, programming, and implementation of U.S. foreign assistance, and other issues.

State Department Authorization, Review and Reform—The Committee will examine the operations, budget, programs, planning, and long-term staffing needs of the Department of State in carrying out its responsibilities to further U.S. national interests and implement foreign policy that addresses current and emerging challenges. The Committee also will review the adequacy of the Department's long-range overseas building plan to provide an appropriate physical platform for the conduct of 21st Century diplomacy.

- Foreign Assistance.

Special attention will be given to the effectiveness of programs that have consumed large amounts of Congressional attention in recent years, including international family planning, international child survival, refugee and migration assistance, and international education, including basic education.

- Human Rights.

International Trafficking in Persons—Review of the implementation of the Trafficking Victims Protection Act of 2000 and subsequent reauthorization acts, including the William Wilberforce Trafficking Victims Reauthorization Act of 2008; review of potential means

⁹³ [Click Here](#) to see the complete text of the 111th Congress Oversight Plan for the House Committee on Foreign Affairs

to prevent international travel by sex offenders for the purpose of sexually exploiting children.

Full Committee Roster. The chart that follows lists the roster of the House Committee on Foreign Affairs for the 111th Congress. Members who have left the Committee are denoted with a ~~stricken through line~~. New Members who are new to the Committee are marked with an asterisk (*):

House Committee on Foreign Affairs
111th Congress

Democrats (28)	Republicans (19)
Berman (D-CA)	Ros-Lethinen (R-FL)
Ackerman (D-NY)	Smith, Christopher (R-NJ)
Faleomavaega (D-AS)	Burton (R-IN)
Payne (D-NJ)	Gallegly (R-CA)
Sherman (D-CA)	Rohrabacher (R-CA)
Wexler (D-FL)	Manzullo (R-IL)
Engel (D-NY)	Royce (R-CA)
Delahunt (D-MA)	Chabot (R-OH)
Meeks (D-NY)	Tancredi (R-CO)
Watson (D-CA)	Paul (R-TX)
Smith, Adam (D-WA)	Flake (R-AZ)
Carnahan (D-MO)	Pence (R-IN)
Sires (D-NJ)	Wilson (R-SC)
*Connolly (D-VA)	Boozman (R-AR)
*McMahon (D-NY)	Barrett (R-SC)
Tanner (D-TN)	Mack (R-FL)
Green (D-TX)	Fortenberry (R-NE)
Woolsey (D-CA)	McCaul (R-TX)
Jackson Lee (D-TX)	Poe (R-TX)
Hinojosa (D-TX)	Inglis (R-SC)
Lee (D-CA)	Fortune (R-PR)
*Berkley (D-NV)	Bilirakis (R-FL)
Crowley (D-NY)	
Wu (D-OR)	
*Ross (D-AR)	

Democrats (28)	Republicans (19)
Miller, Brad (D-NC)	
Sanchez, Linda (D-CA)	
Scott (D-GA)	
Costa (D-CA)	
*Ellison (D-MN)	
Giffords (D-AZ)	
Klein (D-FL)	

☼ ◇

Executive Branch Transition

Even though President Obama has named the cabinet secretaries already for each of the departments that have jurisdiction over the federal government’s major immigration- and refugee-related functions, The executive branch will continue in a state of transition over the next several weeks and months as it searches for and names subcabinet officials in those departments and agencies.

Beginning this week, this section of the Weekly Immigration and Refugee Legislative Update will be devoted to chronicling the impact that the actions and decisions of the incoming Obama Administration in organizing the executive branch will have on the course of immigration- and refugee-related legislation, as well as examining the impact that those actions and decisions may have on Congressional oversight of the executive branch’s immigration- and refugee-related functions.

This section will continue in this publication until President-Elect Obama has made all of his major immigration- and refugee-related appointments.

Napolitano to Bring Arizona Department of Corrections Chief to the Department of Homeland Security:

Secretary of Homeland Security Janet Napolitano will bring Arizona Department of Corrections Director Dora B. Schriro to Washington to work at the Department’s Immigration and Customs Enforcement (ICE) bureau. While it was not known at the time of this writing the precise role she will play, reports indicate that she will be “a senior adviser to the Deputy Secretary of Homeland Security.”

Ms. Schriro, who headed a department with 9,700 employees in Arizona, has been in corrections for 25 years. Prior to becoming Arizona’s Department of Corrections Director, she oversaw the state of Missouri’s prison system.

While she was governor, Secretary Napolitano had called Ms. Schriro "one of America's leading minds on modern, effective prison management."

Ms. Schriro is known for promoting a "parallel universe" model, which she described as "the notion that life inside prison should resemble life outside prison and that inmates acquire values, habits and skills that will help them become productive, law-abiding citizens. This means they will all work, contribute to the restitution of their victims, and participate in basic educational and vocational training."

Last Week's Legislative Activity

Last Week's Hearings

There were no hearings last week at which significant immigration- or refugee-related matters were discussed.

Last Week's Markups

Two committees held markups last week at which they considered legislation with immigration- or refugee-related provisions or nominees to head agencies that have jurisdiction over significant immigration- or refugee-related functions:

- **Legislation:** Two committees marked up legislation containing significant immigration- or refugee-related provisions:
 1. **E-Verify Program.** The Senate Committee on Appropriations marked up its portion of the economic stimulus bill, including within it provisions funding border security operations and interior immigration operations.
- **Committee Organizing Meetings.** The following committees with jurisdiction over immigration- or refugee-related legislation and agencies held organizing meetings last week:
 2. **House Foreign Affairs Committee.** The House Committee on the Foreign Affairs organized for the 111th Congress.

Senate Appropriations Approves Economic Stimulus Bill: The Senate Committee on Appropriations last week approved its portion of the economic stimulus bill. Last week's markup occurred on Tuesday, January 27, 2009, in connection with [S. 336](#)⁹⁴, the "American Recovery and Reinvestment Act of 2009". The Committee approved the draft measure by a vote of 21-9.

As approved by the Senate Committee on Appropriations, S. 336 contains \$365 BILLION in discretionary spending, split between fiscal year 2009 and future fiscal years. The measure eventually will be folded into the Senate version of H.R. 1 once that measure is readied for consideration on the Senate floor..

Summary of Immigration- and Refugee-Related Provisions. As approved by the Senate Appropriations Committee, S. 336 contains the following immigration- or refugee-related provisions:

- **Funding for U.S. Customs and Border Protection.**
 1. **Border Facilities.** an appropriation of \$1.2 BILLION for the for construction and repair of border stations;
 2. **CBP Salaries and Expenses.** An appropriation of \$198 MILLION for U.S. Customs and Border Protection salaries and expenses, including \$100.8 MILLION for the procurement and deployment of non-intrusive inspection systems to improve port security and \$ 97.2 MILLION for procurement and deployment of tactical communications equipment and radios.
 3. **Border Fencing and Technology.** an appropriation of \$200 MILLION for Border Security Fencing, Infrastructure, and Technology, to be used for expedited development and deployment of border security technology on the Southwest border.
 4. **Port of Entry Construction.** an appropriation of \$800 MILLION for Construction, to be used to construct, alter, enhance, expand, repair, and/or improve CBP-owned land border ports of entry.
- **Funding for U.S. Customs and Immigration Enforcement.**
 1. **Automation Modernization.** an appropriation of \$27.8 MILLION for automation modernization to be used for the procurement and deployment of tactical communications equipment and radios.

Next Steps. Now that the Senate Committee on Appropriations has approved S. 336, its provisions will be combined with provisions approved last week by the Senate Committee on Finance to make up the Senate version of H.R. 1. The Senate is scheduled to take up H.R. 1 beginning on Monday, February 2, 2009, and it likely will have the bill under consideration for much of the week. ☼

Senate Judiciary Approves Attorney General Nomination: The Senate Committee on the Judiciary last week approved the nomination of Eric H. Holder, Jr., to be

⁹⁴ [S. Rept. 111-3](#), January 27, 2009

Attorney General of the United States. Last week's Senate Judiciary Committee action occurred on Wednesday, January 28, 2009. The Committee approved the nomination by a vote of 17-2.

Next Steps. Now that the Senate Committee on the judiciary has approved the nomination of Eric H. Holder, Jr., to be Attorney General of the United States, the next step in the process is for the full Senate to take up the nomination. The full Senate is scheduled to take up his nomination beginning at 2:00 pm on Monday, February 2, 2009, with a vote on the nomination scheduled for 6:15 pm. ☼

House Foreign Affairs Committee Holds 111th Congress Organizing Meeting: The House Committee on the Foreign Affairs last week held its organizing meeting for the 111th Congress, where it divided into subcommittees, approved its rules, and approved its oversight plan for the 111th Congress.

See pages 139-142 of this week's Weekly Legislative Update for an analysis of last week's House Foreign Affairs Committee organizing meeting.

Last Week's Floor Activity

Congress took two floor actions last week impacting immigration or refugees. This included the following actions:

- **Legislation:** The full House or full Senate last week acted on two measures containing significant immigration- or refugee-related provisions:
 1. **Immigrant Children Eligibility for SCHIP.** The full Senate passed legislation to reauthorize the State Children's Health Insurance Program (SCHIP).
 2. **Economic Stimulus Package.** The full House passed its version of the economic stimulus package, which includes a number of immigration-related provisions, including several controversial ones.

Senate Approves Bill Expanding Immigrant Eligibility for Federally Funded Health Benefits:

The Senate last week passed legislation containing provisions that would expand legal immigrant children's and pregnant women's access to federally-financed health benefits. Last week's Senate floor debate began on Monday, January 26, 2009, in connection with the Senate version of [H.R. 2](#), the "Children's Health Insurance Program Reauthorization Act of 2009". The Senate passed the measure on Thursday, January 29, 2009, by a vote of 66-32.⁹⁵

⁹⁵ [Senate Roll Call No. 31](#), January 29, 2009

As passed by the Senate, H.R. 2 would reauthorize the State Children's Health Insurance Program (SCHIP) for four-and-a-half years, increase its benefits, and expand eligibility for the program. The measure would be paid for, in part, by increasing the federal tax on cigarettes by 61 cents.

Legislative History. The House passed its version of H.R. 2 on January 14, 2009, by a vote of 289-139.⁹⁶ It bypassed the House Committee on Energy and Commerce, which has jurisdiction over the SCHIP Program and the Committee on Ways and Means, which has jurisdiction over Medicaid.⁹⁷

The Senate Committee on Finance marked up [S. 275](#), its version of the measure, on January 16, 2009, reporting it to the Senate as an original measure. The Senate Finance Committee action occurred after a bruising debate on immigration. The Committee added two immigration-related provisions and rejected numerous other immigration-related amendments during its consideration of the measure.

Among the amendments added to the bill during the Committee's consideration was a provision that would give states the option of providing SCHIP and Medicaid benefits to legal immigrant children and pregnant women without having to wait until the immigrants have been in the United States for five years.⁹⁸

The full Senate took up the House-passed version of H.R. 2 beginning on Monday, January 26, 2009, replacing it with the text of S. 275, and subjecting it to amendment on the Senate floor throughout the week.

Summary of the Bill's Immigration- and Refugee-Related Provisions. As passed by the Senate, H.R. 2 contains the following immigration- or refugee-related provisions:

- **State Option to Provide SCHIP and Medicaid Benefits.** Sections 214(a) and (b) of the measure would—
 1. Give states the option of providing SCHIP and Medicaid benefits to legal immigrant children and pregnant women without waiting until the immigrant has been in the United States for five years or more;

⁹⁶ [House Roll Call No. 16](#), January 14, 2009

⁹⁷ See Pages 81-83 of the January 19, 2009, edition of the *Weekly Legislative Update*, for a report on and analysis of House consideration of H.R. 2.

⁹⁸ See Pages 78-81 and 87-91 of the January 19, 2009, edition of the *Weekly Legislative Update* for a report and analysis of the debate in the Senate Committee on Finance of the immigration-related provisions in S. 275 and the amendments offered in Committee to the measure.

2. Waive the requirement under current law that the income and resources of an immigrant's sponsor be deemed to be that of the immigrant for the purposes of determining the immigrant's eligibility for SCHIP and Medicaid; and
3. Relieve sponsors of affidavit of support obligations with regard to Medicaid and SCHIP benefits.

The Congressional Budget Office estimated that this provision would result in \$3.9 BILLION of additional spending from fiscal year 2009 through fiscal year 2019.

- Eased Citizenship Verification for States. Section 211(a) would provide an alternative citizenship verification process for states when determining Medicaid eligibility. Instead of presenting satisfactory documentary evidence as required under the Deficit Reduction Act of 2005, states could submit the name and Social Security number of the individual to the Commissioner of Social Security. The Commissioner would then determine whether the name and Social Security number provided by the state is consistent with information in the records maintained by the Commissioner. If the information is not consistent, the state would make a reasonable effort to address the causes of the inconsistency. If the inconsistency cannot be resolved, the individual would be disenrolled from the program. The bill also would apply the verification process to the Children's Health Insurance Program;
- Strengthened Citizenship Verification for SCHIP. Section 211(b) would extend to the SCHIP program a 2005 Medicaid citizenship documentation requirement that some health advocates have found problematic because it has resulted in many eligible persons being barred from the program;
- Bar on Provision of Benefits to Illegal Immigrants. Section 605 would explicitly provide that nothing in the Act allows Federal payments for individuals who are not lawfully residing in the United States; and
- Annual Immigration Status Checks. The proposed new Section 1903(v)(4)(C) of the Social Security Act, as added by Section 214(a)(2) of the bill, would require states to acquire documented evidence of immigrants' lawful immigration status for immigrants receiving benefits pursuant to a state's decision to exercise its option to waive the five-year waiting period for immigrant eligibility for Medicaid and SCHIP benefits. Under the provision, states would be required to acquire this documentation when they conduct their annual redetermination of eligibility.

Floor Debate. There was significant mention of immigration and immigrants during the Senate's floor debate on H.R. 2. Almost all of the references to immigration during the Senate

debate concerned two provisions in the measure: Section 214(a), which would give states the option of providing SCHIP and Medicaid coverage to legal immigrants without requiring that the immigrants wait five years their entry to the United States, and Section 211(b), which would ease the documentation requirements for Medicaid and SCHIP recipients to prove American citizenship.

- Opponents of the Immigration Provisions. Among the senators who spoke against the immigration provisions on the Senate floor were Senators Jon Kyl (R-AZ), Mitch McConnell (R-KY), Charles Grassley (R-IA), Hatch (R-UT), Richard Burr (R-GA), Tom Coburn (R-OK), Jim DeMint (R-SC), and Thad Cochran (R-MS).

Opponents of the bill's immigration provisions argued that when immigrants come to the United States, they have sponsors who sign affidavits of support, pledging to support the immigrants. They argued that it would be unfair to American citizens to force them to pay for immigrants' coverage, particularly during this time of economic crisis.

Some senators also argued that the provision in the bill easing documentation requirements for persons claiming U.S. citizenship would result in undocumented aliens receiving SCHIP and Medicaid benefits.

Senator Jon Kyl was vocal in his opposition to the bill's immigration provisions. During the debate, he said, "[t]he Senate bill actually eliminates the requirement that sponsors of immigrants reimburse the Federal Government for immigrants' coverage. This would be for the first time since actually 1882--our Federal law dates back that far--with regard to immigration."

Senator Kyl continued, saying that "[w]e are a nation of immigrants. We invite immigrants to come here. My grandparents are immigrants. We want to make sure that when they come here, they don't immediately become a public charge or go on welfare. That is why, starting as far back as 1882, we said: You need to take care of yourself when you come here and not ask the Government to do it or at least have your sponsor affirm that he or she will take care of you. That was affirmed in 1996 when we updated the legislation." Senator Kyl complained that the bill "would eliminate that requirement, so that from now on legal immigrants, primarily green card holders, would be able to avail terms of this coverage. It is about 300,000 individuals estimated at a five-year cost of \$1.3 billion. I don't have the CBO number for the 10-year cost. That number doesn't even begin to take into account people who are here illegally but who might actually make legal under some kind of immigration reform, if that were to happen."

Senator Orrin Hatch, also, was vocal on the Senate floor, saying that, “ordinarily I support helping legal immigrants in almost every way. But we do not have enough money to take care of our own citizens' children. That is a matter of great concern to me and it is of great concern to a significant number of Members of both bodies who probably will vote against this bill because of that provision. In fact, there are plenty of reasons to vote against this bill because it was written in such a partisan fashion.” Senator Hatch went on to state that “the legal immigrant provision is now in this legislation, and, as a result, there are many Members in both Houses of Congress who now oppose the bill. We simply do not understand why we are not taking care of our children who are U.S. citizens first. Once that goal is accomplished, I would be willing to make a commitment to the work on resolving all of the issues regarding legal immigrants once and for all. But now is not the time.”

Senator Hatch said, “[t]here is not enough money even in this bill to take care of our children who are citizens. This is especially true when our country is in economic crisis and there are more children who are U.S. citizens who need health insurance coverage because their parents may have lost their jobs or may have lower paying jobs. I do not believe this is an unreasonable request. For the life of me, I cannot understand why those who support the coverage of legal immigrant children cannot work with us to resolve this issue, especially if they want a bill that has broad bipartisan support.”

Senators Grassley, McConnell, Hatch, and DeMint each offered amendments that would have stripped or narrowed the bill’s expansion of immigrant eligibility for the SCHIP and Medicaid programs. Those amendments all failed.

- Supporters of the Bill’s Immigration Provisions. Among the senators who spoke out in favor of the bill’s immigration provisions were Senate Finance Committee Chairman Max Baucus (D-MT) and Senators John David Rockefeller IV (D-WV), Benjamin Cardin (D-MD), Robert P. Casey, Jr. (D-PA), Sherrod Brown (D-OH), Sheldon Whitehouse (D-RI), Olympia Snowe (R-E), Tim Johnson (D-SD), Dick Durbin (D-IL), Patrick Leahy (D-VT), Russell Feingold (D-WI), Barbara and Boxer (D-CA).

Supporters of the bill’s immigration provisions argued that the bill would not force states to cover immigrants but, rather, give them the option to do so if they so choose. They argued, further, that the persons whose eligibility for federally-financed health care is being expanded by the bill are children, who cannot make independent decisions and do not have independent funds to purchase health coverage.

The bill’s language’s supporters also pointed out that many legal immigrant children are in ill health and that failure to provide them with coverage means that they either get sicker or they rely on more expensive emergency room coverage that the government ultimately pays for. Finally, supporters of the bill’s language pointed out that legal immigrants pay taxes, serve in the military, and often become citizens.

Said Senator Whitehouse, “this bill does not even require States to cover legal immigrant children. It simply provides and supports that option.” He went on to say, “[l]egal immigrants pay taxes, they serve in our Armed Forces, and just like the rest of us, they play by the rules. They are our future citizens, and insuring their children makes sense. This was the law until 1996 when sweeping restrictions affecting legal immigrants were made. Since 1996, we have become wiser, and many of those restrictions have been reversed on a bipartisan basis by Congress.

“The provision in this legislation covering legal immigrants is fully consistent with that trend back to 1996 levels. This Nation is slowly emerging from a dark time when our ideals and our virtues were too often hidden in the shadows, when we let our fear overcome our principles and our better judgment, when we lost sight of our priorities and left millions of people in the cold and millions of children uninsured. That time can end now.”

Senator Whitehouse concluded his remarks by saying, “[t]his bill is a chance to show these millions of Americans that we have heard them and that we stand ready to help. We know how tough it is for working families in this economy. If there is one worry, one burden we can take off those parents' shoulders so they can be sure their children have the health insurance every American deserves, we should stand ready to help. This country should once again own its duty to protect those who cannot protect themselves and to restore dignity and hope where it has diminished.”

Senator Durbin, too, was vocal in his support for the bill’s immigrant provisions and against efforts to strip those provisions out of the bill. He said during the debate, “[n]o child should have to wait 5 years for health care. Five years is a lifetime to a child with a medical problem. Many of these conditions have long consequences if we do not treat them early. So let’s make sure we do the right thing. As someone said in some of the debate the other day, children are contagious. You cannot say, well, we are going to put in a classroom those citizen kids with those legal resident kids, and the legal resident kids do not get to go to the doctor. They have to wait until they are really sick or the parent, in desperation, has to take them to an emergency room, and it does not affect the whole classroom. It does.” He

concluded by saying, “[w]e are literally in this together. Our children and grandchildren are in this together. Our country can do better. I hope we defeat these amendments and stick with this basic bill.”

Immigration-Related Floor Amendments and Motions.

Despite all of the heat in the Senate Committee on Finance and on the Senate floor over immigration, Senators offered only seven immigration-related amendments to H.R. 2 on the Senate floor. The Senate agreed to one and rejected each of others.

One was a technical amendment. Five of the immigration-related amendments would have narrowed SCHIP benefits for legal immigrants. And one would have broadened benefits to cover more immigrants.

- Technical Amendments. The following technical amendment was offered relative to immigrants:

1. BAUCUS/GRASSLEY TECHNICAL STATE OPTION AMENDMENT.—Senate Finance Committee Chairman Max Baucus (D-MT), along with Ranking Republican Charles Grassley (R-IA), offered a technical correction to the option to cover legal immigrant children and pregnant women.

Under the technical amendment, States would be able to verify that an individual continues to lawfully reside in the United States using the documentation presented to the State by the individual on initial enrollment. If the State cannot successfully verify that the individual is lawfully residing in the United States in this manner, it would be required to require that the individual provide the State with further documentation or other evidence to verify that the individual is lawfully residing in the United States.

The Senate adopted the Amendment by unanimous consent.

- Pro-Immigrant Amendments. The following were the pro-immigrant amendments that were offered on the Senate floor to H.R. 2:

1. HATCH UNBORN CHILD AMENDMENT.—Senator Orrin Hatch (R-UT) offered Senate Amendment No. 80, which would have codified regulations specifying that an unborn child is eligible for child health assistance. The effect of the amendment would have been to make undocumented alien women eligible for SCHIP benefits because their unborn child would be born a United States citizen.

The Senate rejected the Hatch amendment by a vote of 39-59.⁹⁹

- Anti-Immigrant Amendments. The following were the anti-immigrant amendments that were offered on the Senate floor to H.R. 2:

1. HATCH STATE THRESHOLD/QUOTA AMENDMENT.—Senator Orrin Hatch (R-UT) offered Hatch/Grassley Amendment No. 45 to Senate Amendment No. 39. Senate Amendment No. 45 would have prohibited any Federal matching payment for Medicaid or CHIP coverage of noncitizen children or pregnant women until a State demonstrates that it had enrolled 95 percent of the children eligible for Medicaid or CHIP who reside in the State and whose family income does not exceed 200 percent of the poverty line.

The Senate rejected the Hatch amendment by a voice vote.

2. GRASSLEY AMENDMENT TO STRIKE.—Senate Finance Committee Ranking Republican Charles Grassley (R-IA) offered Senate Amendment No. 41, which sought to strike the provisions from the bill that would allow states to waive the five-year waiting period for legal immigrant children and pregnant women for participation in the SCHIP and Medicaid programs.

The Senate rejected the Grassley amendment by a voice vote.

3. MCCONNELL SUBSTITUTE AMENDMENT.—Senate Minority Leader Mitch McConnell (R-KY) offered Senate Amendment No. 40, a substitute amendment to H.R. 2. With regard to immigration, the McConnell substitute would have maintained the provision in current law that bars states from providing SCHIP and Medicaid benefits to legal immigrant children and legal immigrant pregnant women unless they have been in the United States for five years or more.

The Senate rejected the McConnell substitute amendment by a vote of 32-65.¹⁰⁰

4. GRASSLEY SUBSTITUTE AMENDMENT.—Senate Finance Committee Ranking Republican Charles Grassley (R-IA) offered Senate Amendment No. 83, a substitute amendment to H.R. 2. With regard to immigration, the Grassley substitute would

⁹⁹ [Senate Roll Call No. 26, January 29, 2009](#)

¹⁰⁰ [Senate Roll Call No. 18, January 28, 2009](#)

have maintained the provision in current law that bars states from providing SCHIP and Medicaid benefits to legal immigrant children and legal immigrant pregnant women unless they have been in the United States for five years or more.

The Senate rejected the Grassley Substitute Amendment by a voice vote.

5. DEMINT TAXPAYER COST RECOVERY AMENDMENT.—Senator Jim DeMint (R-SC) offered Senate Amendment No. 85, which would have provided an above-the-line Federal income tax deduction for health care costs of certain children in an amount comparable to the average federal share of the benefit provided to any non-citizen child for medical assistance or child health assistance..

The Senate rejected the DeMint amendment by a vote of 40-58.¹⁰¹

Next Steps. Now that the Senate has passed its version of H.R. 2, the next step in the legislative process is for the House to pass identical legislation so that it can be sent to the President for his consideration. The House is scheduled to take up the Senate-passed version on Wednesday, February 4, 2009. ☀

House Passes Economic Stimulus Bill Containing Controversial E-Verify Provisions: The full House of Representatives last week passed an economic stimulus measure containing two controversial immigration provisions, including one that would greatly expand the mandatory use of the controversial E-Verify program. Last week's House floor action occurred on Wednesday, January 28, 2009, in connection with [H.R. 1](#), the "Economic Recovery and Reinvestment Act of 2009". The House passed the measure on that date by a vote of 244-188.¹⁰²

H.R. 1 is an \$825 BILLION package that is based on proposals put together by President Barack Obama and House and Senate Democratic Leaders. It is an unusual measure, in that it combines discretionary spending provisions, entitlement spending provisions, revenue measures, and authorization provisions. In all, the measure contains \$358.1 BILLION in discretionary spending increases, \$192 BILLION in entitlement spending increases, and \$275 BILLION in tax cuts, and. It was assembled after three separate House committees held markups to put their stamps on the measure.

Legislative History. On January 6, 2009, the day on which the 111th Congress convened, the House Democratic

Leadership set aside the bill number, H.R. 1, for President Barack Obama's economic stimulus plan.

Staff members for the House Democratic Leadership and the President worked during the period between the convening of the 111th Congress and President Obama's inauguration to firm up their plans for the legislation.

The House Committee on Appropriations, House Committee on Ways and Means, and House Committee on Energy and Commerce met separately during the week of February 19, 2009, formally approving their respective portions of the measure.

The work of the three committees was bundled together into a single bill, which House Appropriations Committee Chairman David Obey introduced on Monday, January 26, as H.R. 1.

House Appropriations Committee Consideration. The House Committee on Appropriations approved its portion of H.R. 1 on Wednesday, January 21, 2009, by a vote of 35-22. Technically, the Committee approved a different measure, [H.R. 679](#).¹⁰³ The text of that measure was later folded into H.R. 1.

The Committee adopted two controversial immigration-related amendments during the course of the markup, both by unanimous consent. The first amendment, offered by Representative Jack Kingston (R-GA), would require all entities that enter into contracts using funds from the bill to use the E-Verify Program to verify the work eligibility of their employees. The second amendment, offered by Representative Ken Calvert (R-CA), would extend the E-Verify Program through fiscal year 2016.¹⁰⁴

House Ways and Means Committee Consideration. The House Committee on Ways and Means approved its version of H.R. 1 on Thursday, January 22, 2009, by a vote of 24-13. The Committee adopted one immigration-related amendment during the course of the markup. The amendment, offered by Representative John Yarmuth (D-KY), would require recipients of the bill's tax credits to undergo immigration status verification before they can receive the credits.

Summary of Immigration- and Refugee-Related Provisions. As passed by the House, H.R. 1 contains the following immigration- or refugee-related provisions:

- Mandatory Use of the E-Verify Program.—Section 1114 of the measure would provide that none of the funds

¹⁰¹ [Senate Roll Call No. 27](#), January 29, 2009

¹⁰² [House Roll Call No. 46](#), January 28, 2009

¹⁰³ [H. Rept. 111-4](#)

¹⁰⁴ See Pages 117-119 of the January 26, 2009, edition of the *Weekly Legislative Update* for a report and analysis of the January 21, 2009, House Appropriations Committee markup of H.R. 1.

made available by the Act may be used to enter into a contract with an entity that does not participate in the E-Verify program.

- Bar Illegal Aliens from Receiving the Making Work Pay Tax Credit. The new Section 36A(c)(1)(A) of the Internal Revenue Code, added by Section 1001 of the bill, would bar non-resident aliens from receiving the Making Work Pay” tax credits in the bill.
- Immigration Status Documentation Requirements for the “Making Work Pay” Tax Credits. The measure would impose documentation requirements to prevent illegal residents from receiving the Making Work Pay Credit.
- Bar Loan Guarantees if Small Businesses Owned, in Part, by Illegal Aliens. Section 6201(f) of the measure would bar small business loan guarantees under the Act to concerns if an illegal immigrant has an ownership interest in the concern or if the Secretary of Homeland Security or Attorney General of the United States have determined that concern has engaged in a pattern and practice of hiring, recruiting, or referring for a fee, for employment in the United States an alien knowing the person is an unauthorized alien.
- Bar Small Business Loans to Firms Hiring Illegal Aliens. Section 6204(g) of the bill would bar small business concerns from receiving refinancing assistance under the Act if an illegal immigrant has an ownership interest in the concern or if the Secretary of Homeland Security or Attorney General of the United States have determined that concern has engaged in a pattern and practice of hiring, recruiting, or referring for a fee, for employment in the U.S. an alien knowing the person is unauthorized.
- Provisions Relating to the Extension of the E-Verify Program. Title VII of the measure contains a number of provisions relating to the E-Verify Program—
 1. Extension of the E-Verify Program. Section 7001 of the measure would extend the E-Verify Program for five years, through 2016.
 2. Funding for the Social Security Administration’s E-Verify Duties. Section 7002 of the measure would require the Department of Homeland Security to enter into an agreement with the Social Security Administration (SSA) to provide funding to SSA to compensate it for costs associated with its participation in the E-Verify Program.
 3. GAO Study of the Erroneous Nonconfirmations Under the E-Verify Program. Section 7003 of the measure would require the Government Accountability Office (GAO) to conduct a study of

the erroneous tentative nonconfirmations under the E-Verify Program.

4. GAO Study of Effects of the E-Verify Program on Small Entities. Section 7004 of the measure would require to report on its analysis of the impact of the E-Verify Program on small entities.
- Non-Intrusive Detection Technology. Title VII of the measure contains language that would appropriate \$100 MILLION for salaries and expenses for “non-intrusive detection technology to be deployed at sea ports of entry.
 - Construction of Inspection Facilities. Title VII of the measure contains language that would appropriate \$150 MILLION for Construction to repair and construct inspection facilities at land border ports of entry.
 - Border Facilities and Land Ports of Entry. Title VI of the measure contains language that would appropriate \$1 BILLION to be used for the construction, repair, and alteration of border facilities and land ports of entry.

Immigration-Related Areas of Controversy. The bill’s E-Verify provisions were quite controversial. Indeed, they were so controversial that pro-immigrant advocates, labor unions, and business groups all pressed the House Democratic Leadership to remove them from the bill before it reached the House floor. The House Democratic Leadership did not heed the organizations’ calls and, in the end, the provisions remained in the bill through House passage.

Section 1114 of H.R. 1 would require every entity that contracts with the federal government using funds provided by the economic stimulus bill to use the E-Verify Program to verify its employees’ work eligibility. The language is so broad that it could be construed as requiring such entities to use the Program to verify the eligibility of all of their employees – even employees that are not performing work related to the contract and even to existing employees; not just new hires. Moreover, the provision could be construed to require even subcontractors and entities that are providing minimal services funded by the Act to use the Program to verify their employees’ work eligibility.

The provision raises a number of thorny questions, such as –

- Will a company from which pencils are purchased be required to verify its employees’ work eligibility through the E-Verify Program because the pencils are being purchased using funds appropriated by the economic stimulus bill?
- Will Churches be forced to choose between using the E-Verify Program to verify all of its employees and providing services to the public using funds appropriated by the economic stimulus bill?

- Will the E-Verify Program be able to handle the millions of new hits that it could get as a result of a broad interpretation of the bill's provisions?
- How much will it cost to expand the government's capability to perform E-Verify Program services at the level required by the bill?
- Will the expanded E-Verify Program mandates impact the ability of the Social Security Administration to perform its basic functions?

Businesses argued that the enactment of Section 1114 of the bill would make it difficult for them to make use of the funds. This is because in order to use the Program, businesses and other entities must agree to a memorandum of understanding, formally enroll in the program, and train their personnel on the program's use. Already, the U.S. Chamber of Commerce has filed suit against the federal government because of a rule that was published last year requiring most federal contractors to use the E-Verify Program. They are not likely to back away from their opposition to mandatory use of the program in the face of Section 1114.

Some in organized labor argued that enactment of Section 1114 would slow down implementation of the Act, resulting in fewer jobs being created. Some also argued against the provision out of a concern about the E-Verify Program's accuracy.

The E-Verify Program is not without controversy. Pro-immigrant advocates have argued that it is riddled with errors and that those errors will likely result in unjust firings, the failure of some businesses to hire qualified workers, delayed employment, lost productivity, and enormous costs.

Floor Debate in the House. No immigration-related matters were raised during House floor debate on H.R. 1.

Immigration-Related Floor Amendments and Motions. The rule providing for consideration of H.R. 1 did not permit any immigration-related amendments to be offered to the measure.

Next Steps. Now that the House of Representatives has passed H.R.1, the next step in the legislative process is consideration of the measure by the Senate. The Senate is set to begin consideration of its version of H.R. 1 on Monday, February 2, 2009. The Senate Democratic Leadership hopes to complete Senate consideration of the measure this week.

Both the House and the Senate Democratic Leadership hope to have a bill on President Obama's desk by the time Congress leaves Washington for its week-long President's Day recess, which is set to begin upon the close of business on Friday, February 13, 2009. ☼ ◇

Last Week's Executive Activity

Administration Delays Implementation of Mandatory E-Verify Rule for Federal Contractors until May:

As predicted in this space last week, the Obama Administration has announced it will delay implementation of a controversial Bush-Era rule that requires most federal contractors to use the E-Verify System¹⁰⁵ to verify the employment eligibility of their employees. Last week's announcement, made in the January 30, 2009, edition of the *Federal Register*,¹⁰⁶ gives federal contractors and subcontractors until May 21, 2009, to begin using the E-Verify system to verify the work eligibility of its employees, rather than requiring that they comply with the previous deadline of February 20, 2009.

Last week's *Federal Register* announcement came just ten days after White House Chief of Staff Rahm Emanuel issued a memorandum to all executive branch agency heads requesting that they consider extending the effective date of published regulations that have not yet taken effect.¹⁰⁷

This most recent delay in implementing the federal contractor e-verify rule marks the second time the federal government has postponed the implementation of the mandate. The rule was first set to go into effect on January 15, 2009.

In commenting on the Administration's move, Secretary of Homeland Security Janet Napolitano said, "I believe in E-Verify. I believe it has to be an integral part of our immigration enforcement system." She went on to say that

¹⁰⁵ *Formerly known as the Basic Pilot/Employment Eligibility Verification Program, the E-Verify system is an internet-based system operated by the Department of Homeland Security (DHS) and U.S. Citizenship and Immigration Services (USCIS) in partnership with the Social Security Administration (SSA). Based on the information provided by the employee on his or her Form I-9, E-Verify checks this information electronically against records contained in DHS and Social Security Administration (SSA) databases. It is intended to enable participating employers to electronically verify the employment eligibility of new hires. At present, the use of E-Verify is voluntary for the most part and applies only to new hires. However, the State of Arizona has made it mandatory for employers in its state.*

¹⁰⁶ [Click Here](#) to see the announcement, made in the January 30, 2009, edition of the *Federal Register*, of the delay in the implementation of the E-Verify Federal contractor rule.

¹⁰⁷ [Click Here](#) to see the January 20, 2009, memorandum from White House Chief of Staff Rahm Emanuel to the head of all executive branch departments and agencies on regulatory review.

"[t]he review is intended to see what needs to be done to increase the capacity for the E-Verify system, how quickly that can be done."

Background. On November 14, 2008, the administration of President George W. Bush published a rule in the Federal Register requiring certain federal contractors and subcontractors to use the E-Verify system administered by the Department of Homeland Security and U.S. Citizenship and Immigration Services as the means of verifying that certain of their employees are eligible to work in the United States.¹⁰⁸ As published on November 14, 2008, the rule was set to go into effect on January 15, 2009. However, on January 9, 2009, the Bush Administration agreed to suspend the implementation of the E-Verify Federal Contractor Rule until February 20, 2009, one month after the Obama Administration was to assume office. The Administration announced the suspension days after the U.S. Chamber of Commerce, along with other business groups, filed a lawsuit challenging the legality of this law.

The suspension announced last week by the Obama Administration delays implementation of the rule until at least May 21, 2009. ☼

Secretary Napolitano Issues Wide-Ranging Immigration and Border Security Action Directive: Secretary of Homeland Security Janet Napolitano last week issued the 12th and final of her initial action directives to the Department of Homeland Security (DHS) to guide the Department's efforts as she takes over the Department. Last week's directive was the third one that she has issued related to immigration matters. It requires various DHS offices and components to work together and with state and local partners to review and assess their plans and policies to address seven different areas:

- criminal and fugitive aliens;
- legal immigration benefit backlogs;
- southbound gun smuggling;
- cooperation with the National Guard;
- widows and widowers of U.S. citizens;
- immigration detention centers; and
- electronic employee verification.

In the directive, the Secretary directed various components and offices of the Department to provide a final report to her by February 20, 2009, about current programs, including metrics of success, gaps in service/resources, partnerships with state and local governments and other federal agencies

¹⁰⁸ [Click Here](#) to see rule on E-Verify and federal contractors that was published in the November 14, 2008, edition of the Federal Register. [Click Here](#) to see a question-and-answer document prepared by the Department of Homeland Security on the E-Verify rule.

as well as offer suggestions for reforms, restructuring, and consolidation where needed on the seven matters.

In all, the Secretary asked 27 questions of the Department, including:

- Criminal and Fugitive Aliens.

1. The Secure Communities Program. With respect to the Secure Communities Program, which the directive described as a program that "works with state, local, and tribal law enforcement to identify and remove aliens unlawfully present who are involved in criminal activity", the directive asked—
 - A. How can we best accelerate its development and expansion?
2. The Institutional Removal Program. With respect to the Institutional Removal Program, which her directive described as a program that "facilitates the entry of final removal orders before aliens convicted of crimes are released from criminal custody", her directive asked—
 - A. What measures are needed, and with what priority, to secure expansion of this resource-saving program?
 - B. Which state or federal facilities are the main targets of opportunity for efficient expansion?
 - C. What specific cooperation is needed from the Department of Justice (DOJ) to facilitate expansion?
3. Fugitive Operation Teams. With respect to the Department's Fugitive Operation Teams, the Secretary's directive asked—
 - A. Please provide the current metrics of fugitive apprehension and removal (clearly differentiate the number of fugitives that are actually removed versus those aliens unlawfully present who are simply encountered by the teams while on assignment).
 - B. How can fugitives be more effectively prioritized for these purposes and what steps can be taken to expedite removal?
4. The Electronic Travel Document Program. With respect to the Electronic Travel Document Program, which the directive describes as a program that "facilitates the travel of persons subject to removal orders", the directive asked—

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- A. How can the department best secure an expansion of this program to include the consulates of additional countries?
5. The 287(g) Program. With respect to the 287(g) Program, which the directive describes as a program that “provides for agreements whereby federally trained and supervised state and local law enforcement officials can participate in the investigation, apprehension, and transport of unauthorized aliens”, the directive asked—
- A. How many officers have been trained to date?
- B. How many agreements have been signed with state and locals to date and how many are ready to be signed?
- C. What is the current turnaround time to sign an agreement and what can be done to expedite more agreements?
- D. How does this model compare in cost, effectiveness, and administration, to other forms of cooperation with these officials or entities?
- E. What are the strengths and challenges with jail model agreements versus task force model agreements?
- Legal Immigration Benefit Backlogs. With respect to backlogs in the adjudication of immigration benefits, the directive asked--
 - A. What progress has been made in reducing the significant backlogs that had developed in the adjudication of naturalization petitions and adjustment of status (green card) applications?
 - B. Which regional offices still lag behind in making progress toward target processing times, and what specific steps are recommended for providing priority resources to those offices?
 - C. Please provide an assessment of information-sharing with the Department of State’s Bureau of Consular Affairs on projected adjustment caseloads, to be used by that Bureau in setting each month’s cutoff dates on waiting lists for immigration categories that are limited by a yearly quota.
 - D. What steps have been taken and what further steps are recommended to make sure that the full quota of permanent immigration spaces is used each fiscal year?
 - Southbound Gun Smuggling. With respect to southbound gun smuggling, the directive noted “[a] growing wave of criminal violence in Mexico’s border communities and in the interior of the country, fueled by the availability of guns and currency smuggled south from the U.S” It said that this activity “poses a serious threat to Mexico’s security and portends deepening problems for our nation’s border regions.” It asked a number of questions, none of which were directly related to immigration.
 - National Guard. With regard to the use of the National Guard in immigration enforcement, the directive asked—
 - A. Describe and assess the current deployment of the National Guard at or near the border.
 - B. What overarching plans exist for coordinating with the Guard at the border?
 - C. How could the arrangements for the Guard’s presence be made more effective for support of DHS missions?
 - Widows and Widowers of U.S. Citizens. With regard to widows and widowers of U.S. citizens, the directive noted that “[r]ecent media accounts have highlighted the cases of widows and widowers of U.S. citizens who had petitioned for the alien spouse’s immigration, but whose petitions were not adjudicated before the citizen spouse’s death.” The directive asked—
 - A. What are the regulatory, legislative, and litigation options that could be considered to immediately address the situation of these widows and widowers?
 - Immigration Detention Facilities. With respect to immigration detention facilities, the directive asked—
 - A. What is the current status of the Performance Based National Detention Standards (Standards), and in what ways do they improve upon previous detention standards?
 - B. To which facilities do they apply at present, and what are the plans for full application of the standards to all facilities housing ICE detainees?
 - E. What regulatory or legislative changes (including a possible pre-application filing procedure for adjustment cases) are recommended to facilitate caseload planning and make optimum use of U.S. Citizenship and Immigration Services adjudication capacity?

- C. How do the Standards address concerns associated with the treatment of families and unaccompanied children?
 - D. What are the arrangements for monitoring compliance with the Standards, and what corrective actions or sanctions are applied in the case of violation or shortfall?
 - E. What steps are taken to segregate ordinary detainees from those with a serious criminal record (either immigration detainees or other inmates of a facility that may also house prisoners in the criminal justice system)?
 - F. What are the prospects, advantages, and disadvantages of expanding the use of community-based alternatives to detention or of less-restrictive models of detention as have been used in Broward County, Fla.?
- Electronic Employment Verification. With respect to electronic employment verification, the directive declared that “[r]educing unauthorized employment is crucial for controlling the problem of illicit migration.” It asserted that “E-Verify has been a key component in proposals for comprehensive immigration reform and holds real promise as a central element in effective immigration enforcement that combines border efforts with interior measures.” At the same time, the directive acknowledge that “E-Verify has encountered criticism both for false negatives (persons who are authorized to work but who nonetheless receive a tentative non-confirmation from the system) and for false positives (unauthorized aliens who receive a confirmation because they have borrowed or stolen the identity of an authorized worker).” The directive asked--
 - A. What is the status of the employer monitoring and compliance efforts of the E-Verify system?
 - B. How can DHS expand such monitoring, including alternative strategies such as electronic detection of suspicious patterns, with an indication of resource requirements?
 - C. What strategies are available to minimize false negatives?
 - D. What steps and resources are needed to secure a systematic and detailed study of the origin, prevalence, and types of erroneous non-confirmations, including measuring the rate of correct non-confirmations, and how much time would be required for such a study?
 - E. What is the status of measures (such as photo tools) designed to minimize false positives?
 - F. Currently, photo tools are useful for only certain types of documents presented by the worker. What would be needed to make the photo tool applicable to all identity documents presented by covered employees?
 - G. What is the prospect for using biometrics as part of the screening (done either by the employer or at an offsite location by specialized offices)?
 - H. What role could data-mining or other innovative strategies play in helping to identify false positives and false negatives?
 - I. What steps would be most effective both in the short and long term to deter and detect identity fraud?
 - J. Please also provide an assessment of the laws and regulations on administrative fines for employers. ☼ ◇

Recently Introduced Legislation

The following bills containing significant immigration- or refugee-related provisions were introduced last week in either the House or Senate:

House

Control of Illegal Immigration

- American Recovery and Reinvestment Act of 2009: Representative David R. Obey (D-WI) has introduced [H.R. 1](#), a bill making supplemental appropriations for job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and State and local fiscal stabilization, for fiscal year ending September 30, 2009, and for other purposes.

As introduced and later passed by the House, H.R. 1 contains numerous provisions appropriating funds, cutting taxes, and increasing spending on entitlement programs in an effort to stimulate the U.S. economy. With respect to immigration, the measure would extend the E-Verify program through 2016 and make its use mandatory for entities receiving funds through the bill. It also would appropriate funds for border and interior enforcement efforts.

Senate

Relief From Removal

- Improving Assistance to Domestic and Sexual Violence Victims Act of 2009: Senator Patrick J. Leahy (D-VT) has introduced [S. 327](#), a bill to amend the Violence Against Women Act of 1994 and the Omnibus Crime

Control and Safe Streets Act of 1968 to improve assistance to domestic and sexual violence victims and provide for technical corrections.

As introduced, S. 327 would make a number of changes to law to assist victims of domestic and sexual violence in receiving assistance in the United States. Among its provisions are several immigration-related ones, including those that would strengthen protections in existing law for battered immigrant women and ensure that battered immigrant women are eligible for housing assistance.

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

Bills in Development

Next week's and future Weekly Immigration and refugee Legislative Updates will include a brief listing of several immigration- or refugee-related bills that are currently under development and that could soon be introduced in the Senate or House of Representatives. In each week's listing, items that were added since the previous edition of the Weekly Legislative Update or items which have substantially changed since the previous Weekly Immigration and Refugee Legislative Update was issued will be marked with a double asterisk (**).

Over the Horizon ...

Bicameral

****Work on the Extension of Four Immigration Programs to Be Among First Items the New Congress Tackles:** When Congress completed work last year on the fiscal year 2009 continuing appropriations resolution, it included within it a temporary extension of three expiring immigration programs. The programs are the Conrad 30 program for foreign-born doctors, the E-Verify employment verification program, and a program relating to the EB-5 Investor visa program. The continuing appropriations resolution extended these three programs through March 6, 2009, the length of the continuing appropriations. Congress subsequently extended through March 6, 2009, another expiring immigration program, the special immigrant non-minister religious worker visa program. All four of these programs will face either extinction or extension in the 111th Congress, and Congress is expected to work to extend them beginning next week with House consideration of the measures. It was unclear at the

time of this writing, however, if the appropriations committees would first markup the measures. ☼ ◇

Next Week's Edition ...

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

- Preview of the Likely Immigration and Refugee Legislative Agenda for the 111th Congress. Next week's Weekly Legislative Update will preview the likely immigration and refugee legislative agenda that Congress will face during the 111th Congress.
- Expansion of Immigrant Children's Access to Health Insurance. Next week's Weekly Legislative Update will report on final actions that are expected to be taken in the House of Representatives this relating to reauthorization of the SCHIP program and efforts to expand immigrant children's access to the program.
- Immigration Provisions in the Economic Stimulus Bill. Next week's Weekly Legislative Update will report on actions taken on the Senate floor relating to the immigration-related provisions in the economic stimulus bill.
- Refugee- and Immigration-Related Provisions in the Fiscal Year 2009 Omnibus Appropriations Bill. Next week's Weekly Legislative Update will either preview or review the refugee- and immigration-related provisions expected to be contained in the fiscal year 2009 omnibus appropriations bill, depending on whether the House takes up the measure this week.
- Organization of the 111th Congress. Next week's Weekly Legislative Update will continue coverage of efforts that are underway to organize the House of Representatives and Senate for the 111th Congress and analyzing how those efforts, decisions, and actions might impact the course of immigration- and refugee-related legislation.
- Confirmation of Cabinet Nominees. Next week's Weekly Legislative Update will report on any confirmation hearings, markups, and floor votes that occur in relation to Secretary of Health and Human Services-Designate Tom Daschle, the final of President-Elect Obama's four nominees to head departments and agencies that operate the nation's immigration- and refugee-related functions. ◇

Appendix

No items this week

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