



# United States Conference of Catholic Bishops Government Relations

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

Monday, March 2, 2009

Page 241

### Legislative Highlights

<i>Senate to Take Up FY '09 Omnibus Appropriations Bill</i> .....	<a href="#">244-245</a>
<i>House to Take Up Bill Extending Expiring Religious Worker and Conrad 30 Programs</i> .....	<a href="#">243-244</a>
<i>House Appropriations Panel to Examine Health Services for Immigrant Detainees</i> .....	<a href="#">241-242</a>
<i>House Homeland Security Committee to Examine 287(g) Program</i> .....	<a href="#">242-242</a>
<i>Obama to Nominate Governor Sebelius to Head the Department of Health and Human Services</i>	<a href="#">266-267</a>
<i>House Passes FY '09 Omnibus Bill Funding Federal Immigration and Refugee Functions</i> .....	<a href="#">249-258</a>
<i>Little Detail Available on Immigration or Refugees in Obama's FY '09 Budget Submission</i> .....	<a href="#">259-260</a>
<i>Secretary Napolitano Testifies Before the House Homeland Security Committee</i> .....	<a href="#">246-248</a>
<i>Senate Appropriations Committee Hopes to Organize for the 111<sup>th</sup> Congress</i> .....	<a href="#">262-265</a>
<i>Secretary Napolitano Begins to Make Appointments of Key Department Personnel</i> .....	<a href="#">265-269</a>

### This Week's Hearings

At the time of this writing, two committees of Congress had scheduled hearings at which significant immigration- or refugee-related matters are expected to be discussed:

- **Health Services for Immigrant Detainees:** The House Appropriations Subcommittee on Homeland Security has scheduled a hearing for this week at which it will examine health services for immigrant detainees; and
- **State and Local Enforcement of Immigration Law:** The House Committee on Homeland Security has scheduled a hearing for this week at which it will examine state and local enforcement of immigration law.

#### House

**Health Services for Immigrant Detainees:** The House Appropriations Subcommittee on Homeland Security has scheduled a hearing for this week at which it will examine health services for immigrant detainees. This week's hearing is scheduled for 10:00 am on Tuesday, March 3, 2009, in Room 2359 of the Rayburn House Office Building.

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

- Jose Rodriguez, Director, Division of Immigrant Health Services, ICE, DHS;

**Continued on Page 242**

### Inside This Week's Edition

Legislative Highlights .....	<a href="#">241</a>
This Week's Hearings .....	<a href="#">241 - 242</a>
This Week's Markups .....	<a href="#">243 - 242</a>
This Week's Floor Activity .....	<a href="#">242 - 245</a>
This Week's Conference Activity .....	<a href="#">245 - 245</a>
This Week's Executive Activity .....	<a href="#">245 - 245</a>
Last Week's Legislative Activity .....	<a href="#">246 - 258</a>
Last Week's Executive Activity .....	<a href="#">259 - 260</a>
Recently Introduced Legislation .....	<a href="#">261 - 262</a>
Bills in Development .....	<a href="#">262 - 262</a>
Organization of the 111 <sup>th</sup> Congress .....	<a href="#">262 - 265</a>
Executive Branch Transition .....	<a href="#">265 - 269</a>
Over the Horizon .....	<a href="#">269 - 270</a>
Next Week's Weekly Legislative Update ..	<a href="#">270 - 270</a>
Appendix .....	<a href="#">271 - 271</a>

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

- Jim Hayes - Director, Office of Detention and Removal Operations, Immigration and Customs Enforcement (ICE), Department of Homeland Security (DHS); and
- Alicia Puente Cackley, Director, Health Care Issues, Government Accountability Office (GAO). ☼

### **State and Local Enforcement of Immigration**

**Law:** The House Committee on Homeland Security has scheduled a hearing for this week at which it will examine state and local enforcement of immigration law. This week's hearing is scheduled for 2:00 pm on Wednesday, March 4, 2009, in Room 311 of the Cannon House Office Building.

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

- William Riley, Acting Director, Office of State and Local Coordination, Immigration and Customs Enforcement, Department of Homeland Security;
- Richard Stana, Director, Homeland Security and Justice Issues, Government Accountability Office (GAO); and
- Muzaffar Chishti, Director, New York Office, Migration Policy Institute. ☼

### Senate

At the time of this writing, no hearings had been scheduled for this week in the Senate at which significant immigration- or refugee-related issues were expected to be explored. ◇

### ***This Week's Markups***

At the time of this writing, only two committee actions were contemplated for this week at which significant immigration- or refugee-related legislation or matters will be considered:

- Markups
  1. Private Immigration Bills. The House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law will hold its first meeting of the 111<sup>th</sup> Congress.
- Committee Organizing Meetings
  2. Senate Appropriations Committee. The Senate Committee on Appropriations could hold its 111<sup>th</sup> Congress organizing organize this week.

### House

#### **House Immigration Subcommittee to Consider**

**Private Immigration Bills:** The House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law has scheduled its first meeting in the 111<sup>th</sup> Congress for this week. The Subcommittee is expected to adopt its rules for private bills and consider several private immigration bills during the meeting. This week's meeting is scheduled for 10:00 am on Thursday, March 5, 2009.

### Senate

#### **Senate Appropriations Committee to Hold 111<sup>th</sup>**

**Congress Organizing Meeting:** While no official notice had been given at the time of this writing, Senate Appropriations Committee staff indicates that the Committee could hold its much anticipated 111<sup>th</sup> Congress organizing meeting as early as this week.

Notwithstanding the best hopes of the staff, given that much of the Senate's time this week will be taken up considering the fiscal year 2009 omnibus appropriations bill, it seems questionable whether the Committee will be able to hold its organizing meeting this week.

See Pages 262-265 of this week's edition of the Weekly Legislative Update for a detailed preview of this week's Senate Appropriations Committee organizing meeting. ◇

### ***This Week's Floor Activity***

At the time of this writing, House or Senate floor action was anticipated on at least two measures containing significant immigration- or refugee-related provisions:

- Extension of the Religious Worker Visa and Conrad 30 Immigration Programs. The full House is likely to take up a measure extending the special immigrant nonminister religious worker visa and the Conrad 30 programs; and

**Continued on Page 243**

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## *This Week Floor Activity (continued)*

- Fiscal Year 2009 Omnibus Appropriations. The full Senate is likely to take up a measure appropriating funds for the remaining fiscal year 2009 appropriations bills.

### House

**House to Take Up Bill Extending Religious Worker Visa and Conrad State 30 Programs:** The House of Representatives this week could take up a measure extending two expiring immigration programs through the end of fiscal year 2009. House action is expected to occur on either Monday, March 2, 2009, or Tuesday, March 3, 2009, in connection with [H.R. 1127](#), which was introduced in the House of Representatives by House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law Zoe Lofgren (D-CA).

**Legislative History.** Representative Lofgren introduced H.R. 1127 on Monday, February 23, 2009. The measure will bypass the House Committee on the Judiciary, where it was referred, and will be taken up directly by the full House.

**Parliamentary Situation.** The House of Representatives will take up H.R. 1127 under a procedure known as “suspension of the rules.” Under this procedure, debate on a measure is limited to 40 minutes, equally divided between Democrats and Republicans, the measure is not subject to amendment, and it must receive the affirmative votes of two-thirds of those Members who are present and voting.

**Need for the Bill.** When the 110<sup>th</sup> Congress adjourned in December, 2008, it did so without providing long-term extensions of four expiring immigration programs: the E-Verify program, the Investor Visa Regional Centers, Conrad State 30, and Special Immigrant Nonminister Religious Worker Visa programs. Congress extended the E-Verify and Investor Visa programs in the fiscal year 2009 continuing appropriations resolution it enacted last December and it extended the religious worker visa and Conrad State 20 programs in separate legislation. All four programs were extended through Friday, March 6, 2009.

The House-passed version of H.R. 1105 would extend the E-Verify and Investor Visa programs through September 30, 2009. However, it would not extend the Religious Worker and Conrad State 30 programs. H.R. 1127 would extend those two programs through the end of fiscal year 2009.

**Background on Religious Worker Visa Program.** The Non-Minister Religious Worker Visa Program allows religious organizations to sponsor non-minister religious workers from abroad to perform service here in the United States. Congress enacted the program as part of P.L. 101-649, the Immigration Act of 1990.

The program is composed of two parts:

- The *first* part provides for up to 5,000 Special Immigrant visas (or permanent resident visas) per year which religious denominations or organizations in the United States can use to sponsor foreign nationals to perform religious service in the United States. Once granted, this type of visa allows religious workers to permanently immigrate to the United States and eventually become citizens of our country. This program expires from time-to-time. It currently is set to expire at the end of fiscal year 2008. Unless Congress acts to prevent it, this part of the program will expire on September 30, 2008.
- The *second* part of the program provides religious denominations and organizations with the ability to sponsor temporary religious workers, called Nonimmigrants, to perform religious service in the United States. Nonimmigrant religious workers under this part of the program may remain and work in the United States for no more than five years. Unlike the special immigrant provision, the nonimmigrant provision is permanent law which has no expiration date.

Non-minister religious workers are persons in a religious vocation or occupation, other than those who lead a religious congregation or group (such as ministers, pastors, priests and rabbis.) Examples of non-minister religious workers include those called to religious vocations, such as nuns and monks, as well as lay persons who work as religious instructors, cantors, liturgical musicians, religious broadcasters, missionaries, pastoral care providers, and in other religious occupations.

Since its enactment, the Special Immigrant provision of the Non-Minister Religious Worker Visa Program has been extended four times.

**Background on Conrad State 30 Program.** The Conrad State 30 Program was designed to provide each of the fifty U.S. states with 30 waivers for J-1 physicians each fiscal year. Under the program, each State has been given some flexibility to implement its own guidelines, but there are some basic requirements that are common to all STATE 30 programs.

While the exact requirements vary from state to state, the following is generally required:

- an offer of employment as a primary care physician in a medically underserved area in a particular State;
- a letter of support from the particular State Director of Health supporting the physician's STATE 30 request; and
- a three-year employment contract.

**Summary of Immigration Provisions.** As introduced—

- **Religious Worker Visa Program.** Section 1 of H.R. 1127 would amend subclauses (I) and (II) of Section 101(a)(27)(C)(ii) of the Immigration and Nationality Act to extend from March 6, 2009, to September 30, 2009, special immigrant nonminister religious worker visa program; and
- **Conrad State 30 Program.** Section 2 of H.R. 1127 would amend Section 220(c) of the Technical Corrections Act of 1994 to extend from March 6, 2009, to September 30, 2009, the provision of law that permits certain foreign medical graduates (FMGs) to work at health care facilities located in geographic areas designated by the Secretary of Health and Human Services (HHS) as having a shortage of health care professionals.

**Outlook.** House staff appear to be confident that the House will pass H.R. 1127 without controversy. ☼

### Senate

**Senate to Take Up House-Passed FY '09 Omnibus Appropriations Bill:** The Senate this week is scheduled to take up a House-passed appropriations bill containing funding for the nation's immigration court system and its refugee admissions, overseas refugee assistance, and refugee resettlement programs. This week's Senate floor action is expected to occur beginning at 2:00 pm on Monday, March 2, 2009, in connection with the House-passed version of [H.R. 1105](#), the Omnibus Appropriations Act, 2009.<sup>241</sup> Senate floor consideration of the measure is expected to continue throughout the week.

**Parliamentary Situation.** It was not clear at the time of this writing what the process will be for Senate floor consideration of H.R. 1105. As last week ended, Senate Majority Leader Harry Reid (D-NV) was trying to negotiate a finite list of amendments for the Senate to consider and a time certain for a vote on final passage of the measure. However, he has implied that he may employ parliamentary maneuvers to block or shut down the amendment process if he cannot reach an agreement with Senate Republicans.

**Background.** As passed last week by the U.S. House of Representatives, H.R. 1105 is comprised of the nine fiscal year 2009 appropriations bills that Congress did not act before it adjourned in December of 2008. Among those unfinished bills were the bills that appropriate funds for the Department of State, which administers the nation's refugee admissions and overseas refugee assistance programs; the Department of Health and Human Services, which administers the Office of Refugee Resettlement's refugee

resettlement, trafficking victim assistance, torture victim assistance, and unaccompanied alien child programs; and the Department of Justice, which operates the nation's immigration court system. Those agencies and programs are currently being funded through Friday, March 6, 2009, pursuant to Division A of [P.L. 110-329](#), the "Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009", which was considered in the House and Senate as [H.R. 2638](#).<sup>242</sup> Congress must act to either pass another continuing appropriations bill or enact H.R. 1105 into law before the end of the day on Friday, March 6, 2009.

**Summary Immigration- and Refugee-Related Provisions.**

As passed by the House, H.R.1105 contains the following immigration- and refugee-related appropriations provisions:

- \$633.4 MILLION refugee and entrant assistance administered by the Department Health and Human Services' Office of Refugee Resettlement (ORR);
- \$931.0 MILLION for Migration and Refugee Assistance administered by the Department of State's Bureau of Population, Refugees, and Migration (PRM);
- \$40 MILLION for the Emergency Refugee and Migration Assistance (ERMA), administered by PRM; and
- \$267.6 MILLION for the Executive Office for Immigration Review (EOIR), within the U.S. Department of Justice.

The explanatory statement accompanying the House-passed version of the measure also includes numerous immigration- or refugee-related directives to agencies and departments.

In addition to the provisions appropriating funds, the House-passed version of H.R. 1105 also contains several legislative provisions. Most notably—

- **Special Immigrant Status and Refugee Benefits for Afghans.** Division F, Title VI, Section 602(b) of the House-passed version of H.R. 1105 would authorize the Secretary of Homeland Security to grant Special Immigrant status to up to 1,500 Afghan citizens or nationals each year between fiscal years 2009 and 2013 who—
  1. have been employed for at least a year by or on behalf of the United States government;

<sup>241</sup> [Click Here](#) or see Pages 249-258 of this week's edition of the Weekly Legislative Update for a detailed analysis of the immigration- and refugee-related provisions in the House-passed version of H.R. 1105

<sup>242</sup> [Click Here](#) to see the official explanatory documents relating to the Fiscal Year 2009 Homeland Security Appropriations Act, enacted into law as Division D of P.L. 110-329

2. received documentation and a positive recommendation from the employee's senior supervisor; and
3. have received a letter of have experienced or are experiencing an ongoing serious threat as a consequence of the alien's employment by the United States government."

The provision provides for a rolling over of unused visas from year-to-year, excludes any numbers used from the annual limitation on the number of aliens who may be given special immigrant status, and makes special immigrants from Afghanistan admitted pursuant to the provision eligible for refugee benefits and entitlement benefits.

- Adjustment of Status for Iraqi and Afghan Parolees. Division F, Title VI, Section 602(b)(9) of the House-passed version of H.R. 1105 would provide for the adjustment of status of parolees or nonimmigrants from Iraq and Afghanistan.
- Extension of the Lautenberg Amendment. Division H, Title VII, Section 7034(g) of the House-passed version of H.R. 1105 would extend the "Lautenberg Amendment", which provides a relaxed refugee adjudicatory standard for Soviet Jews and others, through the end of fiscal year 2009.
- Prohibition on Hiring Illegal Aliens. Division F, Title V, Section 519 of the House-passed version of H.R. 1105 would prohibit the use of any funds in the Act to employ workers who are unauthorized to work in the United States.
- Extension of the E-Verify and Investor Visa Regional Center Programs. Division J, Sec. 101 of the House-passed version of H.R. 1105 would extend the E-Verify and EB-5 Investor Visa programs through September 30, 2009.

**Potential Immigration-Related Floor Amendments.** The House Democratic Leadership hopes to defeat all amendments offered to the measure on the Senate floor so that it can clear the measure and send it the President by the end of the day on Friday, March 6, 2009. Any changes to the bill in the Senate would require further action in the House of Representatives.

At the time of this writing, Majority Leader Reid was seeking an agreement limiting the number of amendments offered to a finite list of amendments.

The only potential Senate immigration-related amendment that had publicly been discussed at the time of this writing was a potential amendment from Senator Jeff Sessions (R-

AL) that would extend the E-Verify program permanently and require all recipients of funds under the economic stimulus bill to use the E-Verify system to verify the employment eligibility of their employees. There was no word at the time of this writing, however, whether Senator Sessions would actually attempt to offer such an amendment to H.R. 1105.

In addition to any amendments that would explicitly impact immigration, various other amendments that could have an incidental impact on immigration have been discussed. Most prominently, Senator John McCain (R-AZ), has indicated he will offer an amendment that would freeze most funding in the bill at fiscal year 2008 levels.

**Outlook.** It was not possible at the time of this writing to predict whether senators seeking to amend H.R. 1105 will be able to muster the votes necessary to do so or whether the Senate Democratic Leadership will be able to muster the votes necessary to clear the bill prior to the March 6, 2009, deadline. ☀ ◇

## ***This Week's Conference Activity***

**Fiscal Year 2009 Omnibus Appropriations Bill:** It was not known at the time of this writing whether the Senate this week will amend the House-passed version of the fiscal year 2009 omnibus appropriations bill or if it will pass the House-passed version of the measure without amendment, clearing it for the President's consideration.

Should the Senate amend the House-passed version of the omnibus appropriations bill, the House and Senate would have to take additional steps to resolve any differences between the two versions of the measure. It is unlikely that a conference would be convened because of the time it would take to do so. More likely than not, the House would take up the Senate amendments and the Senate would then take up any changes made by the House. ◇

## ***This Week's Executive Activity***

**Obama Expected to Sign Fiscal Year 2009 Omnibus Appropriations Bill:** President Barack Obama is expected this week to sign either the fiscal year 2009 omnibus appropriations bill or a continuing appropriations resolution for fiscal year 2009 into law. The House has passed [H.R. 1105](#), the Omnibus Appropriations Act, 2009, which would fund the operations of the federal government through the end of fiscal year 2009. The Senate is expected to take up the measure beginning on Monday, March 2, 2009, and consider the measure throughout the week. If Congress cannot complete action on the bill before the end of the day on Friday, March 6, 2009, expiration date

of the continuing appropriations bill that is in place, Congress will have to send another continuing appropriations resolution to the President for his consideration. ◇

## *Last Week's Legislative Activity*

### Last Week's Hearings

Only one committee of Congress held a hearing last week at which significant immigration- or refugee-related matters were discussed:

- Secretary Napolitano Testifies Before the House Homeland Security Committee: The House Committee on Homeland Security held a hearing last week at which Secretary of Homeland Security Janet Napolitano testified.

**Secretary Napolitano Testifies before House Homeland Security Committee:** The House Committee on Homeland Security last week held an oversight hearing examining the operations and plans of the Department of Homeland Security. Last week's hearing occurred on Wednesday, February 25, 2009.

The title of last week's was: "DHS: The Path Forward".

**Witness List.** The sole witness at last week's hearing was Secretary of Homeland Security Janet Napolitano.

**Opening Statements.** The following summarizes the immigration-related comments made in Members' opening statements at last week's hearing:

- Chairman Thompson. House Committee on Homeland Security Chairman Bennie G. Thompson (D-MS) made virtually no mention of immigration during his opening statement.<sup>243</sup>
- Ranking Member King. House Committee on Homeland Security Chairman Pete King (R-NY) made virtually no mention of immigration during his opening statement.

**Prepared Testimony.** Secretary Napolitano began her testimony<sup>244</sup> by talking about the Department of Homeland Security's core mission. Interestingly, her description of the Department's core mission did not mention immigration

<sup>243</sup> [Click Here](#) to see the text of the prepared opening statement of House Homeland Security Chairman Bennie G. Thompson at the February 25, 2009, House Committee on Homeland Security hearing at which Secretary Napolitano testified

<sup>244</sup> [Click Here](#) to see the text of the prepared testimony of Secretary Napolitano at the February 25, 2009, hearing before the House Committee on Homeland Security

benefits or services. Instead, she said, "[a]t its core, I believe DHS has a straightforward mission: to protect the American people from threats both foreign and domestic, both natural and manmade – to do all that we can to prevent threats from materializing, respond to them if they do, and recover with resiliency."



The Secretary went on to tell the Committee about a number of "action directives" that she has issued since being sworn in, including three immigration-related directives. She listed some of the questions that were contained in the directives, but did not provide information about the reports that have been issued pursuant to those directives, despite the fact that the deadlines that she set for receiving information from DHS employees pursuant to the directives have passed.

Beyond listing the action directives, the Secretary's only other reference to immigration in her prepared testimony was a brief mention of the Department's use of RFID technology in identification documents that she said would enable immigration enforcement agents to more quickly identify people approaching border stations.

**Q&A Session.** Despite the House Committee on Homeland Security's limited immigration-related jurisdiction, its members asked questions about a wide range of immigration-related matters, including questions on:

- [Backlogs in Adjudicating Immigration Services](#)
- [Bellingham, Washington Immigration Raid](#)
- [Border Violence](#)
- [Citizenship and Naturalization](#)
- [Fencing Along the Border](#)
- [Interior Immigration Enforcement Agents](#)
- [Northern Border](#)
- [REAL-ID Act Implementation](#)
- [SBI Net and P-28](#)

The following summarizes the question and answer session that took place between Committee Members and Secretary Napolitano:

- Backlogs in Adjudicating Immigration Services. Representative Yvette Clarke (D-NY) complained about backlogs in the adjudication of immigration services and asked the Secretary about resources and technology devoted to adjudicating immigration benefit eligibility at USCIS.

Secretary Napolitano replied that "[t]here are wonderful men and women who work there [at USCIS], and they are there because they want to help those who have come into our country legally and who seek to become and get the benefits of citizenship to get there." She went on to say that "[w]e've been involved and they've been involved on a very aggressive backlog reduction process.

By June, the average processing time will -- will be below five months, which is 50 percent of what it's been." She concluded her response by saying that "we're looking for other things as well that we can do administratively to facilitate the process and make it easier -- more consumer-friendly, as it were -- to help people who seek to become citizens and enjoy the benefits of citizenship to get there."

- Bellingham, Washington Immigration Raid. Representative Zoe Lofgren (D-CA) asked the Secretary about an immigration raid that recently was conducted by ICE agents in Bellingham, Washington, using the question as a way of inquiring about DHS's standards for detaining people in immigration raids.

Secretary Napolitano responded, "I was briefed about that action early this morning, and I did not know about it beforehand. So I've asked a number of questions about what was the predicate for this." She went on to say, "there's a lot of different allegations going around. Was it 70? Was it 40? Was it 30? What were they wearing? There were earlier allegations that helicopters were used. They were not. But I want to get to the bottom of this as well, so I've already issued those directives to ICE to get me some answers." She concluded by saying that, "[i]n my view, we have to do workplace enforcement. It needs to be focused on employers who intentionally and knowingly exploit the illegal labor market. That has impacts on American workers. It has impacts on wage levels, often has undue impacts on the illegal workers themselves. And our ICE efforts should be focused on those sorts of things, and we should really have thought through the prosecutions that are going to result and the deportations that will result after any sort of workforce action. So that is the direction in which we seek to move."

- Border Violence. Several committee members asked the Secretary about violence taking place in northern Mexico close to the border with the United States.

Chairman Thompson asked Secretary Napolitano to share with the Committee efforts that are underway to address escalating violence along the U.S. border with Mexico.

Secretary Napolitano responded by citing statistics on the number of drug-related homicides that have occurred in Mexico in recent years. She said that the United States was reaching out to various officials in Mexico to "make sure we are doing all we can in a coordinated way to support the president of Mexico." She said that she, specifically, had met with the Attorney General of Mexico and the Mexican Ambassador to the United States. "One of the things that I particularly am focused on is southbound traffic in guns, particularly assault weapons, and cash that are being used to funnel and --

and fund these very, very violent cartels," she said. She concluded her response by saying that, "working with customs, working with ATF, we're looking at ways that we can help suppress that traffic. But in my view, from a homeland security standpoint, this is going to be an issue -- working with Mexico, that is going to be of real priority interest over this -- over these coming months."

Representative Pete Olson (R-TX) asked the Secretary if the Department has a contingency plan to deal with a large influx of illegal aliens from Mexico if the violence along the border expands.

Secretary Napolitano replied that "Secretary Chertoff had developed a contingency plan, and I'm looking at that, evaluating that, making sure that we can provide resources to state and local law enforcement in those border areas should we see that kind of flow over of the -- the drug war in Mexico at that level into the United States." She went on to say that "[o]ne of the things I'm doing right now is -- is making sure that we are actually physically talking with the sheriffs in those border counties. My experience is that the best intel sometimes in a border county is that local sheriff." She promised to "stay in regular touch with them to see what is actually happening on the ground in the border communities that may be related to the drug war in Mexico." That being said, she repeated her earlier call that "we need to recognize that within the country of Mexico, the president, the federal government, are really engaged in a serious, serious effort against these drug cartels." She said that those efforts were "having a big impact on the level of violence within Mexico and it is something that deserves our utmost attention right now."

Representative Ann Kirkpatrick (D-AZ) asked the Secretary about recent reports about record numbers of abductions, including Americans taken right out of their homes, as well as recent reports that battles using machine guns and grenades are being waged near the border."

Secretary Napolitano responded that "it is a grave concern. It's at several levels. One, it's interaction with Mexican law enforcement, particularly the federal government of Mexico, and addressing the fact that he's got a drug war on his hands, and it's a big one. Secondly, it is looking government-wide at what we can do to stop the southbound export of weaponry, particularly assault-type weapons and grenades that are being used in that drug war. The third is to stay in constant touch with local law enforcement, sheriffs and the like, along that border, and should they identify gaps that they have or they see, to identify what we can do to help fill those gaps. And fourth is to have a contingency plan to deal with worst-case scenarios."

- Citizenship and Naturalization. Representative Charles W. Dent (R-PA) cited the case of a constituent of his who works for the Department of State, is a legal permanent resident, and who is stationed abroad. His constituent is finding it difficult to amass the requisite number of years of residency needed to naturalize because of his foreign assignment. He asked if the Department has any procedures in mind that would expedite the naturalization of an LPR who is serving U.S. security interests.

Secretary Napolitano replied that the Department needs more flexibility, generally, but that she was not sure whether the case that Representative Dent referred to was a case where the Secretary needed a change in the statute or if there needed to be an attitude change at USCIS.

- Fencing Along the Border. Representative Henry Cuellar (D-TX) complained to the Secretary about the construction of fencing in the south Rio Grande Valley along a levee there. He complained that the actual fence that was constructed was massive, inappropriate, and not what DHS had advertised.

Secretary Napolitano promised to look into it.

- The Number of Interior Immigration Enforcement Agents. Representative Mike Rogers (R-AL) inquired about whether the Department was planning to increase the number of Immigration and Customs Enforcement (ICE) agents.

Secretary Napolitano responded, saying that “[w]e are looking at staffing levels across the department, but also between departments.” She said that, “[i]mmigration is a system. It begins with the apprehension of someone illegal in our country and works not only through DHS but also through the Department of Justice, because you've got to have marshals to transport detainees. You've got to have facilities. You've got to have courtrooms and -- and all the rest.” She concluded, saying that “the Attorney General and I have begun ... a joint review of the immigration system and what the federal government needs to do to support it.”

- Northern Border Security. Representative Candice S. Miller (R-MI) asked the Secretary to comment on her strategy for securing the northern border of the United States.

Secretary Napolitano replied that, at her request, an analysis of our northern border efforts was underway. She said that her request for an analysis wasn't necessarily a prelude to “thickening” the northern border but that, rather, it was an effort to devise a strategy. She said that efforts along the northern border must take into account protections, but that they also needed to consider

topography, as well as the balance that needs to be stricken between trade facilitation, relationships, and security. The Secretary said that she was planning to visit the Northern Border this Spring.

- REAL ID Act Implementation. Representative Mark Souder (R-IN) remarked that Secretary Napolitano had made negative comments about the REAL ID Act while Governor of Arizona and asked her how she saw the REAL ID Act moving forward.

Secretary Napolitano responded that the problem with Real ID were several-fold. One is it was stood up without adequate consultation with governors who actually deal with the nuts and bolts of how you handle driver's licenses. So there were a lot of just implementation issues. And secondly, there was no money put behind it, and it -- and it was budgeted, and it's very expensive to do. And -- and so what I am doing is working now with a group of the National Governors Association to say what can we do, and should we do, now with -- with the cooperation and consultation of governors of both parties, I might add, to convert Real ID into something that actually can happen on the ground and can happen on a real-time basis.”

- SBINet and P-28. Representative Chris Carney (D-PA) expressed disappointment about SBINet which is the component of the Secure Border Initiative (SBI) charged with developing and installing the technology and tactical infrastructure solution for effective control of the border, as well as about P-28, which is a particular concept of integration of radar, integrated cameras, and a common operating picture that can cover a broader range of border than is true with ground-based radar. Carney expressed particular disappointment with P-28, which has had a very flawed deployment.

Secretary Napolitano replied that “a border protection system requires boots on the ground and technology. And that -- that's key.” She went on to say that “if we're going to require technology, the technology has to work, and it has to do what the vendors told us it would do. So I think an initial takeaway is what were the initial contract representations made as to what this system would do.” She said that “a second takeaway is to make sure that in our bidding process -- and in our competitive bidding process we really, from the get-go, take into account the operational needs of the agents who actually have to do the apprehension and interdiction.” She concluded by saying, “I think there was perhaps there -- that was late to the table in terms of actually looking at what that technology needed to empower.” ☀

### Last Week's Markups

Only one committee action occurred last week at which significant immigration- or refugee-related legislation or matters were considered:

- Committee Markups.

1. Omnibus Appropriations Bill. The House Committee on Rules marked up a rule providing for consideration of the fiscal year 2009 omnibus appropriations bill.

**House Rules Committee Approves Rule Providing for Consideration of FY '09 Omnibus Appropriations Bill:**

The House Committee on Rules last week approved a rule providing for the consideration of the omnibus appropriations bill. Last week's action occurred on Tuesday, February 24, 2009. The rule that the House Committee on Rules approved precluded the offering of any amendments to the measure. The House subsequently agreed to the resolution and then passed the omnibus appropriations bill by a vote of 245-178.<sup>245</sup>

See Pages 249-258 of this week's edition of the Weekly Legislative Update for a detailed analysis of the immigration- and refugee-related provisions in the House-passed fiscal year 2009 omnibus appropriations bill.

Last Week's Floor Actions

Only one measure containing significant immigration- or refugee-related provisions was considered last week by the full House or Senate:

- Fiscal Year 2009 Omnibus Appropriations. The full House took up an omnibus appropriations measure appropriating funds for the remaining fiscal year 2009 appropriations bills.

**House Passes FY '09 Omnibus Appropriations**

**Bill:** The House of Representatives last week passed a fiscal year 2009 omnibus appropriations bill containing funding for the nation's immigration court system and its refugee admissions, overseas refugee assistance, and refugee resettlement programs. Last week's House action occurred on Wednesday, February 25, 2009, in connection with [H.R. 1105](#), the Omnibus Appropriations Act, 2009. The House passed the measure on that date by a vote of 245-178.<sup>246</sup>

As passed by the House, H.R. 1105 would appropriate approximately \$410 BILLION in discretionary fiscal year 2009 spending, covering nine of the 12 regular appropriations bills that Congress must pass each year. Overall, the measure would appropriate about \$31 BILLION more than was appropriated for the same nine bills in fiscal year 2008 and about \$19 BILLION more than President Bush requested for those same nine bills.

<sup>245</sup> [House Roll Call No. 86](#), February 25, 2009

<sup>246</sup> [House Roll Call No. 86](#), February 25, 2009

The Senate is expected to take up the House-passed version of H.R. 1105 beginning on Monday. Congress must clear either H.R. 1105 or a continuing appropriations resolution by March 7, 2009.

**Need For the Bill.** When the 110<sup>th</sup> Congress adjourned in December, 2008, it left most of its fiscal year 2009 appropriations work undone, including leaving undone the enactment of the appropriations bills that fund the operation of the nation's immigration court system and its refugee admissions, overseas refugee assistance, and refugee resettlement programs. Those programs currently are being funded through Friday, March 6, 2009, pursuant to Division A of [P.L. 110-329](#), the "Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009", a measure that was considered in the House and Senate as [H.R. 2638](#).<sup>247</sup>

The House-passed version of H.R. 1105 contains fiscal year 2009 appropriations for the following agencies and departments that administer significant immigration- or 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, none collectively as Refugee and Entrant Assistance (REA), 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.

**Summary of Immigration- and Refugee-Related Provisions.**

The House-passed version of H.R. 1105 would appropriate the following amounts for immigration- and refugee-related functions:

- Refugee and Entrant Assistance. \$633.4 MILLION refugee and entrant assistance administered by the Department Health and Human Services' Office of Refugee Resettlement (ORR);

<sup>247</sup> [Click Here](#) to see the official explanatory documents relating to the Fiscal Year 2009 Homeland Security Appropriations Act, enacted into law as Division D of P.L. 110-329

- Migration and Refugee Assistance. \$931.0 MILLION for Migration and Refugee Assistance administered by the Department of State's Bureau of Population, Refugees, and Migration (PRM);
- Emergency and Refugee and Migration Assistance. \$40 MILLION for the Emergency Refugee and Migration Assistance (ERMA), administered by PRM; and
- Executive Office for Immigration Review. \$267.6 MILLION for the Executive Office for Immigration Review (EOIR), within the U.S. Department of Justice.

In the case of Migration and Refugee Assistance, the amounts contained in the House-passed version of H.R. 1105 are in addition to emergency MRA funding that was included in P.L. 110-252. When that funding is included, the total fiscal year 2009 appropriation for MRA rises to \$1.281 BILLION.

The pages and charts that follow provide a detailed analysis of the immigration- and refugee-related provisions in the House-passed version of H.R. 1105, as well as of the explanatory language accompanying the House-passed measure. This analysis is divided into the following sections, the headers of which you can click on to go directly to if you are connected to the internet while viewing this Update:

- [Refugee and Entrant Assistance](#)
- [Migration and Refugee Assistance](#)
- [Executive Office for Immigration Review](#)
- [Non-Appropriations Legislative Riders](#)
- [Chart of Immigration- and Refugee Appropriations](#)
- [Chart of Migration and Refugee Assistance](#)
- [Chart of Refugee and Entrant Assistance](#)

A detailed analysis of the immigration- and refugee-related provisions in the House-passed version of H.R. 1105 follows:

- Department of State's Bureau of Population, Refugees, and Migration (PRM). Division H of the House-passed version of H.R. 1105 would appropriate \$931 MILLION for the Department of State's Bureau of Population, Refugees, and Migration (PRM) to administer the Department's Migration and Refugee Assistance (MRA) account. This would be an increase of \$107.8 MILLION over the fiscal year 2008 appropriation, not including supplemental appropriations for fiscal year 2008 and 2009 that have been enacted into law. It would be an increase of \$167 MILLION over the Bush Administration's fiscal year 2009 request.

The \$931 MILLION fiscal year 2009 appropriation is in addition to a \$350 MILLION supplemental appropriation that was enacted into law last year. When the two are combined, the total MRA appropriation for fiscal year 2009 would be \$1.281 MILLION. This compares to a total fiscal year 2008 appropriation of \$1.338 MILLION,

including \$822.9 MILLION in regular fiscal year 2008 appropriations and \$515 MILLION in fiscal year supplemental appropriations.

The \$931 MILLION fiscal year 2009 MRA appropriation represents a compromise between the amounts contained in the House and Senate versions of the fiscal year 2009 State, Foreign Operations, and Related Agencies Appropriations bills that were prepared last summer. The House measure from last summer would have appropriated \$765 MILLION for the MRA account. The Senate bill from last summer would have appropriated \$1.1 BILLION for the MRA account.<sup>248</sup>

In addition to the appropriating language, the explanatory statement accompanying Division H of H.R. 1105 contained "report" language on the following refugee-related matters:

1. Administrative Expenses. The explanatory language accompanying Division H of H.R. 1105 states that "[t]he bill discontinues the limitation on administrative expenses carried under this heading in prior years. The Department of State should continue to hold administrative expenses to a minimum, in order to provide the maximum funding possible for overseas refugee processing and services. The fiscal year 2009 spending plan shall detail the projected administrative expenses and justify any increase above the request."

There was no comparable language in the committee report accompanying S. 3288.

2. Columbia. The explanatory language accompanying Division H of H.R. 1105 states that "[t]he bill provides \$3,500,000 for assistance for Colombian refugees in neighboring countries by transfer from the ESF account."

The above explanatory language replaces language that was in the committee report accompanying S. 3288, which recommended an unspecified amount of additional assistance for internally displaced persons (IDPs) in Columbia, whose number, the report noted, are increasing.

3. Iraqi Refugees. The explanatory language accompanying Division H of H.R. 1105 states that "[t]he Department of State and USAID should aggressively support refugee relief and resettlement programs for displaced Iraqis inside and outside of Iraq, including those displaced in Syria, and for religious minorities." The statement goes on to

<sup>248</sup> [S. 3288](#), reported to the full Senate as an original measure by the Senate Committee on Appropriations ([S. Rept. 110-425](#), July 18, 2008)

assert that “[t]he Department of State should ensure that the Iraqi resettlement program remains a priority and that the previous backlog is addressed.

The above language replaces language that was in the committee report accompanying S. 3288, which noted that the Committee was “deeply concerned with the plight of Iraqi refugees and IDPs and recognizes the significant economic and social burdens assumed by host countries.” The Committee went on to note “with concern that the fiscal year 2009 budget request did not include any funding for Iraqi refugees”. It, further, directed “OMB to include appropriate funding in the fiscal year 2010 budget request to address the growing needs of Iraqi refugees and IDPs.”

4. Migration to Israel. The explanatory language accompanying Division H of H.R. 1105 states that “[t]he bill provides not less than \$30,000,000 for assistance for refugees resettling in Israel.

There was no comparable language in the committee report accompanying S. 3288.

5. North Korea. The explanatory language accompanying Division H of H.R. 1105 states that “[a]ssistance should be made available for North Korean refugees, as authorized by Public Law 108-333.

The above explanatory language replaces language that was in the committee report accompanying S. 3288, which recommended “that assistance be made available for North Korean refugees, as authorized by Public Law 108-333, the North Korean Human Rights Act of 2004.”

6. Tibetan Refugees. The explanatory language accompanying Division H of H.R. 1105 states that “[t]he Department of State should work with the Government of Nepal to ensure the safe transit of Tibetan refugees and to respect the rights of, and provide legal protections to, Tibetans residing in Nepal.”

The above explanatory language replaces language that was in the committee report accompanying S. 3288, which expressed the Committee’s support for “assistance for Tibetan refugees who have fled their homeland and are in transit in Nepal or resettled in India.” The Committee also expressed concern “that Tibetans have been imprisoned and mistreated in Nepal for peacefully protesting China’s recent crackdown in Tibet.”

7. Thai/Burma Border. The explanatory language accompanying Division H of H.R. 1105 states that

“[t]here is continued concern with the plight of refugees and internally displaced persons along the Thai-Burma border, and the Department of State shall provide sufficient resources to address these needs.

There was no comparable language in the committee report accompanying S. 3288.

8. United Nations Relief and Works Agency (UNRWA). The explanatory language accompanying Division H of H.R. 1105 states that “[t]he Department of State is directed to work closely with UNRWA and host governments to develop a strategy for identifying individuals known to have engaged in terrorist activities.”

There was no comparable language in the committee report accompanying S. 3288.

- Department of Health and Human Services Office of Refugee Resettlement (ORR). Division F of the House-passed version of H.R. 1105 would appropriate \$633.442 MILLION for the Department of Health and Human Services Office of Refugee Resettlement to administer the Department’s Refugee and Entrant Assistance account. This would be a cut of \$22.189 MILLION below the fiscal year 2008 appropriation. However, it would be an increase of \$5.398 MILLION over the Bush Administration’s fiscal year 2009 request.

The explanatory language accompanying Division F of the House-passed version of H.R. 1105 indicates that ORR is expected to carryover \$52.051 MILLION of fiscal year 2008 funds into fiscal year 2009, resulting in a total of \$685.493 MILLION that will be available in fiscal year 2009 for ORR’s programs.

The \$633.442 MILLION fiscal year 2009 appropriation for ORR in H.R. 1105 is actually lower than the amount that was appropriated for ORR in both the unpublished House and Senate versions of the fiscal year 2009 Labor, Health and Human Services, and Education Appropriations bill that the House and Senate appropriations committees produced last summer. The House bill would have appropriated \$641.144 MILLION for ORR. The Senate bill would have appropriated \$635.044 MILLION for ORR.

With regard to subaccounts, the House-passed version of H.R. 1105 would appropriate—

1. Resettlement Services. \$489.7 MILLION for ORR’s resettlement services, which is \$4.6 MILLION less than was appropriated for ORR’s resettlement services in fiscal year 2008 and the same amount less than the Bush Administration

requested. All of this reduction is found in ORR's Transitional and Medical Services account.

2. Assistance to Trafficking Victims. \$9.8 MILLION for assistance to trafficking victims, which is the same amount that was appropriated for trafficking victims in fiscal year 2008 and the same amount that the Bush Administration requested.
3. Assistance to Torture Victims. \$10.8 MILLION for assistance to torture victims, which is an increase of \$1 MILLION over the fiscal year 2008 appropriation and \$1 MILLION over the Bush Administration's request.
4. Care and Placement of Unaccompanied Alien Children (UAC). \$123.1 MILLION for the care and placement of unaccompanied alien children, which is \$9.5 MILLION below the fiscal year 2008 appropriation for the care of unaccompanied alien children and \$9 MILLION above the Bush Administration's fiscal year 2009 request. Explanatory language accompanying the bill explains that "[t]he bill includes \$9,050,000 more than the budget request for the UAC program to ensure that sufficient funds are available for UAC medical and transportation services."

The \$123.1 MILLION for unaccompanied alien children in H.R. 1105 compares with \$126.2 MILLION that was contained in the fiscal year 2009 appropriations bill that was put together by the House Committee on Appropriations last summer, and \$120 MILLION that was contained in the fiscal year 2009 bill that was put together by the Senate Committee on Appropriations.

In addition to the appropriating language, the explanatory statement accompanying Division F of H.R. 1105 contains "report" language on the following refugee-related matters:

1. Voluntary Agency Matching Grant Program. The explanatory language accompanying Division F of H.R. 1105 made no reference to the Voluntary Agency Matching Grant Program.

The Voluntary Agency Matching Grant Program was addressed in the draft committee report accompanying the fiscal year 2009 appropriations bill that the House Committee on Appropriations produced last summer. In that draft report from last summer, the Committee recognized "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. Unaccompanied Refugee Minors. The explanatory language accompanying Division F of H.R. 1105 requests that ORR "provide adequate funding under Transitional and Medical Assistance to unaccompanied refugee minor programs for capacity development so that they have the necessary infrastructure to accommodate increasing numbers of unaccompanied and separated refugee children."

The above language replaced much more extensive language addressing unaccompanied refugee minors (URM) that was contained in the draft committee report accompanying the fiscal year 2009 appropriations bill that the House Committee on Appropriations produced last summer. In that 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 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. Cuban and Haitian Entrants. The explanatory language accompanying Division F of H.R. 1105 provides that, "[w]ithin the funds provided for Social Services, the bill includes \$19,000,000 for continued support to communities with large concentrations of Cuban and Haitian entrants of varying ages whose cultural differences make assimilation especially difficult, justifying a more intense level and longer duration of Federal assistance."

There was no comparable language in the draft committee reports accompanying either the House or Senate appropriations bills from last summer.

4. Refugee School Impact Grants. The explanatory language accompanying Division F of H.R. 1105 requested that the Administration on Children and

Families (ACF) continue to adequately fund refugee school impact grants.

There was no comparable language in the draft committee reports accompanying either the House or Senate appropriations bills from last summer.

5. Victims of Trafficking. The explanatory language accompanying Division F of H.R. 1105 made no reference to the Victims of Trafficking.

The draft House committee report from last summer had addressed ORR's efforts to assist victims of trafficking. That draft report expressed the Committee's concern that "in fiscal year 2007, this program certified only 303 child trafficking victims." The Committee last summer 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 last summer requested the Department "to expedite letters of eligibility so that minor victims may be connected to benefits without delay."

6. Torture Victims. The explanatory language accompanying Division F of H.R. 1105 made no reference to the Torture Victims.

The draft Senate committee report from last summer had addressed ORR's efforts to assist torture victims. That draft report noted that "a large proportion of the increasing numbers of Iraqi refugee arrivals have experienced trauma, torture, and severe violence." It 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."

7. Unaccompanied Alien Children. The explanatory language accompanying Division F of H.R. 1105 addressed issues related to unaccompanied alien children. More specifically—

- A. Transportation of Unaccompanied Alien Children. The explanatory language accompanying Division F of H.R. 1105 directed the Department of Health and Human Services, in conjunction with DHS and OMB, "to submit a report to the House and Senate Committees on Appropriations (Committees) no later than March 1, 2009; recommending which agency is

the most appropriate to fund the transportation of unaccompanied alien children (UAC) between DHS and HHS custody. This joint report shall focus on which agency can deliver these services in the most cost effective manner. In addition, starting no later than September 1, 2009, the ORR, in conjunction with Immigration and Customs Enforcement agency, should provide semi-annual briefings to the Committees on the implementation of the recommendations. For fiscal year 2009, the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, provides sufficient resources to DHS to pay for this transportation function."

The above language replaced language that had been included in the draft committee reports that both the House and Senate Appropriations Committees had prepared last summer.

The draft House committee report from last summer had expressed the 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 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 had 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.”

- B. **Prompt Transfers of Children.** The explanatory language accompanying Division F of H.R. 1105 directs ORR “to respond to the DHS initial call for placement by identifying the ORR placement facility to DHS within six hours, on average, of receiving the DHS call. In addition, ORR shall continue to work with DHS to expedite the transfer and placement of these special needs children in the most appropriate facility as quickly as possible.”

The language above replaced language that had been included in the draft committee report that the Senate Appropriations Committee had prepared last summer.

The draft Senate committee report from last summer had stated 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.” Last summer’s draft report 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.”

- C. **Pro Bono Pilot Program.** The explanatory language accompanying Division F of H.R. 1105 provides that \$5.05 MILLION of the funds provided in the bill for unaccompanied alien children be used “to continue the pro bono legal services initiative to ensure legal representation of all UAC.” The explanatory language, further, provides that “[t]hese funds should be used to train attorneys to detect abuse, mistreatment, labor exploitation, and trafficking of these children.” It also provides that, “[i]n addition, a portion of these funds should be used to train attorneys in methods that will ensure the appearance of children at all immigration court hearings.” The language states Congress’ expectation that ORR “use part of these funds to assess the overall impact of the pro bono legal services initiative, including the number and

proportion of UAC provided pro bono legal representation.”

The above explanatory language replaced language that had been included in the draft committee reports that both of the draft committee reports that the House and Senate Appropriations Committees had prepared last summer.

The draft House committee report from last summer had 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 had 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.”

- D. **Breakdown of Costs.** There was no language in the explanatory language accompanying Division F of H.R. 1105 directing ORR to breakdown its costs in its fiscal year 2010 budget justifications.

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.”

- **Department of Justice Executive Office for Immigration Review.** Division B of the House-passed version of H.R. 1105 would appropriate \$267.4 MILLION for the Department of Justice’s Executive Office for

Immigration Review (EOIR). This would be an increase of \$30.3 MILLION above the fiscal year 2008 appropriation, and it would be an increase of \$6.2 MILLION over the Bush Administration's fiscal year 2009 request.

The explanatory language accompanying Division B of the House-passed version of H.R. 1105 indicates that the \$267.4 MILLION fiscal year 2009 appropriation for EOIR includes \$4,000,000 in fees that are collected by the Department of Homeland Security and transferred to EOIR.

The House and Senate Appropriations Committees each produced versions of the Fiscal Year 2009 Commerce, Justice, Science, and Related Agencies Appropriations bill last summer. Both bills would have appropriated \$266.404 MILLION for EOIR in fiscal year 2009, which is \$1 MILLION less than the amount contained in the House-passed version of H.R. 1.

In the case of the House, the Committee on Appropriations approved the measure on June 25, 2008, but it didn't actually report the bill to the full House of Representatives until December 10, 2008, reporting it as [H.R. 7322](#), an original measure.<sup>249</sup> In the case of the Senate, the Committee on Appropriations approved the measure on June 19, 2009, reporting it to the full Senate on June 23, 2009. The measure was reported as [S. 3182](#), an original measure.<sup>250</sup>

In addition to the appropriating language, the explanatory statement accompanying Division B of H.R. 1105 contains "report" language on the following immigration-related matters:

1. **Hiring New Immigration Judges.** The explanatory language accompanying Division B of the House-passed version of H.R. 1105 specifies that "[w]ithin funds provided, \$5,000,000 is made available to hire new immigration judges and support personnel to address the growing caseload." The explanatory language goes on to direct the Department of Justice and EOIR "within 90 days of enactment of this Act, to submit to the House and Senate Committees on Appropriations a strategic plan to address the case backlogs."

The House committee report from last year also had specified that \$5 MILLION of the amount it was providing for EOIR was to be made available "to hire new immigration judges and additional support personnel to address a growing immigration

caseload." The House committee report noted that the appropriation for hiring additional immigration judges was to be offset, in part, by the transfer of \$4 MILLION in fee account generated funds from the Department of Homeland Security.

While the Senate committee report from last year did not explicitly call for the hiring of additional immigration judge, it expressed concern "about the growing immigration problem and the Executive Office of Immigration Review's [EOIR] ability to handle increasing caseloads." The report indicated that the Senate bill has "provided additional funds to address rising backlogs." The report said that "[t]he Committee urges the Department to work with EOIR in developing a strategic plan for expansion, which shall be submitted to the Committee on Appropriations within 90 days of enactment."

2. **Legal Orientation Program (LOP).** The explanatory language accompanying Division B of the House-passed version of H.R. 1105 specifies that directs that "[w]ith funds provided in this bill and in prior year appropriations, EOIR is directed to provide not less than \$4,000,000 for the LOP program during fiscal year 2009."

Both the House and Senate committee reports from last year addressed this issue.

The House committee report from last year specified that EOIR should use funds provided in the bill and in fiscal year 2008 to "continue to support the LOP in order to improve judicial efficiency and to assist all parties involved in detained removal proceedings." The Senate committee report from last year addressed the legal orientation program more extensively. It stated that "the Committee provides \$4,000,000 for Legal Services Orientation Program [LOP]. The Committee is disappointed that the Department of Justice failed to request funding for this important program in their budget request. The EOIR created the Legal Orientation Program in March 2003 but have never requested direct funding to run this program and instead have relied on Department of Homeland Security to fund the program. Congress explicitly stated in 2007 that they expected the Department of Justice to fund this program and not the Department of Homeland Security. The Committee encourages the Department of Justice to include the LOP in any future budget requests submitted to Congress."

The Senate committee report went on to state that "[t]he LOP program informs detained aliens in immigration removal proceedings about the immigration court process, how to obtain legal representation or represent themselves and how to

<sup>249</sup> [H. Rept. 110-119](#), December 10, 2008

<sup>250</sup> [S. Rept. 110-397](#), June 23, 2008

determine if they are eligible for any immigration relief or expedite the removal process.” It cited a Vera Institute study, saying that, “[a] 2008 study conducted by the Vera Institute found that the LOP participants move an average of 13 days faster through immigration court, were more likely to appear for court hearings than those who do not participate in the program and that the LOP increases immigration court efficiency.”

3. Immigration Court Reforms. The explanatory language accompanying Division B of the House-passed version of H.R. 1105 contains language stating that “[w]ithin 30 days of enactment of this Act, the Department is directed to report to the House and Senate Committees on Appropriations on the implementation status of the 22 reform measures to improve the efficiency of immigration courts that were identified by the Attorney General in August, 2006.”

Both the House and Senate committee reports from last year addressed this issue.

The House committee report from last year directed the Department of Justice “to report to the House and Senate Committees on Appropriations on the implementation status of the 22 reform measures to improve the efficiency of immigration court that were identified by the AG in August, 2006.” The Senate committee report from last year expressed that “[t]he Committee is concerned that the Executive Office for Immigration Review’s has delayed implementation of its 22 new Measures to Improve the Immigration Courts and the Board of Immigration Appeals unveiled in 2007, which were mandated by the former Attorney General on January 9, 2006.” The Senate committee report directed EOIR “to report within 30 days of enactment of all steps taken to fully, effectively and efficiently implement these measures including a timeline for implementation.”

4. Competency Evaluation Standards. The explanatory language accompanying Division B of the House-passed version of H.R. 1105 encouraged EOIR “to work with experts and interested parties in developing standards and materials for immigration judges to use in conducting competency evaluations of persons appearing before the courts.”

The House committee report from last year contained identical language.

5. Digital Audio Recording System. There was no mention in the explanatory language accompanying Division F of H.R. 1105 relating to implementation

and maintenance of a digital audio recording system for EOIR.

The House committee report from last year had specified that \$10 MILLION of EOIR’s appropriation was to be used for EOIR’s “implementation and maintenance of a digital audio recording system and the Immigration Review Information Exchange System to ensure accurate records of immigration proceedings.”

- Other Significant Immigration- or Refugee-Related Appropriations Provisions. The House-passed version of H.R. 1105 contained a number of other significant immigration- or refugee-related appropriations provisions that do not fall under the category of MRA, ORR, ERMA, or EOIR. For instance, the measure contains appropriations of \$400 MILLION for State Criminal Alien Assistance Program; \$ 31 MILLION for Southwest Border Prosecutor Program; \$3 MILLION for Northern Border Prosecutor Program; and \$10 MILLION for Victims of Trafficking Grants.

**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, H.R. 1105 contains a number of immigration- and refugee-related legislative provisions. Most notably—

- Special Immigrant Status and Refugee Benefits for Afghans. Division F, Title VI, Section 602(b) of the House-passed version of H.R. 1105 would authorize the Secretary of Homeland Security to grant Special Immigrant status to up to 1,500 Afghan citizens or nationals each year between fiscal years 2009 and 2013 who—
  1. have been employed for at least a year by or on behalf of the United States government;
  2. received documentation and a positive recommendation from the employee’s senior supervisor; and
  3. have received a letter of have experienced or are experiencing an ongoing serious threat as a consequence of the alien’s employment by the United States government.”

The provision provides for a rolling over of unused visas from year-to-year, excludes any numbers used from the annual limitation on the number of aliens who may be given special immigrant status, and makes special immigrants from Afghanistan admitted pursuant to the provision eligible for refugee benefits and entitlement benefits.

- Adjustment of Status for Iraqi and Afghan Parolees. Division F, Title VI, Section 602(b)(9) of the House-passed version of H.R. 1105 would provide for the adjustment of status of parolees or nonimmigrants from Iraq and Afghanistan.
- Extension of the Lautenberg Amendment. Division H, Title VII, Section 7034(g) of the House-passed version of H.R. 1105 would extend the “Lautenberg Amendment”, which provides a relaxed refugee adjudicatory standard for Soviet Jews and others, through the end of fiscal year 2009.
- Prohibition on Hiring Illegal Aliens. Division F, Title V, Section 519 of the House-passed version of H.R. 1105 would prohibit the use of any funds in the Act to employ workers who are unauthorized to work in the United States.
- Extension of the E-Verify and Investor Visa Regional Center Programs. Division J, Sec. 101 of the House-passed version of H.R. 1105 would extend the E-Verify and EB-5 Investor Visa programs through September 30, 2009.

There were a number of immigration- or refugee-related riders that various members sought but that were not included in the House-passed version of H.R. 1105, including the following:

- Extension of the Religious Worker Visa Program.
- Extension of the Conrad State 30 Program.
- Nullification of Bush-Era H-2A Rules
- Nullification of Bush-Era H-2B Rules.

**Floor Consideration.** The House considered H.R. 1105 under a procedure that forbade floor amendments. And so no amendments were offered.

**Charts Showing FY '09 Spending Under H.R. 1105.** The following charts provide a brief summary of immigration- and refugee-related spending in H.R. 1105, along with detailed spending estimates and comparisons for Migration and Refugee Assistance, Refugee and Entrant Assistance, and Emergency Refugee and Migration Assistance.

The chart that follows provides a brief summary comparing the fiscal year 2009 appropriation for REA, MRA, ERMA, and EOIR with the fiscal year 2008 appropriation for those four accounts, the amount requested in fiscal year 2009 by the Bush Administration, and the amounts that were contained in the House and Senate draft Fiscal Year 2009 State-Foreign Operations appropriations bills from last summer:

**Brief Overview of FY '09  
Refugee and Immigration Funding**

ITEM	'08 ACT'L	'09 BUSH	'09 HOUSE <sup>251</sup>	'09 SENATE <sup>252</sup>	'09 FINAL <sup>253</sup>
REA	\$ 655.6	\$ 628.0	\$ 641.1	\$ 635.0	\$ 633.4
MRA <sup>254</sup>	\$ 1,338.2	\$ 764.0	\$ 1,174.0	\$ 1,450.0	\$ 1,281.0
ERMA <sup>255</sup>	\$ 75.6	\$ 45.0			\$ 40.0
EOIR	\$ 230.3	\$ 261.5	\$ 266.4	\$ 266.4	\$ 267.6

Millions of Dollars

<sup>251</sup> *Unpublished committee report accompanying the House Appropriations Subcommittee on Labor, Health and Human Services, Education, and Related Agencies-approved Fiscal Year 2009 Labor, Health and Human Services, Education, and Related Agencies Appropriations Bill*

<sup>252</sup> *Unpublished committee report accompanying the Senate Appropriations Subcommittee on Labor, Health and Human Services, Education, and Related Agencies-approved Fiscal Year 2009 Labor, Health and Human Services, Education, and Related Agencies Appropriations Bill*

<sup>253</sup> *Subject to action in the Senate on H.R. 1105*

<sup>254</sup> *The fiscal year 2008 appropriation for PRM includes a regular appropriation of \$823.2 MILLION and two emergency supplemental appropriations. The first fiscal year 2008 emergency supplemental appropriation was for \$200 MILLION and was provided in P.L. 110-161. The second fiscal year 2008 emergency supplemental appropriation was for \$315 MILLION and was provided in P.L. 110-252*

*The fiscal year 2009 “final” appropriation for PRM includes an appropriation of \$931 MILLION in H.R. 1105 and an emergency supplemental fiscal year 2009 appropriation of \$350 MILLION that was provided in P.L. 110-252*

*The fiscal year 2009 House appropriation for PRM includes an appropriation of \$824 MILLION in the bill that the House Appropriations Committee prepared last summer and an emergency fiscal year 2009 supplemental appropriation of \$350 MILLION provided in P.L. 110-252*

*The fiscal year 2009 Senate appropriation for PRM includes an appropriation of \$1.1 BILLION in the bill that the Senate Appropriations Committee prepared last summer and an emergency fiscal year 2009 supplemental appropriation of \$350 MILLION provided in P.L. 110-252*

<sup>255</sup> *The fiscal year 2008 actual appropriation for ERMA includes a regular appropriation of \$44.635 MILLION in the fiscal year 2008 appropriation bill and an additional appropriation of \$31 MILLION provided in P.L. 110-252*

**Weekly Immigration and Refugee Legislative Update (continued)  
Monday, March 2, 2009**

The chart that follows compares FY '09 appropriations for the Department of State's MRA account with the actual amounts appropriated in FY '08, the amount requested in FY '09 by the Bush Administration, and the amounts that were contained in the House and Senate draft FY '09 State-Foreign Operations appropriations bills from last summer:

**Detailed Fiscal Year 2009 Appropriations for Migration and Refugee Assistance**

ITEM	'08 ACT'AL	'09 BUSH	'09 <sup>251</sup> HOUSE	'09 <sup>252</sup> SENATE	'09 <sup>253</sup> FINAL
Refugee Admissions <sup>256</sup>	\$ 549.0	\$ 498.0			
Overseas Assistance	\$ 212.0	\$ 213.0			
Refugees to Israel	\$ 40.0	\$ 30.0			\$ 30.0
Administrative Expenses	\$ 22.0	\$ 23.1			
Reimbursable Programs	\$ 1.0	\$ 1.0			
Permanent Reductions	-\$ 7.0				
<b>SUBTOTAL</b>	<b>\$ 822.9</b>	<b>\$ 765.0</b>	<b>\$ 824.0</b>	<b>\$ 1,100.0</b>	<b>\$ 931.0</b>
Suppl #1 <sup>257</sup>	\$ 200.0	-----	-----	-----	-----
Suppl #2	\$ 315.0	-----	\$ 350.0	\$ 350.0	\$ 350.0
<b>TOTAL</b>	<b>\$ 1,337.9</b>	<b>\$ 765.0</b>	<b>\$ 1,174.0</b>	<b>\$ 1,450.0</b>	<b>\$ 1,281.0</b>

Millions of Dollars

The chart that follows compares the proposed final fiscal year 2009 appropriation for the Department of Health and Human Services Office of Refugee Resettlement with the actual amounts appropriated in fiscal year 2008, the amount requested in fiscal year 2009 by the Bush Administration, and the amounts that were contained in the House and Senate draft Fiscal Year 2009 Labor, Health and Human Services, Education, and Related Agencies appropriations bills from last summer:

<sup>256</sup> Regular Appropriation provided in [P.L. 110-161](#), December 26, 2007

<sup>257</sup> [P.L. 110-161](#), December 26, 2007, appropriated \$200 MILLION in emergency MRA funds for fiscal year 2008, all of which was devoted to overseas refugee assistance

**Detailed Fiscal Year 2009 Appropriations for the Office of Refugee Resettlement**

ITEM	'08 ACT'AL	'09 BUSH	'09 HOUSE	'09 SENATE	'09 FINAL
Transitional & Medical	\$ 296.1	\$ 287.0	\$ 287.0	\$ 287.0	\$ 282.3
Social Services	\$ 154.0	\$ 154.0	\$ 154.0	\$ 154.0	\$ 154.0
Preventive Health	\$ 4.7	\$ 4.7	\$ 4.7	\$ 4.7	\$ 4.7
Targeted Assistance	\$ 48.6	\$ 48.6	\$ 48.6	\$ 48.6	\$ 48.6
<b>SUBTOTAL</b>	<b>\$ 503.4</b>	<b>\$ 494.3</b>	<b>\$ 494.3</b>	<b>\$ 494.3</b>	<b>\$ 489.7</b>
Trafficking Victims	\$ 9.8	\$ 9.8	\$ 9.8	\$ 9.8	\$ 9.8
Torture Victims	\$ 9.8	\$ 9.8	\$ 10.8	\$ 10.8	\$ 10.8
Unaccompanied Alien Children	\$ 132.6	\$ 114.1	\$ 126.2	\$ 120.0	\$ 123.1
<b>ORR TOTAL</b>	<b>\$ 655.6</b>	<b>\$ 628.0</b>	<b>\$ 641.1</b>	<b>\$ 635.0</b>	<b>\$ 633.4</b>

Millions of Dollars

**Next Steps.** Now that the House of Representatives has passed H.R. 1105, the next step in the legislative process is for the Senate to take up the measure. The Senate is set to take up H.R. 1105 beginning on Monday, March 2, 2009, and could have it under consideration throughout the remainder of the week.

If the Senate changes the House-passed bill in any way, the House will have to take further action to resolve any differences between the two versions of the measure.

Spending authority for the nine appropriations bills that are covered by H.R. 1105 expires on Friday, March 6, 2009. Accordingly, Congress must either complete action on H.R. 1105 by the end of Friday, March 6, 2009, or send another continuing appropriations resolution to the President. ☼

**Last Week's Conference Activity**

There were no actions last week in any conference committees considering legislation containing significant immigration- or refugee-related provisions. ◇

## *Last Week's Executive Activity*

**President Obama Submits Fiscal Year 2010 Budget Outline to Congress:** President Barack Obama last week took the first steps toward producing his first federal budget as he submitted a 142-page fiscal year 2010 "Budget Overview" to Congress. The President submitted the Budget Overview on Thursday, February 26, 2009, which he titled, "[A New Era of Responsibility: Renewing America's Promise](#)". While the document sends a few encouraging smoke signals to the pro-immigrant and pro-refugee advocacy communities about where their priorities might fit within the new President's budget plans, it did not contain sufficient detail to provide any meaningful guidance on that question. The President is expected to submit a fully detailed budget to Congress sometime in April.

The President's fiscal year 2010 Budget Overview foreshadows what many are calling a transformational budget. It assumes a staggering \$3.55 TRILLION in spending in fiscal year 2010 and eye-popping deficits of \$1.75 TRILLION in fiscal year 2009 and \$1.17 TRILLION in fiscal year 2010. But as large and unprecedented as those deficit projections are, the budget is also transformational because of its proposals to increase taxes by more than \$1 TRILLION over ten years, reconfigure the distribution of the tax burden by increasing the percentage of total revenue paid by wealthier individuals, dramatically increase spending on social programs, and eventually double spending on foreign assistance.

As previously eluded to, the President's Budget Overview contained virtually no detail with regard to proposed fiscal year 2010 spending for immigration- and refugee-related functions, departments, agencies, and activities. And so it is impossible at this time to discern with any accuracy how much the Administration proposes to spend on those functions. Unfortunately, it is unlikely that upcoming hearings and briefings will provide any further detail anytime soon; in a February 19, 2009, memorandum to all heads and acting heads of executive branch departments and agencies, Office of Management and Budget Director Peter R. Orszag ordered them to give no more detail to Congress or the public on the Obama budget than can be found in the budget document just delivered to Congress.

In his February 19, 2009, memorandum, Director Orszag wrote, "[i]n the coming weeks, you and your representatives will be testifying before Congressional committees in support of the Administration's FY 2010 Budget and participating in public events focused on budget initiatives. For the period between the February 26 release of the Administration's FY 2010 Budget Overview and the April release of the full FY 2010 President's Budget, your testimony and public disclosures should be limited to the information contained in the Budget Overview. The agency summaries in the Overview provide highlights of the agency budget; the

Overview also describes certain Administration initiatives and other proposals. You should not make commitments about specific programs not specifically mentioned in the Overview or address account level details until the release of the full Budget in April."

**Summary of Immigration- and Refugee-Related Budget Proposals.** As previously stated, the Budget Overview contained very little information about the Administration's fiscal year 2010 spending plans for the federal government's immigration- and refugee-related functions. The following is what can be discerned from the budget documents and conversations with Administration officials—

- Refugee Admissions and Overseas Refugee Assistance. There was no information in the Budget Overview about how much the Obama Administration intends to spend in fiscal year 2010 on the Department's Migration and Refugee Assistance (MRA) or Emergency Refugee and Migration Assistance (ERMA) accounts.

Despite the lack of specificity, there is reason for refugee advocates to be encouraged by the President's Budget Overview. The Administration indicated it will ask for a 9.5 percent increase in spending for the Department of State and Other International programs in fiscal year 2010; it stated that the fiscal year 2010 budget would [put] "the United States on a path to double foreign assistance," and it stated in the Overview that the budget would ensure "that the United States continues to be the world's leader in providing food aid and life sustaining support for refugees and other conflict and disaster victims."<sup>258</sup>

Materials released in conjunction with the Budget Overview go a bit further, promising that the fiscal year 2010 budget would "strengthen assistance to help Iraqis who have been displaced because of the war." Encouragingly, these materials also assert that "[t]o increase transparency, the Budget reduces reliance on emergency supplemental appropriations by funding expenses that are predictable and recurring." On this last point, the materials get more specific, saying that, "[t]he Budget reduces reliance on emergency supplemental appropriations by increasing key accounts and programs with predictable and recurring funding requirements that have previously been funded in supplementals. While emergency supplementals may be required in the future, they should focus on truly unanticipated events and not be used to fund regular programs."<sup>259</sup>

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<sup>258</sup> "[A New Era of Responsibility: Renewing America's Promise](#)", Page 87-89

<sup>259</sup> [Click Here](#) to see a Fact Sheet on Department of State and Other International Programs, prepared by the White House Office of Management and Budget

- Refugee and Entrant Assistance. There was no information in the Budget Overview about how much the Obama Administration intends to spend in FY '10 for the Office of Refugee Resettlement's (ORR) resettlement services or its services to trafficking victims, torture victims, or unaccompanied alien children.

One ominous sign for refugee advocates is that the FY '10 Budget Overview indicates that the Administration intends to spend less in fiscal year 2010 than in fiscal year 2009 for the Department of Health and Human Services, excluding any funds that were appropriated in the recently enacted economic stimulus bill. Another ominous sign is that the fiscal year 2009 omnibus appropriations bill that the House passed last week actually cuts funding for ORR relative to fiscal year 2008, a move that had to be signed off on by the Obama Administration. When questioned about the cut in ORR's funding, Jack Smalligan, Chief of the Income Maintenance Branch of the Obama Administration's Office of Management and Budget, defended the cut by pointing to the fact that ORR will have carry over funds from previous fiscal years.

- Immigration Services. There was little information in the Budget Overview about how much the Obama Administration intends to spend in FY '10 on immigration services.

While the budget speaks with some specificity about increases in spending that the Obama Administration is seeking for a number of immigration enforcement programs, the only thing it says about immigration services is that "[t]he Budget also supports strengthening the delivery of immigration services by streamlining and modernizing immigration application processes."<sup>260</sup> It makes no mention of how much funding will be devoted to the effort or whether the funding will be totally from fee revenue or whether the Administration will ask Congress to directly appropriate non-fee generated funds to enhance fee-generated money.

Materials released in conjunction with the Budget Overview go a bit further, but not much further. In those materials, the Office of Management and Budget declares that "[t]he Budget strengthens ... efforts to improve the delivery of immigration enforcement by streamlining and modernizing immigration application processes."<sup>261</sup>

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<sup>260</sup> "A New Era of Responsibility: Renewing America's Promise", Page 72

<sup>261</sup> [Click Here](#) to see a Fact Sheet on Department of Homeland Security Programs, prepared by the White House Office of Management and Budget

- Immigration Enforcement. The Budget Overview speaks with some specificity about increases the Obama Administration is seeking for immigration enforcement. More specifically, the Budget Overview indicates that, the Administration is seeking—

1. \$45 million for the expansion of an exit pilot at key land ports of entry and other border security priorities;
2. funding of \$368 million within existing Customs and Border Protection funds support 20,000 Border Patrol agents protecting nearly 6,000 miles of U.S. borders.
3. over \$1.4 billion for Immigration and Customs Enforcement programs to ensure that illegal aliens who commit crimes are expeditiously identified and removed from the United States; and
4. funding of \$110 million is provided to continue expansion of E-Verify, an electronic employment eligibility verification system.<sup>262</sup>

In addition to the above funding increases in the Department of Homeland Security's budget, the Budget Overview eludes to funding increases in the Department of Justice's budget relating to immigration. More specifically, the Budget Overview says that the Budget "includes additional funding for a comprehensive approach to enforcement along the Nation's borders that combines law enforcement and prosecutorial component efforts to investigate, arrest, detain, and prosecute illegal immigrants and other criminals."<sup>263</sup>

**Next Steps.** Under ordinary circumstances, cabinet officers would be flooding Capitol Hill in the coming days and weeks to testify on the Administration's budget priorities. However, given that the Obama Administration has only released a budget outline, and given that the Office and Management and Budget has precluded Administration officials from giving any detail beyond that outline, the usual flood of Administration witnesses will likely be minimized.

The Administration will deliver a more detailed budget to Congress sometime in April. In the meantime, authorizing committees will begin to produce their "views and estimates" on the fiscal year 2010 budget and the budget committees of the House and Senate will produce their budget resolutions over the next three-to-five weeks. ☀ ◇

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<sup>262</sup> "A New Era of Responsibility: Renewing America's Promise", Page 72

<sup>263</sup> "A New Era of Responsibility: Renewing America's Promise", Page 82

## Recently Introduced Legislation

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

### House

#### Acculturation of Immigrants

- **National Language Act of 2009:** Representative Peter T. King (R-NY) has introduced H.R. 1229, a bill to amend title 4, United States Code, to declare English as the official language of the Government of the United States.

As introduced, [H.R. 1229](#) would make English the official language of the U.S. government. It would require the government to: (1) conduct its official business in English, including publications, income tax forms, and informational materials; and (2) preserve and enhance the role of English as the official language of the United States of America. It would provide that that no person has a right, entitlement, or claim to have the government act, communicate, perform, or provide services or materials in any other language, unless specifically stated in applicable law.

The measure also would exempt the use of a language other than English for religious purposes, for training in foreign languages for international communication, or in school programs designed to encourage students to learn foreign languages. States that this does not prevent the U.S. government from providing interpreters for persons over age 62.

The measure would repeal provisions of the Voting Rights Act of 1965 regarding bilingual election requirements and regarding congressional findings of voting discrimination against language minorities, prohibition of English-only elections, and other remedial measures.

Finally, the measure would amend the Immigration and Nationality Act to require that all public ceremonies in which the oath of allegiance is administered pursuant to such Act be conducted solely in English, and it would specify that this Act shall not preempt any state law.

It has been referred to the House Committees on Education and Labor and Judiciary.

#### Control of Illegal Immigration

- **Scott Gardner Act:** Representative Sue Myrick (R-NC) has introduced [H.R. 1199](#), a bill to improve sharing of immigration information among Federal, State, and local law enforcement officials, to improve State and local enforcement of immigration laws.

As introduced, H.R. 1199 would direct the Secretary of Homeland Security to share immigration information with the Attorney General and require a joint report from such officials to Congress on improving the performance of federal immigration databases to ensure the prompt entry of immigration information.

The measure also would require (1) the director of each state and local law enforcement agency to collect and report to the Secretary all immigration and DWI (driving while intoxicated) information collected in the course of normal duties; (2) such information to appear as a flag on the wants/warrants page of the National Criminal Information Center (NCIC) database; and (3) state or local detention of an arrested flagged alien pending federal transfer.

The measure, further, would amend the Immigration and Nationality Act to: (1) require the Secretary to reimburse the costs of training state and local law enforcement employees on federal immigration laws; and (2) authorize the apprehension and detention of an alien for DWI or a similar violation, as long as the alien is deportable on any other grounds or is an illegal alien. It would require each state motor vehicle administrator to share with the Secretary all information concerning aliens with records of DWI convictions or refusals to take sobriety tests.

Finally, the bill would require states to report information about DWIs and contacts with illegal aliens as a condition of receiving State Criminal Alien Assistance Program (SCAAP) funds, make 287(g) programs mandatory, and direct the Secretary of Homeland Security to submit to Congress a formula for the allocation of federal detention facilities for aliens.

It has been referred to the House Committee on the Judiciary and House Committee on Homeland Security.

#### Detention

- **Immigration Oversight and Fairness Act:** Representative Lucille Roybal-Allard (D-CA) has introduced [H.R. 1215](#), a bill to reform immigration detention procedures.

As introduced, H.R. 1215 would set forth standards of detention for facilities that house immigration detainees. The measure also would establish procedures for the protection of unaccompanied alien children and female detainees. It would direct the Secretary to: (1) convene a detention advisory committee; (2) promulgate regulations regarding detainee care and custody; (3) implement secure alternatives to detention programs under which eligible aliens are released under supervision, assistance, and monitoring that ensure their appearance at all immigration interviews, appointments,

and hearings; and (4) provide protective detention alternatives for specified categories of vulnerable aliens.

It has been referred to the House Committee on the Judiciary and House Committee on Homeland Security.

### **Employment-Based Immigration System**

- **Short-Term Extension of Religious Worker and Conrad 30 Visa Programs:** Representative Zoe Lofgren (D-CA) has introduced [H.R. 1127](#), a bill to extend certain immigration programs. As introduced, H.R. 1127 would extend through September 30, 2009, the Special Immigrant Nonminister Religious Worker Visa Program and the Conrad State 30 Visa Program.

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

### **Miscellaneous**

- **Fiscal Year 2009 Omnibus Appropriations Bill:** Representative David R. Obey (D-WI) has introduced [H.R. 1105](#), a bill making omnibus appropriations for the fiscal year ending September 30, 2009, and for other purposes.

As passed by the House, H.R. 1105 would complete the fiscal year 2009 appropriations process, appropriating funds for nine of the 12 regular appropriations bills.

With respect to immigration- and refugee-related appropriations, the bill would appropriate \$633.4 MILLION refugee and entrant assistance administered by the Department Health and Human Services' Office of Refugee Resettlement (ORR); \$931.0 MILLION for Migration and Refugee Assistance administered by the Department of State's Bureau of Population, Refugees, and Migration (PRM); \$40 MILLION for the Emergency Refugee and Migration Assistance (ERMA), administered by PRM; and \$267.6 MILLION for the Executive Office for Immigration Review (EOIR), within the U.S. Department of Justice.

In addition to appropriating funds, the measure contained a number of immigration policy provisions. Among them are provisions that would provide for special immigrant status and refugee benefits for Afghan citizens and nationals who have helped the United States government during the armed conflict in Afghanistan; provide for the adjustment of Status for certain Iraqi and Afghan parolees; extend the Lautenberg Amendment that provides for a relaxed refugee adjudicatory standard for Soviet Jews and others; and extend the E-Verify and Investor Visa Regional Center Programs through September 30, 2009.

### Senate

No new bills containing significant immigration- or refugee-related provisions have been introduced in the Senate since the last listing of such bills. ◇

### ***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 or that have substantially changed since the previous edition of the Weekly Legislative Update was issued will be marked with a double asterisk (\*\*).

### ***Organization of the 111<sup>th</sup> Congress***

The Senate and House of Representatives is nearing completion of its efforts to organize the 111th Congress. This section of the Weekly Legislative Update is devoted to chronicling the impact that those 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

No Items this week

### Senate

#### **Senate Appropriations Committee to Organize:**

No notice of an organizing meeting had been given at the time of this writing. However, staff members for the Senate Committee on Appropriations have indicated that the Committee could hold its organizing meeting for the 111<sup>th</sup> Congress as soon as this week, adopting its rules and organizing itself into subcommittees.

#### **Committee Jurisdiction Over Immigration and Refugees.**

The Senate Committee on Appropriations is responsible for appropriating all of the federal government's discretionary spending. With respect to immigration- and refugee-matters, this includes responsibility for refugee admissions, overseas assistance to refugees, emergency assistance to refugees, refugee resettlement, assistance to torture victims and the victims of trafficking, appropriations for immigration enforcement, immigration services, appropriations for the care and custody of unaccompanied alien children, and the adjudication of litigation over immigration enforcement and service matters.

**Committee Chairman.** Senator Daniel Inouye (D-HI) assumed the chairmanship of the powerful Senate Committee on Appropriations at the beginning of the 111th Congress, succeeding Senator Robert F. Byrd (D-WV), who stepped aside for health reasons.



Senator Inouye was first elected to the United States Senate in 1962, just three years after Hawaii was admitted as a state.

He has been reelected by wide margins ever since. Before being elected to the Senate, he was the first Member of the U.S. House of Representatives to represent the state, having been elected in 1959 to be Hawaii's then-lone representative to the House.

Senator Inouye has supported the pro-immigrant and pro-refugee advocacy communities' position on just over 90 percent of the key contested immigration- and refugee-related votes that he has cast during his time in the Senate. This includes votes in support of the positions of the two communities on 84 percent of the votes that he cast prior to September 11, 2001, and on more than 95 percent of the votes he has cast since that time.

Senator Inouye has not been an activist on immigration issues. He declined to cosponsor any of the marquee immigration bills that were introduced in the Senate during the 110th Congress: the DREAM Act, the Unaccompanied Alien Child Protection Act, and the AgJOBS bill. Despite his relatively strong voting record in support of most pro-immigrant proposals, some pro-immigrant advocates have noted over the years that he has been reluctant to support some pro-immigrant initiatives and equally reluctant to oppose some of the proposals put forth by immigration restrictionists to make life more difficult for illegal immigrants.

Among the five key, contested immigration-related votes that he has cast in opposition to the pro-immigrant advocacy community's positions—

- two were to sunset guest worker programs in comprehensive immigration reform legislation;
- one was to establish the Basic Pilot employment verification system;
- one was against establishing a wider range of documents that illegal immigrants could show in order to establish their residency; and
- another was in favor of requiring state and local governments to cooperate with the Immigration and Naturalization Service (INS) regarding the enforcement of civil immigration laws.

**Committee Ranking Minority Member.** Returning as Ranking Republican of the Senate Committee on Appropriations in the 111th Congress is Senator Thad Cochran (R-MS), who served as the Committee's Ranking Republican during the 110th Congress.



Senator Cochran's potential influence over immigration and refugee matters goes beyond his position as Ranking Republican of the full Senate Committee on Appropriations. He also is the Ranking Republican on the Senate Appropriations Subcommittee on Homeland Security, a subcommittee that has appropriating jurisdiction over the federal government's immigration benefits adjudication, border and port of entry enforcement, and interior immigration enforcement agencies and functions.

Senator Cochran was first elected to the Senate in 1978. He has been reelected by wide margins ever since.

**Committee Ratio.** As the 110th Congress drew to a close, there were 15 Democrats and 14 Republicans on the Senate Committee on Appropriations. The Committee ratio in the 110th Congress will be 17-Democrats-to-13-Republicans.

**Departed Committee Members.** No Democrats who served on the Committee during the 110th Congress are leaving it in the 111th Congress. However, four Republican 110th Congress Committee members have departed the Committee in the 111th Congress:

- Ted Stevens (R-AK)
- Pete Domenici (R-NM)
- Larry Craig (R-ID)
- Wayne Allard (R-CO)

**New Committee Members.** Five senators who were not on the Committee during the 110th Congress have joined it in the 111th Congress. Two of the new senators are Democrats and three are Republicans. The new senators are:

- Mark Pryor (D-AR)
- Jon Tester (D-MT)
- Susan Collins (R-ME)
- George Voinovich (R-OH)
- Lisa Murkowski (R-AK).

**Full Committee Roster.** The chart that follows lists the membership of the Senate Committee on Appropriations in the 111th Congress. Senators who are known to be leaving the committee in the 111th Congress are denoted with a ~~stricken-through line~~. New committee members are marked with an asterisk (\*):

**Senate Committee on Appropriations**  
**111th Congress**

Democrats (17)	Republicans (13)
Inouye (D-HI)	Cochran (R-MS)
Byrd (D-WV)	<del>Stevens (R-AK)</del>
Leahy (D-VT)	Specter (R-PA)
Harkin (D-IA)	<del>Domenici (R-NM)</del>
Mikulski (D-MD)	Bond (R-MO)
Kohl (D-WI)	McConnell (R-KY)
Murray (D-WA)	Shelby (R-AL)
Dorgan (D-ND)	Gregg (R-NH)
Feinstein (D-CA)	Bennett (R-UT)
Durbin (D-IL)	<del>Craig (R-ID)</del>
Johnson (D-SD)	Hutchison (R-TX)
Landrieu (D-LA)	Brownback (R-KS)
Reed (D-RI)	<del>Allard (R-CO)</del>
Lautenberg (D-NJ)	Alexander (R-TN)
Nelson (D-NE)	*Collins (R-ME)
*Pryor (D-AR)	*Voinovich (R-OH)
*Tester (D-MT)	*Murkowski (R-AK)

**Membership on Immigration- and Refugee-Related Subcommittees.** Each of the 12 subcommittees of the Senate Appropriations Committee has jurisdiction over a different combination of federal agencies and departments. Each subcommittee produces a bill that first is marked up in the subcommittee and then marked up by the full Committee.

It was not known at the time of this writing how the committee ratios on the various subcommittees will be adjusted for the 111<sup>th</sup> Congress.

During the 110<sup>th</sup> Congress, four of the Senate Appropriations Committee's subcommittees had jurisdiction over the bulk of immigration- and refugee-related appropriations matters:

- Homeland Security Subcommittee. The Subcommittee on Homeland Security has jurisdiction over funding for the Department of Homeland Security, including its Directorate for Border and Transportation Security (BTS), which is the parent directorate for three immigration-related bureaus: the Bureaus of Citizenship and Immigration Services (CIS), Customs and Border Protection (CPB), and Immigration and Customs Enforcement (ICE).

The Homeland Security Subcommittee was chaired by Senator Robert F. Byrd (D-WV). He is returning as chairman in the 111<sup>th</sup> Congress. The Ranking Minority Member of the Subcommittee during the 110<sup>th</sup> Congress was Senator Thad Cochran (D-MS). It is believed that he, too, will return to his position in the 111<sup>th</sup> Congress.

The ratio of Democrats-to-Republicans on the Subcommittee during the 110<sup>th</sup> Congress was 9-8. It is unknown at the time of this writing what the ratio will be during the 111<sup>th</sup> Congress.

- State-Foreign Operations Subcommittee. The Subcommittee on State, Foreign Operations, and Related Programs has jurisdiction over the Department of State's refugee admissions and overseas refugee assistance programs, which are operated by the Bureau of Population, Refugees, and Migration (PRM) and administered through the Migration and Refugee Assistance (MRA) and Emergency Refugee and Migration Assistance (ERMA) accounts.

The State-Foreign Operations Subcommittee was chaired by Senator Patrick Leahy (D-VT) in the 111<sup>th</sup> Congress. The Ranking Minority Member of the Subcommittee during the 110<sup>th</sup> Congress was Senator Judd Gregg (R-NH). It is anticipated that both Senators Leahy and Gregg will return to their 110<sup>th</sup> Congress roles in the 111<sup>th</sup> Congress.

The ratio of Democrats-to-Republicans on the Subcommittee during the 110<sup>th</sup> Congress was 8-7. It is unknown at the time of this writing what the ratio will be during the 111<sup>th</sup> Congress.

- Labor-HHS Subcommittee. The Subcommittee on Labor, Health and Human Services, Education, and Related Agencies has jurisdiction over funding for the Department of Health and Human Services' refugee resettlement programs, operated by the Department's Office of Refugee Resettlement (ORR).

The Labor-HHS Subcommittee was chaired by Senator Tom Harkin (D-IA) during the 110<sup>th</sup> Congress. He is returning as chairman in the 111<sup>th</sup> Congress. The Ranking Minority Member on the Subcommittee during the 110<sup>th</sup> Congress was Senator Arlen Specter (R-PA). He is expected to reprise that role in the 111<sup>th</sup> Congress.

The ratio of Democrats-to-Republicans on the Subcommittee during the 110<sup>th</sup> Congress was 8-7. It is unknown at the time of this writing what the ratio will be during the 111<sup>th</sup> Congress.

- Commerce-Justice-Science. The Subcommittee on Commerce, Justice, Science, and Related Agencies has jurisdiction over funding for the Department of Justice, including the Executive Office for Immigration Review (EOIR), Office of Special Counsel (OSC), Office of Immigration Litigation (OIL), and Bureau of Prisons (BOP).

The Commerce-Justice-Science Subcommittee was chaired by Senator Barbara Mikulski (D-MD) during the 110<sup>th</sup> Congress. She is expected to return as

Chairwoman in the 111<sup>th</sup> Congress. The Ranking Minority Member on the Subcommittee during the 110<sup>th</sup> Congress was Senator Richard Shelby (R-AL). He is expected to return to that position during the 111<sup>th</sup> Congress.

The ratio of Democrats-to-Republicans on the Subcommittee during the 110<sup>th</sup> Congress was 9-8. It is unknown at the time of this writing what the ratio will be during the 111<sup>th</sup> Congress.

**Subcommittee Rosters.** The charts that follow detail what is known at this time about the membership of the four Senate Appropriations subcommittees with appropriating jurisdiction over the major federal immigration- and refugee-related agencies, functions, and activities. Senators known to be leaving a subcommittee are denoted with a ~~stricken through line~~. New Members are marked with an asterisk (\*):

**Projected Senate Appropriations Subcommittee on Homeland Security  
111<sup>th</sup> Congress**

Democrats (?)	Republicans (?)
Byrd (D-WV)	Cochran (R-MS)
Inouye (D-HI)	Gregg (R-NH)
Leahy (D-VT)	<del>Stevens (R-AK)</del>
Mikulski (D-MD)	Specter (R-PA)
Kohl (D-WI)	<del>Domenici (R-NM)</del>
Murray (D-WA)	Shelby (R-AL)
Landrieu (D-LA)	<del>Craig (R-ID)</del>
Lautenberg (D-NJ)	Alexander (R-TN)
Nelson (D-NE)	

**Projected Senate Appropriations Subcommittee on State, Foreign Operations, and Related Agencies  
111<sup>th</sup> Congress**

Democrats (?)	Republicans (?)
Leahy (D-VT)	Gregg (R-NH)
Inouye (D-HI)	McConnell (R-KY)
Harkin (D-IA)	Specter (R-PA)
Mikulski (D-MD)	Bennett (R-UT)
Durbin (D-IL)	Bond (R-MO)
Johnson (D-SD)	Brownback (R-KS)
Landrieu (D-LA)	Alexander (R-TN)
Reed (D-RI)	

**Projected Senate Appropriations Subcommittee on Labor, HHS, Education  
111<sup>th</sup> Congress**

Democrats (?)	Republicans (?)
Harkin (D-IA)	Specter (R-PA)
Inouye (D-HI)	Cochran (R-MS)
Kohl (D-WI)	Gregg (R-NH)
Murray (D-WA)	<del>Craig (R-ID)</del>
Landrieu (D-LA)	Hutchison (R-TX)
Durbin (D-IL)	<del>Stevens (R-AK)</del>
Reed (D-RI)	Shelby (R-AL)
Lautenberg (D-NJ)	

**Projected Senate Appropriations Subcommittee on Commerce, Justice, Science  
111<sup>th</sup> Congress**

Democrats (?)	Republicans (?)
Mikulski (D-MD)	Shelby (R-AL)
Inouye (D-HI)	Gregg (R-NH)
Leahy (D-VT)	<del>Stevens (R-AK)</del>
Kohl (D-WI)	Domenici (R-NM)
Harkin (D-IA)	McConnell (R-KY)
Dorgan (D-ND)	Hutchison (R-TX)
Feinstein (D-CA)	Brownback (R-KS)
Reed (D-RI)	Alexander (R-TN)
Lautenberg (D-NJ)	



***Executive Branch Transition***

Even though President Obama has named the cabinet secretaries for all but one of the four departments that have jurisdiction over the federal government's major immigration- and refugee-related functions, those agencies will continue in a state of transition over the next several weeks and months as subcabinet officials, agency heads, and key staff members are named in those departments.

This section of the Weekly Immigration and Refugee Legislative Update is devoted to chronicling the impact that the actions and decisions of the 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.

**President to Nominate Kathleen Sebelius to Head the Department of Health and Human Services:**



Published reports indicate that President Barack Obama this week will nominate Governor Kathleen Sebelius (D-KS) to be Secretary of Health and Human Services. Reports indicate that the President will announce Governor Sebelius' nomination on Monday, March 2, 2009. If the reports are true and if she is confirmed by the Senate, hers would be the last of the four cabinet departments with significant jurisdiction over immigration- or refugee-related functions and programs to have their cabinet secretaries confirmed. The three departments that have heads in place are the Department of Homeland Security, department of State, and Department of Justice.

Governor Sebelius is President Obama's second choice to head the Department of Health and Human Services. His first choice, former Senate Majority Leader Tom Daschle (D-SD), withdrew his nomination for the position in early February following revelations that he had not paid income taxes on all of his income over the last several years.

Governor Sebelius has twice been elected governor of Kansas, having first been elected in 2002. Prior to being elected governor, she served for eight years as Kansas Insurance Commissioner, beginning in 1995. From 1987 to 1995 she served in the Kansas State House of Representatives. She has no experience in Washington.

**HHS Jurisdiction over Refugees and Immigration.** While the Department of Health and Human Services has broad jurisdiction over many programs and activities of government, it operates several specific programs that assist refugees and other vulnerable populations of noncitizens:

- Resettlement Services to Refugees, Asylees, Special Immigrant Iraqis, and Certain Amerasians. These programs provide resettlement services to refugees who have been admitted to the United States and aliens, individuals who have been granted asylum in the United States, individuals from Vietnam who are admitted to the U.S. as immigrants pursuant to section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988.
- Trafficking Victims. These programs assist aliens found in the United States who are the victims of trafficking;

- Torture Victims. These programs assist alien torture victims who are found in the United States; and
- Unaccompanied Alien Children. These programs provide care and custody for unaccompanied aliens in federal custody while their immigration status is being resolved.

The Department operates these programs through its [Office of Refugee Resettlement](#) (ORR), which is an office within the Department's [Administration for Children and Families](#) (ACF).

Two other Federal departments also play a major role in refugee protection. The Department of State, through its Bureau of Population, Refugees, and Migration (PRM) operates programs to assist in the admission of refugees to the United States and provide overseas refugee assistance to refugees in camps of first asylum. And the Department of Homeland Security, through its U.S. Citizenship and Immigration Services Bureau (USCIS), interviews and adjudicates refugee applicants once they have been identified.

**Governor Sebelius' Positions on Immigration- and Refugee-Related Matters.** Governor Sebelius has had a significant amount of exposure to immigration and refugee matters while governor of Kansas. The state of Kansas has a growing foreign-born population and hosts a disproportionately large number of refugees, many from Africa. Indeed, there are about 5,000 Somalis in the Kansas City area, making them one of the largest refugee populations in the metropolitan area. Other nationalities of refugees who reside in Kansas City include Sudanese, Ethiopians, Burmese and Vietnamese.

The growing number of refugees in Kansas from Africa, and elsewhere, and the number of Central American and Mexican immigrants who work in meat processing plants has stirred up some resentment and anti-immigrant activism in the state. Governor Sebelius has had to deal with that resentment, both in legislation that has been sent to her and during her most recent campaign for reelection. Indeed, in her 2006 reelection campaign, Governor Sebelius was challenged by Jim Barnett, a Republican candidate who tried to use immigration against her. Some say that she tacked a bit to the right on immigration during that reelection campaign, which she won with 58 percent of the vote.

Governor Sebelius has generally been pro-immigrant while Governor. Over the years, she has supported in-state tuition for undocumented aliens and the provision of driver's licenses for undocumented aliens. But she also has signed legislation and taken positions at times that were opposed by the pro-immigrant or pro-refugee advocacy communities.

In 2004, Governor Sebelius signed a measure granting in-state tuition to qualifying students who are illegal immigrants. Under the 2004 law, children of illegal immigrants are eligible to pay in-state tuition if they have lived in Kansas for at least three years, graduated from a Kansas high school and are on the path toward citizenship. Upon passage of the legislation, Governor Sebelius issued a statement declaring that she was “delighted that the immigrant tuition bill was finally approved by the Legislature after two years of efforts by supporters, students and citizens who came from across Kansas to lobby for this measure.” She went on to assert that the bill “will remove financial barriers and open the doors of our colleges and universities to all Kansas high school graduates.” She continued, saying that “[w]e know that 21st Century workers need post-secondary training, but too many talented Kansas students found higher education too expensive to pursue. In the long-run, we will be a stronger state with a better-educated workforce because of this measure.”<sup>264</sup>

In July of 2006, Governor Sebelius sent about 50 airmen from the 184th Civil Engineering Squadron, based at McConnell Air Force Base in Wichita, to the border.

During her 2006 reelection campaign, Governor Sebelius took a number of positions that were anathema to the pro-immigrant advocacy community. She supported English the official language of the state. And she ran ads on the radio boasting about the work of the Kansas National Guard in building a fence on the Arizona-Mexico border to stop the “national crisis” of illegal immigrants crossing the border.” In the ad, she blamed Washington politicians for failing to control the border. The ad stated, in part: “Kathleen Sebelius, committed to tough border security, a real crackdown on employers who hire illegal immigrants, and a strong National Guard.”

Notwithstanding that tacking to the right, in late October of 2006, just weeks before the election, Governor Sebelius gave an interview in which she hinted at support for comprehensive immigration reform that would legalize undocumented aliens in the United States. During the interview she said of illegal immigration, “employers have a responsibility to follow the law.” She continued, saying that “[s]ome employers intentionally hire illegal workers to beat the competition, and that’s one of the areas the state can really do something about.” She went on to say, “[i]t’s unfair to workers here in the workforce. We need a national comprehensive discussion, whether it’s talking about what we’re doing at the border or those 14 million who are already here and who have families here. That isn’t something we can deal with state by state.”

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<sup>264</sup> [Click Here](#) to see the press release issued by Governor Kathleen Sebelius on May 5, 2004, upon approval by the Kansas Legislature of Immigrant Tuition Bill

On April 20, 2007, despite expressing support earlier in her career for providing driver’s licenses to illegal aliens, Governor Sebelius signed into law legislation that precludes persons who are not lawfully present in the United States from obtaining a drivers license in Kansas. The bill, SB 9, requires employees of the Division of Motor Vehicles to be trained on document recognition and on federal rules used to determine lawful presence, with the bill prohibiting the division from issuing a drivers license or an instructional permit to any person who fails to provide proof of lawful presence in the United States.<sup>265</sup>

Additionally, the bill requires the applicant for a drivers license or instructional permit to submit proof of age, proof of identity and a photo identity document, as required by the division. A non-photo identity document may be used if it includes the applicant’s full legal name, date of birth, address of principal residence and Social Security number.

Finally, among other things, the bill authorizes the division to disclose motor vehicle records to any federal, state or local agency to assist in carrying out the functions of that agency.

On May 17, 2007, Governor Sebelius signed into law a measure making English the state’s official language. In an act of irony, on that same day, she signed a bill ensuring the state’s retirement funds won’t be invested in companies doing business in Sudan. Upon signing the latter bill, Governor Sebelius said, “[t]he horrific genocide taking place in Sudan is well-documented, and we want to have nothing to do with companies that are doing business in that nation so long as its government does nothing to stop the killing.”

The English measure that Governor Sebelius signed, HB 2140, designated English as the official language of the State of Kansas for all public documents and official public meetings. Under the measure, no state agency or local government is required to provide documents in a language other than English, but they may use other languages at the agency or local government’s discretion. The measure authorized the use of Braille in signage and documents, as well as communication in American Sign Language to accommodate persons with disabilities. It requires local entities such as political subdivisions, community-based agencies, migrant worker groups and refugee resettlement programs designated by the State Board of Regents to offer English language classes; English language training; citizenship classes for non-native speakers; and to seek assistance from listed groups in expanding awareness of the available classes and training.

A group of immigration restrictionists in the Kansas legislature made a determined, but unsuccessful effort in

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<sup>265</sup> [Click Here](#) to see the press release issued by Governor Kathleen Sebelius upon signing SB 9, relating to drivers license fraud, into law

2008 to pass a comprehensive immigration enforcement bill. The measure never made it to the Governor's desk.

In May of 2008, Governor Sebelius vetoed legislation that sought to impose identification requirements on persons seeking to vote. The measure was aimed at preventing illegal immigrants from voting. In her veto message, the Governor asserted that the measure "goes against our state's long standing tradition of striving to achieve greater voter participation in our democratic process. The needless, additional identification requirements of HB 2019 will only work to disenfranchise many of the electorate and serve as a barrier to their participation in the democratic process."<sup>266</sup> ☼

**President to Nominate John T. Morton to Head DHS's Immigration and Customs Enforcement Bureau:** The Obama Administration last week announced that the President will nominate John T. Morton for the position of Assistant Secretary of Homeland Security for Immigration and Customs Enforcement.

According to a February 23, 2009, Department of Homeland Security press release, "John Morton is a career official at the U.S. Department of Justice (DOJ) with lengthy experience in immigration enforcement and criminal prosecution. He began his career as a trial attorney in the honors program in 1994 and now serves as Acting Deputy Assistant Attorney General of the Criminal Division.

"From September 2007 until last month, he was Acting Chief of the Domestic Security Section and Senior Counsel to the Assistant Attorney General for the Criminal Division, and prior to that, he was Deputy Chief of the Domestic Security Section. In these roles, he was responsible for the prosecution of criminal cases and the development of DOJ policy in the areas of immigration crime, particularly human smuggling and complex passport and visa frauds; human rights offenses, particularly torture, war crimes, genocide, and the use of child soldiers; and international violent crime, particularly violent crime under the Military Extraterritorial Jurisdiction Act.

"From 1999 to 2006, he was as an Assistant United States Attorney in the Major Crimes and Terrorism Units of the United States Attorney's Office for the Eastern District of Virginia. Prior to that, he served for two and a half years as Counsel to the Deputy Attorney General, focusing primarily on immigration matters."

Morton has overseen several complex and high profile immigration and terrorism cases during his career at the Department of Justice.

The nomination of the Assistant Secretary of Homeland Security of Immigration and Customs Enforcement is subject to Senate confirmation. Traditionally, the Senate Committee on Homeland Security and Governmental Affairs has shared jurisdiction over the ICE nomination with the Senate Committee on the Judiciary. ☼

**Secretary Napolitano Appoints Esther Olavarria to Key Policy Position:**



Secretary of Homeland Security Janet Napolitano has appointed Esther Olavarria to the position of Deputy Assistant Secretary of Homeland Security for Policy.

According to a February 23, 2009 Department of Homeland Security press release announcing the appointment, "Esther Olavarria brings nearly 20 years of experience on immigration policy to her new job at the Department of Homeland Security. Most recently, she was a Senior Fellow and Director of Immigration Policy at the Center for American Progress, where she was responsible for planning, developing and administering the organization's work on immigration issues, with a principal focus on policy and advocacy strategies on comprehensive immigration reform; planning and convening roundtables and other venues for discussion, and conducting research and write on immigration issues.

"Prior to that, for nearly ten years, she was Counsel to Sen. Edward Kennedy and the Judiciary Committee's Subcommittee on Immigration, Border Security and Refugees. In that capacity, she served as Senator Kennedy's chief counsel on immigration, border security, refugee and nationality matters, working on myriad immigration proposals, including comprehensive immigration reform.

"She has also served as the Managing Attorney of the Florida Immigrant Advocacy Center, Directing Attorney of the American Immigration Lawyers Association Pro Bono Project, and staff attorney at the Haitian Refugee Center, all based in Miami, Florida. ☼

**Secretary Napolitano Names Legislative Affairs Team:**

Secretary of Homeland Security Janet Napolitano last week announced a roster of familiar names to lead the Department's legislative efforts. The announcement of an Assistant Secretary of Homeland Security for Legislative Affairs and four Deputy Assistant Secretaries came on Thursday, February 26, 2009. The officials named were Chani W. Wiggins, who will serve as Assistant Secretary for Legislative Affairs, and Nelson Peacock and Sue Ramanathan, who will serve as Deputy Assistant Secretaries.

<sup>266</sup> [Click Here](#) to see the complete text of the May 18, 2008, veto message of Governor Kathleen Sebelius regarding HB 2019

The following is a brief summary of their careers:

- Chani Wiggins, Assistant Secretary, Legislative Affairs. Chani W. Wiggins most recently served as Legislative Director Senator Claire McCaskill (R-MO). According to a press release issued by the Department of Homeland Security, Ms Wiggins has a Bachelor of Science in Telecommunications from the University of Florida, College of Journalism.

Ms. Wiggins was a legislative assistant in the office of Senator Tom Harkin (D-IA) and legislative director for Senator Mark Dayton (D-MN) before joining Senator McCaskill’s staff. Prior to working on Capitol Hill, Ms. Wiggins was a newspaper reporter who covered the local police and local government.

- Nelson Peacock, Deputy Assistant Secretary, Legislative Affairs. Mr. Peacock was most recently a Senior Counsel to Senator Joseph R. Biden on the Senate Committee on the Judiciary. He worked on such issues as crime, homeland security, and intellectual property. Mr. Peacock has a law degree from the University of Arkansas School of Law and a Masters of Law from George Washington University School of Law.

- Sue Ramanathan, Deputy Assistant Secretary, Legislative Affairs. Sue Ramanathan was most recently Majority Counsel for the Senate Committee on Homeland Security & Governmental Affairs, advising Chairman Joseph I. Lieberman and Democratic committee members on border security and management issues related to border agencies within DHS.

Prior to joining the Senate Committee on Homeland Security and Governmental Affairs, she served as Chief Counsel and Deputy Staff Director for the House Committee on Homeland Security and as a Policy Advisor and Counsel for Representative Zoe Lofgren (D-CA), who now chairs the House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law. Ms. Ramanathan also has worked at a Senior Analyst with the Government Accountability Office's Homeland Security and Justice team. Ms. Ramanathan has a law degree from Rutgers School of Law and a Masters of Law degree from Georgetown University Law Center. ◇

***Over the Horizon ...***

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

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

**Bicameral**  
**Authorizing Committees to Begin Producing Views & Estimates Reports:**

Now that President Obama has submitted his fiscal year 2010 budget outline to Congress, the six authorizing committees of the House and Senate that have principal jurisdiction over the federal government will begin to produce their “Views and Estimates” letters outlining their ideas on the budget for programs and agencies under their jurisdiction. By law, the committees must produce their “Views & Estimates” reports by no later than six weeks after the President submits his budget. Some committees conduct formal markups at which the draft reports are subjected to amendment. Other Committees produce the reports in a less formal manner.

The following chart lists the House and Senate authorizing committees that have jurisdiction over significant immigration- and refugee-related agencies, functions, programs, and activities and the functions and agencies over which those committees exercise their jurisdiction:

**Major Federal Immigration- and Refugee-Related Functions and the Congressional Authorizing Committees that Have Jurisdiction over Them**

Agencies/Programs	House Committee	Senate Committee
The Department of Justice’s Board of Immigration Appeals (BIA), Executive Office for Immigration Review (EOIR), Office of Special Counsel (OSC), and Office of Immigration Litigation (OIL)	House Judiciary	Senate Judiciary
The Department of Health and Human Services’ refugee resettlement and unaccompanied alien child programs, administered by the Office of Refugee Resettlement (ORR).	House Judiciary	Senate Judiciary
The Department of Health and Human Services’ trafficking victims assistance programs, administered by the Office of Refugee Resettlement (ORR)	House Foreign Affairs	Senate Foreign Relations
The Department of Health and Human Services’ torture victims assistance programs, administered by the Office of Refugee Resettlement (ORR)	House Foreign Affairs  House Energy & Commerce	Senate Foreign Relations
The Department of State’s administration of the nation’s refugee admissions and overseas refugee assistance programs, administered by the Department’s Bureau of Population, Refugees, and Migration (PRM)	House Foreign Affairs	Senate Foreign Relations
The Department of Homeland Security’s immigration benefits adjudication services, administered by the Department’s U.S. Citizenship and Immigration Services Bureau (USCIS)	House Judiciary	Senate Judiciary

Agencies/Programs	House Committee	Senate Committee
The Department of Homeland Security's detention and interior immigration enforcement functions, administered by the Department's Immigration and Customs Enforcement (ICE) Bureau	House Judiciary	Senate Judiciary
The Department of Homeland Security's border and port-of-entry enforcement functions, administered by the Department's U.S. Customs and Border Protection Bureau (CBP)	House Homeland Security	Senate Judiciary

At the time of this writing, none of the six committees that have jurisdiction over significant immigration- and refugee-related agencies, functions, and activities of the federal government had yet announced their schedules for considering their Views & Estimates reports. ☀

### **Immigration Likely to Be Issue on Administration's Housing Foreclosure Prevention Plan:**

President Barack Obama last week released his Homeowner Affordability and Stability Plan, which is intended to address the home mortgage crisis and prevent seven to nine million Americans from losing their homes. While he made no explicit mention of immigrants in his plan, immigration-related issues are likely to surface once Congress begins the task of translating the President's concepts and principles into legislative language.

### House

#### **\*\*House to Produce Budget Resolution in March:**

Speaker of the House Nancy Pelosi has indicated that the House will take up its fiscal year 2010 budget resolution in March, prior to receiving the detailed budget that the Obama Administration promises to deliver to Congress in April.

### Senate

#### **\*\*Senate Panel to Hold Hearing in Washington, DC on Border Violence:**

The Senate Homeland Security and Governmental Affairs Committee has scheduled a hearing for March 25, 2009, at which it will examine the national and homeland security consequences of violence along the U.S.-Mexico border. Neither the time nor the witness list for the March 25 hearing had been determined at the time of this writing. It will take place in Room SD-342 of the Dirksen Senate Office Building.

#### **\*\*Senate Panel to Hold Field Hearing in Arizona on Border Violence:**

The Senate Homeland Security and Governmental Affairs Committee anticipates holding a field

hearing sometime in April, at which it will examine the national and homeland security consequences of violence along the U.S.-Mexico border. No date or witness list for the April field hearing had been determined at the time of this writing. The hearing will take place in Arizona. ◇

### *Next Week's Edition ...*

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

- Refugee- and Immigration-Related Provisions in the Fiscal Year 2009 Omnibus Appropriations Bill. Next week's Weekly Legislative Update will report on the refugee- and immigration-related provisions that are contained in the fiscal year 2009 omnibus appropriations bill, which the Senate could clear for the President's consideration late this week.
- Religious Worker Visas. Next week's Weekly Legislative Update will report on this week's expected House consideration of H.R. 1127, legislation extending the Special Immigrant Nonminister Religious Worker Visa program, as well as preview any action anticipated in the Senate on the measure.
- Hearing on 287(g). Next Week's Weekly Legislative Update will report on this week's House Committee on Homeland Security hearing on the 287(g) program.
- Hearing on Medical Services for Immigration Detainees. Next week's Weekly Legislative Update will report on the hearing this week in the House Appropriations Subcommittee on Homeland Security on medical services for immigration detainees.
- Organization of the 111<sup>th</sup> 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.
- Preview of the Likely Immigration and Refugee Legislative Agenda for the 111<sup>th</sup> Congress. Next week's Weekly Legislative Update will preview the likely immigration and refugee legislative agenda that Congress will face during the 111<sup>th</sup> Congress. ◇

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*Appendix*

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No items this week.

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