



# United States Conference of Catholic Bishops Government Relations

3211 4th Street, N.E. Washington, DC 20017-1194 VOICE: (202) 541-3140 FAX: (202) 541-3313 WEB: [www.usccb.org/gr](http://www.usccb.org/gr)

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

Monday, March 9, 2009

(Revised on March 12, 2009)

Page 273

### Legislative Highlights

<i>Senate Could Take Up Bill Extending the Religious Worker and J-1 Visa Programs .....</i>	<a href="#">277-278</a>
<i>Senate to Vote on E-Verify and Palestinian Refugee Amendments to FY '09 Omnibus Bill .....</i>	<a href="#">275-276</a>
<i>House Appropriations Committee Panel to Hold Hearing on Secure Border Initiative .....</i>	<a href="#">273-273</a>
<i>Three House Panels to Hold Hearings on Violence along the U.S.-Mexico Border .....</i>	<a href="#">274-274</a>
<i>House Passes Bill Extending Expired Religious Worker and Conrad 30 Programs .....</i>	<a href="#">298-300</a>
<i>House Appropriations Panel Examines Health Services for Immigrant Detainees .....</i>	<a href="#">278-290</a>
<i>House Homeland Security Committee Examines 287(g) Program .....</i>	<a href="#">290-297</a>
<i>Obama Nominates Governor Sebelius to Head the Department of Health and Human Services .....</i>	<a href="#">305-306</a>
<i>Senate Appropriations Committee Organizes for the 111<sup>th</sup> Congress .....</i>	<a href="#">302-305</a>

### This Week's Hearings

At the time of this writing, four House or Senate panels had scheduled hearings at which significant immigration- or refugee-related matters are expected to be discussed:

- Hearing on the Secure Border Initiative: A House Appropriations Committee Panel has scheduled a hearing on the Secure Border Initiative; and
- Hearings on U.S.-Mexico Border Violence: Three House panels are holding hearings this week on border violence along the U.S.-Mexico border.

### House

**House Appropriations Panel to Hold Hearing on the Secure Border Initiative:** The House Appropriations Subcommittee on Homeland Security has scheduled a hearing for this week on the Secure Border Initiative. This week's hearing is scheduled for 10:00 am on Tuesday, March 10, 2009, in Room 2358-C of the Rayburn House Office Building.

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

- Jayson Ahern, Deputy Commissioner, Customs and Border Protection, Department of Homeland Security;
- David Aguilar, Chief, U.S. Border Patrol; and
- Mark Borkowitz, Executive Director, Secure Border Initiative. ☀

**Continued on Page 274**

### Inside This Week's Edition

Legislative Highlights .....	<a href="#">273</a>
This Week's Hearings .....	<a href="#">273 - 274</a>
This Week's Markups .....	<a href="#">274 - 274</a>
This Week's Floor Activity .....	<a href="#">274 - 278</a>
This Week's Conference Activity .....	<a href="#">278 - 278</a>
This Week's Executive Activity .....	<a href="#">278 - 278</a>
Last Week's Legislative Activity .....	<a href="#">278 - 300</a>
Last Week's Executive Activity .....	<a href="#">301 - 301</a>
Recently Introduced Legislation .....	<a href="#">301 - 302</a>
Bills in Development .....	<a href="#">302 - 302</a>
Organization of the 111 <sup>th</sup> Congress .....	<a href="#">302 - 305</a>
Executive Branch Transition .....	<a href="#">305 - 306</a>
Over the Horizon .....	<a href="#">306 - 307</a>
Next Week's Weekly Legislative Update ..	<a href="#">307 - 307</a>
Appendix .....	<a href="#">308 - 308</a>

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

**House Appropriations Panel to Hold Hearing on U.S.-Mexico Border Violence:** The House Appropriations Subcommittee on Homeland Security has scheduled a hearing for this week on violence along the U.S.-Mexico border. This week's hearing is scheduled for 11:30 am on Tuesday, March 10, 2009, in Room 2358-C of the Rayburn House Office Building.

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

- Mark Koumans, Deputy Assistant Secretary of Homeland Security for International Affairs;
- Jayson Ahern, Deputy Commissioner, Customs and Border Protection, Department of Homeland Security;
- Marcy Forman, Director, Office on Investigations, Immigration and Customs Enforcement, DHS; and
- David Aguilar, Chief, U.S. Border Patrol. ☼

**House Oversight Panel to Hold Hearing on U.S.-Mexico Border Violence:** The House Oversight and Government Reform Subcommittee on National Security and Foreign Affairs has scheduled a hearing for this week titled "Money, Guns, and Drugs: Are U.S. Inputs Fueling Violence on the U.S.-Mexico Border?" This week's hearing is scheduled for 10:00 am on Thursday, March 12, 2009, in Room 2154 of the Rayburn House Office Building.

**Anticipated Witnesses.** At the time of this writing, the witnesses list for this week's hearing had not yet been publicly released. ☼

**House Homeland Security Panel to Hold Hearing on U.S.-Mexico Border Violence:** The House Homeland Security Subcommittee on Border, Maritime and Global Counterterrorism has scheduled a hearing titled "Border Violence: An Examination of DHS [Department of Homeland Security] Strategies and Resources." This week's hearing is scheduled for 10:00 am on Thursday, March 12, 2009, in Room 311 of the Cannon House Office Building.

The hearing will focus on resources and strategies for combating and responding to violence (and related issues such as narcotics trafficking, weapons smuggling and bulk cash smuggling) in the U.S.-Mexico border region.

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

- Roger T. Rufe Jr., Director, Office of Operations Coordination, Department of Homeland Security (DHS);

- Alonzo Pena, Attaché for DHS, U.S. Embassy, Mexico; and
- John Leech, Acting Director, Office of Counternarcotics Enforcement, DHS. ☼

### **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, no House or Senate committees were contemplating actions on legislation containing significant immigration- or refugee-related provisions. ◇

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

At the time of this writing, House or Senate floor action was possible on two measures containing significant immigration- or refugee-related provisions and one measure that could become the target for immigration-related amendments:

- Fiscal Year 2009 Omnibus Appropriations. The full Senate hopes to complete consideration of a House-passed measure appropriating funds for the remaining fiscal year 2009 appropriations bills;
- Extension of the Religious Worker Visa and Conrad 30 Immigration Programs. The full Senate could take up a measure extending the special immigrant nonminister religious worker visa and the Conrad 30 programs; and
- Home Mortgage Restructuring. The full Senate could take up a House-passed measure that permits courts to reduce the principal owed for principal residences down to the current market value of the home, and to reduce interest rates or fees on the mortgage.

**Continued on Page 275**

#### **Writer**

Micheal E. Hill, Associate Director  
 United States Conference of Catholic Bishops  
 Government Relations (USCCB/GR)  
 Voice: (202) 541-3161  
 Mobile: (202) 257-1520  
 Fax: (202) 541-3313  
 E-Mail Address: [MHill@usccb.org](mailto:MHill@usccb.org)

## *This Week Floor Activity (continued)*

### House

At the time of this writing, no bills containing significant immigration- or refugee-related provisions were scheduled to be considered on the House floor this week. However, the House could be called upon this week to take further action on H.R. 1105, the fiscal year 2009 omnibus appropriations bill, should the Senate amend the measure.

### Senate

**Senate to Vote on Controversial Immigration and Refugee Amendments As it Attempts to Enact FY '09 Omnibus Appropriations Bill:** The Senate this week hopes to complete consideration of a House-passed fiscal year 2009 appropriations bill containing funding for the nation's immigration court system and its refugee admissions, overseas refugee assistance, and refugee resettlement programs. However, a dozen controversial amendments stand in the way of final Senate action on the measure, including a controversial immigration-related amendment and a controversial refugee-related amendment. This week's Senate floor action is expected to occur beginning at 2:00 pm on Monday, March 9, 2009, in connection with the House-passed version of [H.R. 1105](#), the Omnibus Appropriations Act, 2009.<sup>267</sup> The first votes are expected to begin around 5:30 pm on Monday, March 9, 2009. Senate floor consideration of the measure is expected to continue through at least Tuesday, March 10, 2009.

**Parliamentary Situation.** The Senate began consideration of H.R. 1105 on Monday, March 2, 2009, and had it under consideration throughout the entire week.

A unanimous consent agreement has been reached providing for the continued Senate consideration of H.R. 1105. Under the agreement, the Senate will resume consideration of H.R. 1105 at 2:00 pm on Monday, March 9, 2009. Beginning at that time and continuing through Tuesday, March 10, 2009, the Senate will take up (and eventually vote on) twelve amendments to the measure, none of which are amendable.

Following the disposition of the twelve amendments, the Senate will vote on whether to invoke cloture (and thus bring to close debate) on H.R. 1105. If all sworn senators are in the chamber and voting, it will take 60 affirmative votes to invoke cloture on the bill.

Should the Senate invoke cloture on H.R. 1105, it immediately will proceed to a vote on final passage of the

measure. If the Senate invokes cloture on H.R. 1105, only 51 votes will be necessary in order to pass H.R. 1105.

**Background.** As passed by the House, H.R. 1105 is comprised of the nine fiscal year 2009 appropriations bills that Congress did not enact 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 were initially 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>268</sup> On Friday, March 6, 2009, Congress enacted [H.J. Res. 38](#) into law. That measure extended funding for the relevant departments, agencies, functions, and activities through Wednesday, March 11, 2009. Accordingly, Congress must act to either pass another continuing appropriations bill or enact H.R. 1105 into law before the end of the day on Wednesday, March 11.

### **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.

<sup>267</sup>See Pages 249-258 of March 2, 2009, 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>268</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

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;
  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 U.S.
- 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.

**Immigration- and Refugee-Related Floor Amendments.**  
 The Senate has agreed to take up twelve amendments to H.R.

1105, two of which have significant immigration- or refugee-related consequences—

- SESSIONS E-VERIFY AMENDMENT.—Senator Jeff Sessions will offer Senate Amendment No. 604, which would extend the E-Verify program for five years rather than for seven months, as is provided for in the House-passed version of H.R. 1105.

The Sessions amendment is a more slimmed down version of the amendment that he sought to offer to H.R. 1, the economic stimulus bill. That amendment would have extended the E-Verify program for five years. But it also would have required that all persons making use of economic stimulus funds use the E-Verify program to verify the employment eligibility of their employees.

The Senate is expected to vote on the Sessions amendment on either Monday, March 9, 2009 or Tuesday, March 10, 2009.

- KYL PALESTINIAN REFUGEE AMENDMENT.—Senator Jon Kyl (R-AZ) will offer Senate Amendment No. 629, which would provide that no funds may be used to resettle Palestinians from Gaza into the United States.

The Kyl amendment is vigorously opposed by the refugee advocacy community. They argue that while it is extraordinarily unlikely that the United States will resettle Palestinians from Gaza in fiscal year 2009, it is important that no precedent be established that discriminates against resettling refugees based on their nationality, ethnicity, or religion.

The Senate is expected to vote on the Kyl amendment on Monday evening, March 9, 2009.

The Senate's disposition of the two amendments may have nothing to do with the merits of the amendments. Senate 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 Wednesday, March 11, 2009. Any changes to the bill in the Senate would require further action in the House of Representatives. And Speaker of the House Nancy Pelosi (D-CA) has warned that any changes in the bill will prompt her to withdraw the bill, altogether, and enact, instead, a long-term continuing appropriations resolution freezing all spending 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 11, 2009, deadline. ☀

**Senate Could Take Up Bill Extending Religious Worker Visa and Conrad State 30 Programs:**

The Senate this week could take up a measure extending two expired immigration programs through the end of fiscal year 2009. Senate action, if it occurs, is expected to take place 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). Best estimates are that Senate action on H.R. 1127 will occur shortly after the Senate disposes of the Omnibus Appropriations bill.

**Legislative History.** Representative Lofgren introduced H.R. 1127 on February 23, 2009. The House of Representatives last week bypassed the Committee on the Judiciary, where the measure was referred, taking it up and passing it on Wednesday, March 4, 2009, by a voice vote.

**Parliamentary Situation.** Should the Senate take up H.R. 1127, it likely will do so by unanimous consent.

**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 the Religious Worker and Conrad 30 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 passed by the House—

- **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.** Since the Senate is operating under a procedure that requires unanimous consent in order to pass H.R. 1127, if any senator emerges and voices objection, the Senate would not be able to pass the measure. At the time of this writing, no senator had emerged to voice objection to the measure, and Senate staff was working assiduously with interest groups that support it to prevent that from occurring. ☼

**Senate Could Face Immigration Amendments to Home Mortgage Restructuring Bill:** The Senate this week could take up a House-passed measure that would permit courts to reduce the principal owed for principal residences down to the current market value of the home, and to reduce interest rates or fees on the mortgage. While the House-passed measure does not contain any immigration-related provisions, it is possible that amendments that would impose immigration-related restrictions on the bill could be offered during Senate consideration of the measure. This week's Senate action, should it occur, will take place in connection with [H.R. 1106](#), the Helping Families Save Their Homes Act, which the House passed last week. Senate consideration could occur at any time after the Senate disposes of the fiscal year 2009 omnibus appropriations bill.

**Parliamentary Situation.** At the time of this, no unanimous consent agreement providing for the consideration of H.R. 1106 and amendments, thereto, had yet been reached. ◇

### ***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 bill, the House 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 this week is expected this week to sign either the fiscal year 2009 omnibus appropriations bill or another 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 resume consideration of the measure beginning on Monday, March 9, 2009. It hopes to complete consideration of the bill on Tuesday, March 10. However, it is unclear whether the Senate will make changes to the measure necessitating further action in the House.

If Congress cannot complete action on the bill before the end of the day on Wednesday, March 11, 2009, expiration date of the current 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

Two congressional committees held hearings last week at which significant immigration- or refugee-related matters were 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.

**Health Services for Immigrant Detainees:** The House Appropriations Subcommittee on Homeland Security held a hearing last week at which it examined health services for immigrant detainees. Last week's took place on Tuesday, March 3, 2009.

**Witness List.** The witness list at last week's hearing included the following:

- Dora Schriro, Special Advisor to Secretary Janet Napolitano, Department of Homeland Security;
- Jose Rodriguez, Director, Division of Immigrant Health Services, ICE, DHS;

- James T. Hayes, Jr., 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).

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

- Chairman Price. In his opening statement, House Appropriations Subcommittee on Homeland Security Committee David E. Price (D-NC) said that the purpose of the hearing was "to investigate the health care services ICE provides to individuals held in its custody at detention centers around the country and to discuss efforts that DHS will make to improve those services." He noted that "[o]ver the past several years, there have been troubling media reports about detainee deaths that appear to have been preventable had the individuals in question been given appropriate and timely medical attention." He said that "not every death is preventable or avoidable. However, the incidents of deaths among ICE detainees as well as the conditions under which some of those deaths occurred raise serious questions about the health care provided by ICE for those detainees."

Chairman Price expressed concern "that cases of preventable deaths in ICE custody may only be the most glaring examples of breakdowns in the detainee health care system." He said that "[w]hen ICE holds individuals in federal custody, it has a responsibility to treat those people fairly and humanely, and to provide access to necessary medical care when requested." He continued, saying that, "[u]nfortunately, ICE and the local and contract prisons it uses to detain illegal immigrants do not always seem able or willing to fulfill that responsibility."

Chairman Price cited several recent examples of mistreatment and poor practices by ICE, including examples of individuals who have died of late diagnosed or undiagnosed cancerous infections, even though they had repeatedly requested and been denied more comprehensive medical examinations; reports he described as "troubling" of ICE personnel in Washington, D.C., denying medical services for individuals held in detention centers around the country; failure of ICE officials to provide physical examinations of all new detainees, although ICE standards requires such exams to be completed within 14 days of intake; a lack of transferable medical records; and a policy that removes all medicines from detainees upon intake.

After sharing the examples, Chairman Price said, "[I]f anyone try to deny the problem, let me share some

statistics. Nine detainees have died in the first five months of fiscal year 2009. If deaths continue at this rate, more detainees will die in ICE custody this year than at any time since 2004." He continued, saying that "[e]leven detainees died in ICE custody in fiscal year 2008. And of the 90 detainees who have died in ICE custody since fiscal year 2004, six have died at privately owned detention centers, eight have died after being transported to a hospital or other treatment location, 22 have died at federal facilities, and 54 have died at local prisons or jails."

Price declared that "[t]his distribution of deaths suggests a problem that is both pervasive and ongoing. And while it doesn't prove causality, I think it's worth noting that at least 60 percent of the deaths occurred at local prisons and jails, even though fewer than 50 percent of detainees are held there."

Chairman Price remarked on the fact that the 2009 Appropriations Act provides \$2 million for ICE and the DHS Office of Health Affairs to hire outside experts to review the ICE medical system and to offer recommendations on how it could be improved.

Chairman Price said that the issues relating to the health care for immigrant detainees "are significant issues that literally involve matters of life and death. I'm sure that you all understand that our government has a moral obligation to ensure the well-being of those in its custody."

- Ranking Member Rogers. In his opening statement, House Appropriations Subcommittee on Homeland Security Ranking Republican Harold Rogers (R-MO) said that "ICE has a legal and moral obligation to care for the safety and well-being of all those in its custody. I think, I speak for all of us when I say that our goal should be to prevent any death. One death is too many."

Ranking Republican Rogers' opening statement minimized the problem. He expressed his appreciation of the efforts of those appearing before the Subcommittee, as well as "the thousands of ICE personnel in the field to ensure the agency lives up to the solemn duty of providing sufficient health care for all of its detainees." He stressed that "ICE is in fact performing a humanitarian mission, as it provides basic and essential medical services to its detainees, some 1.5 million since the agency was created in 2003." He said that "[i]n most of these cases, ICE is likely providing what amounts to the first real health care these individuals have been given for their entire life."

Noting his understanding that "each and every detainee is required to undergo a thorough medical screening, and for those remaining in ICE custody at least 14 days, a comprehensive physical exam, as well as additional and

specific medical treatment as indicated”, Ranking Republican Price asserted that “[t]hat’s full health care coverage at the American taxpayers’ expense and at a level of quality that far exceeds what might otherwise be available to many of these individuals, evidenced by a mortality rate that is substantially lower for ICE detainees than for U.S. prisons and jail populations, U.S. hospitals, even the general U.S. population as a whole.”

Ranking Republican Price declared that “[t]he bottom line is that providing for the safe and humane confinement of the hundreds of thousands of detainees that pass through ICE’s detention facilities each year is an unquestioned requirement and priority, a priority that is reflected by a doubling of budgetary resources over the last five years, from \$74.3 million in fiscal ’04 to a projected \$151 million in ICE’s ’09 budget -- and, I might add, a priority that this subcommittee most certainly supports.” He said that “ICE’s performance in this area has been punctuated by some unfortunate deaths and illnesses” and that he hoped “to learn more about these tragic cases, how ICE addressed these situations, and what the agency is doing to try to prevent such incidence from ever occurring again.”

**Prepared Testimony.** The following summarizes the immigration-related comments that were contained in the prepared statements of the witnesses at last week’s hearing:

- Dora Schriro. In her prepared testimony, Dora Schriro, Special Advisor to Secretary Janet Napolitano, said that ICE has an affirmative obligation to ensure appropriate medical treatment to detainees in its custody and ICE is appropriated funds to provide that care.<sup>269</sup> She said that currently, all ICE detainees, regardless of location, should expect to receive –
  1. a medical screening within 12 hours of admission;
  2. a physical exam within two weeks of detention;
  3. timely and appropriate responses to emergent medical requests; and
  4. timely medical care appropriate to the anticipated length of detention.

Ms. Schriro acknowledged that the Administration is aware that that this does not always happen.

Ms. Schriro testified that since its inception in 2003, there have been 90 detainee deaths in ICE custody including 76 of natural causes, 13 by suicide and one by accidental overdose. She said that “in several recent

instances, the medical and custodial care that those detainees received before expiring appeared to be contrary to DRO policy.”

Ms. Schriro’s prepared statement cited statistics about the number of detainees ICE has under custody, including those who are in ICE’s physical custody and those who are in contract detention facilities. She said that DRO “oversees as many as 350 facilities of which only a few are under its direct control. Its delivery of health care is shared by the Division of Immigration Health Services (DIHS) and several hundred state and local partners with which DRO maintain intergovernmental agreements.” Her statement said that “DIHS is the direct health care provider to approximately 40 percent of ICE detainees, all of whom are located at seven ICE and 16 private detention facilities. The remaining 60 percent of the detainee population receive routine health care on-site by IGSA providers.” She said that “DRO expended \$128 million through per diem payments during FY 2008 and DIHS provided medical and mental health care to the administratively detained population.” She said that “ICE plans to increase its detention capacity by 1,400 beds during FY 2009. It is also in the process of renegotiating inter-agency service agreements with the 100 largest state and local facilities with which it contracts. We all recognize more than that needs to occur.”

Noting that the FY 2009 appropriation provided \$2,000,000 to ICE to undertake a review of the medical care provided to people detained by DHS, Ms. Schriro said that “[t]his is an important opportunity for ICE to convene stakeholders and subject matter experts to build upon the body of knowledge contained in Government Accountability Office (GAO) reports, House and Senate reports, and a recent report from a working group on detainee health care that was formed last year by Secretary Chertoff to improve the scope, the services and the system of health care. I plan to actively participate.”

Ms. Schriro concluded her prepared statement by saying, “[c]learly, many concerns have been expressed within government and by the community for some time about the medical care and treatment that the ICE detainees receive and detainee deaths in custody. In my view, there is reason for concern. There is also real opportunity for measurable, sustainable improvement. In addition to work previously mentioned, I will complete my review of reports written by GAO, the DHS Office of Inspector General, and others and continue to tour facilities in every part of the country speaking with staff and detainees whenever possible and meeting with my colleagues in state and local law enforcement and non-governmental organizations in each area that I visit. Working with DRO and DIHS, we will also begin to collect data to inform budget and planning decisions that will sustain a system of health care consistent with

<sup>269</sup> [Click Here](#) to see the complete text of the prepared testimony of Dora Schriro before the House Appropriations Subcommittee on Homeland Security

medically accepted community standards of care. There will be less noise and more news. Finally, I have been asked by Secretary Napolitano to submit preliminary findings and recommendations to her shortly and I am prepared to do so. I anticipate that we will provide our findings to you shortly thereafter and it will include deliverables upon which you can count. We can make a difference, and we will.”

- Dr. Jose H. Rodriguez. In his prepared statement, Dr. Jose H. Rodriguez, Director of the Division of Immigration Health Services of the Department of Health and Human Services, said that “[t]he mission of DIHS is to protect America by providing health care and public health services in support of immigration law enforcement.” He explained that DIHS consists of U.S. Public Health Service (PHS), General Schedule (GS) employees, and contracted medical staffing services.<sup>270</sup> He said that “[t]hese health professionals exercise their independent medical judgment about all matters pertaining to a detainee’s health care and seek to ensure that everyone they see receives appropriate medical treatment consistent with accepted community standards of care.

He said that DIHS serves as the primary focal point within ICE for the planning, management, policy formation, program coordination, direction, and liaison for ICE detainee health matters. DIHS, through the USPHS medical staff, also oversees the financial authorization and payment for off-site specialty and emergency care for detainees in ICE custody.

DIHS provides health care to detained aliens in ICE facilities, including those who may encounter a medical emergency while in custody. DIHS provides health care to detainees at Service Processing Centers (SPC), Contract Detention Facilities (CDF), and certain Intergovernmental Service Agreement (IGSA) facilities.

ICE, through its National Detention Standards, requires that each detainee receive an initial medical screening, including a mental health and dental evaluation, within 12 hours of arrival into custody. Those remaining in ICE custody for at least 14 days also receive a comprehensive health assessment, which includes a detailed medical history and a complete physical examination. Many of these detainees learn of a medical ailment or receive medical care and treatment for the first time through this comprehensive screening. ICE requires that each detainee is provided specific treatment as medically indicated for both chronic illnesses and newly diagnosed conditions.

In FY2008, of the 236,906 detainee screenings, 81,352 detainees, or approximately 34 percent were identified as having chronic conditions, including hypertension, diabetes, and/or mental health issues. Some detainees suffer from multiple chronic conditions.

Each DIHS-staffed clinic has a written plan for the delivery of 24-hour emergency health care or immediate outside medical attention. All facilities have arrangements with nearby medical facilities or health care providers for health care not provided within the facility. When an ICE detainee is hospitalized, the hospital assumes medical decision-making authority, including the patient’s drug regimen, lab tests, X-rays and treatments. Appropriate custodial officers are required to transport and remain with the detainee for the duration of any off-site treatment or hospital admission.

Each DIHS clinic has a mechanism that allows detainees to request health care services provided by a physician or other qualified medical officer in a clinical setting. Detainees, including those who are illiterate or do not speak or read English, can receive assistance in filling out the request slip to access a health care provider. Each detainee who is identified with a chronic-care issue is treated and educated on self-care needs, and appropriate treatment and follow-up are coordinated while the individual is in ICE custody.

Patients are treated in accordance with nationally-recognized standards and guidelines. This care may be given on- or off-site, as appropriate for the individual patient’s clinical condition. Individuals who have acute or chronic physical health care needs are referred to a primary care provider for evaluation and medical treatment. Those found to have an infectious disease are placed in an appropriate health care setting and receive treatment for their condition. Access to health care outside DIHS facilities is available to detainees when their needed medical care cannot be provided at the onsite detention health care facility. DIHS also oversees the financial authorization and payment for off-site specialty and emergency care for all detainees in ICE custody, wherever they are housed.

The demands on DIHS to provide mental health care services for detainees continue to grow with the size of the detainee population. To address these mental health needs, the psychologists and social workers of DIHS have provided some 27,000 combined patient encounters for psychological services. Since April 2007, psychologists and social workers have provided some of the following services: psychological and psychiatric assessments and evaluations, individual psychotherapy sessions, psychiatric medication management follow-up, acute mental health hospitalizations, suicide risk assessments, and suicide watch follow-up appointments. This list is not all-inclusive and applies only to those

---

<sup>270</sup> [Click Here](#) to see the complete text of the prepared testimony of Jose H. Rodriguez before the House Appropriations Subcommittee on Homeland Security

detainees in facilities where DIHS Mental Health officers and staff are assigned. Crises intervention services, consultations to special housing unit intakes, special housing unit follow-up appointments and other services provided to detainees are not listed in the above tally. Approximately 82 percent of the services were direct patient contact. DIHS has also developed and implemented a training program for DIHS staff members on suicide prevention.

The DIHS medical staff and the Epidemiology Branch monitor tuberculosis (TB) cases to ensure continuity of care, whether the detainee is to be released from custody into the United States or returned to his or her country of origin. Between January 1, 2007 and May 31, 2008, ICE coordinated the repatriations to home countries of 156 individuals with active or suspected active tuberculosis. DIHS seeks to minimize threats to public health domestically and globally and prevent transmission of drug-resistant and multi-drug –resistant tuberculosis.

DIHS is committed to providing quality medical care to detainees. To help ensure that consistent and quality care is provided, all DIHS facilities maintain accreditation from three nationally-recognized accrediting bodies to ensure the quality of health care meets industry standards: the American Correctional Association (ACA), the National Commission on Correctional Health Care (NCCCHC), and the Joint Commission. Detainee facilities are also assessed using ICE’s National Detention Standards to ensure that adequate and appropriate medical care is provided to detainees. All DIHS health care providers are required to be licensed and credentialed under the same guidelines as those serving the U.S. Bureau of Prisons and other federal or community facilities.

DIHS continues to make improvements to ensure that consistent quality medical care is accessible to all ICE detainees. This is accomplished through regular and frequent communications with ICE DRO leadership and enhancements to existing programs. DIHS is actively participating in the Electronic Medical Record (EMR) Workgroup that is evaluating several electronic health records systems.

- James T. Hayes, Jr.<sup>271</sup> In his prepared statement, Jim Hayes, Director of ICE’s Office of Detention and Removal Operations, Immigration and Customs Enforcement (ICE), Department of Homeland Security (DHS), said that “DRO’s core mission is the arrest, detention, and removal of inadmissible and deportable aliens. In doing so, we enforce the law as enacted by Congress. Our authority to arrest and detain aliens is

contained in the Immigration and Nationality Act (Sections 236 and 241), first in 1952 and subsequently revised and expanded by Congress. In carrying out our mission, one of our highest priorities is to provide a safe, secure and humane detention environment for detainees, including providing health care to those in our custody. We take this responsibility very seriously and have created a comprehensive detainee health care program and a rigorous inspection program to that end. I am personally committed to ensuring that ICE detainees are treated humanely and receive adequate medical care for the duration of their time in custody.”

Mr. Hayes said that “DRO will work closely with the Secretary’s Special Advisor Dora Schriro to review and implement recommendations made by the Department’s Working Group on Detainee Health Care, which considered detainee health care improvements and delivered its report to former Deputy Secretary Paul Schneider on January 26, 2008. The Working Group included the Office of Health Affairs and individual external medical experts commented on its reports. Additionally, as you are aware, this Committee funded an assessment of medical care provided to ICE detainees that will be performed by the Office of Professional Responsibility, in consultation with the Department’s Office of Health Affairs. I understand the contract for that assessment will be awarded by mid-April, and we look forward to cooperating fully with the review.”

Mr. Hayes testified that “[t]he detention facilities that ICE uses can be grouped according to function and ownership. Service Processing Centers (SPCs) are owned by ICE and staffed by a combination of federal and contract employees. Contract Detention Facilities (CDFs) are owned by private companies that contract directly with the government and staffed by a combination of federal and contract employees. Intergovernmental Service Agreement facilities (IGSAs) are operated by local governments and are usually public facilities but can also be privately owned. Dedicated IGSAs are facilities with detention space reserved exclusively for ICE. Other facilities used by ICE include staging facilities for transportation, holding facilities, and hospitals for emergency care.”

He said that “[a]pproximately 67 percent of the current ICE population is in IGSA facilities, 15 percent in Contract Detention Facilities, and 10 percent in ICE-owned facilities; the remainder is housed by the Office of Refugee Resettlement, the Bureau of Prisons, or other, less restrictive detention settings. In Fiscal Year 2009, the ICE detention program is funded for 33,400 beds. Currently, ICE estimates that 442,941 detainees will spend time in ICE custody this year. The vast majority of these detainees will be in ICE’s care for approximately 30 days or less prior to their deportation.”

---

<sup>271</sup> [Click Here](#) to see the complete text of the prepared testimony of James T. Hayes, Jr., before the House Appropriations Subcommittee on Homeland Security

Hayes said that “[t]o ensure detainees receive medical treatment in accordance with community standards of care, my office partners with U.S. Public Health Service commissioned officers to provide or arrange for health care in 23 detention facilities that ICE uses, including all seven ICE-owned Service Processing Centers. The Division of Immigration Health Services (DIHS) has more than 700 doctors, nurses, and other health care professionals. During Fiscal Year 2008, ICE spent over \$128 million on detainee health care, including basic and advanced care for detainees at the above mentioned facilities as well as advanced care for detainees housed at other detention facilities.

“Since the creation of ICE in 2003, more than 1.7 million individuals have passed through ICE detention facilities. ICE currently tracks all health care provided to detainees in detention facilities staffed by DIHS and advanced care authorized for all ICE detainees through the DIHS Managed Care Program. Last summer, we began developing plans to add health records to our modernization of detainee records, with the goal of tracking all health care provided to those in ICE custody.

“The initial health screening must occur within 12 hours of a detainee’s arrival at a facility to determine each detainee’s medical, mental health, and/or dental needs. Included in this process is either a chest x-ray or skin test for tuberculosis. Immediate attention is provided to detainees who present a danger or an imminent risk to themselves or others, such as infectious diseases, uncontrolled mental health disorders, or conditions that would deteriorate if not addressed immediately by medical personnel.”

Mr. Hayes testified that “initial health screenings have proven, in some cases, to be life saving. For example, last August, a Mexican national arrested by ICE agents during a worksite enforcement operation was diagnosed during his initial health screening in ICE custody with an abdominal aortic aneurysm, a serious and potentially life-threatening condition. DIHS took immediate action and arranged for this detainee to undergo a surgical procedure that literally saved his life.”

Mr. Hayes said in his prepared statement that, “[i]n addition to the initial health care screening, ICE detainees receive a health appraisal and physical examination within 14 days of arrival to identify medical conditions that might require monitoring and treatment. Through the screening, physical exam and any other subsequent evaluations, medical staff ensure detainees receive prescription medications, consultations, and follow-up appointments for conditions. Scheduled visits include appointments made in advance for ambulatory care or specialty care clinics. Unscheduled visits are performed for emergent or urgent conditions.

“If language difficulties prevent the health provider or officer from directly communicating with a detainee for purposes of completing a medical screening or health evaluation, the officer is required to obtain translation assistance. ICE has several translation services contracts in place to meet this need.”

Mr. Hayes testified that “[a]ll ICE detainees, regardless of classification, have access to sick call. Detainees have the opportunity to request health care services provided by a physician or other qualified medical officer in a clinical setting. Procedures are in place to ensure that all requests for care are received by the health service provider in a timely manner.” He said that the sick call process “provides detainees access to non-emergency medical services, and all facilities are required to have regularly scheduled times when medical personnel will be available to see detainees who have requested service. For emergency or urgent medical services, detainees may notify any facility staff at any time that a problem occurs, and medical staff or 911 will be called immediately.”

Mr. Hayes testified that “[m]edical care provided at each detention facility also includes access to prescription medications. Prescriptions written for detainees by the health service provider are filled either by an on-site pharmacy or by a local community pharmacy.”

Mr. Hayes said that “[t]he ICE Medical Program articulates the health care services, medical products and treatment options that are available to any detainee in custody, including treatment for conditions that pose an imminent threat to life, limb, hearing or sight. Medical conditions which the local treating physician believes would cause suffering or deterioration of a detainee’s health are also assessed and evaluated through the DIHS Managed Care Program. The Program uses a network of more than 500 hospitals, 3,000 physicians, and 1,300 other health care facilities to provide a wide range of medical services available to all ICE detainees.

“Detainees who require care beyond what can be provided at their detention facility are provided those services through the Managed Care Program. Each year, DIHS handles more than 40,000 requests for outside services. The average turnaround time for a request is 2.6 days, and 98 percent of requests are approved. Relying on DIHS’ managed care network, ICE ensures that detainees get access to specialized treatment for cancer, heart conditions, diabetes, as well as a variety of general surgical procedures, including those covering appendicitis, diseases of the gall bladder, and orthopedics.”

Mr. Hayes testified that “[i]n the five months since I became the permanent DRO Director, I have reviewed our detention system, including the health care delivery system currently used. We are faced with a variety of

challenges, including: that 90 percent of our detainee population comes from 10 of the world's most underdeveloped nations and have generally not received adequate health care prior to entering ICE custody; that of the detainees medically screened by DIHS in Fiscal Year 2008, 34 percent of detainees were identified as having chronic health care problems including cases of hypertension and diabetes that were previously undiagnosed; the lack of available detention space in areas where ICE is busiest, including southern California, New England, and the mid-Atlantic region; and the rising health care costs for a detainee population in generally poor health."

With regard to detainee deaths, Mr. Hayes said that "[w]hile a single death of a detainee is a tragedy, and potentially a failure of the system, the Detainee Health Program has an overall death rate that is well below those in comparable detention or correctional settings. Although exact comparisons of mortality rates between ICE facilities and other correctional and jail settings are difficult, mortality rates at ICE facilities have significantly decreased since 2004." He said that the mortality rate for ICE detainees in 2008 was 2.7 deaths per 100,000 detainees. He said that, "[a]s the Government Accountability Office (GAO) reported, given the generally poor health of detainees who enter ICE custody, the comparatively low death rate among ICE detainees provides evidence of the extraordinary measures ICE takes to prevent the death of any ICE detainee in our care."

Mr. Hayes said that "[w]hen a death does occur, ICE reports it immediately to our Office of Professional Responsibility (OPR) and the DHS Office of the Inspector General (OIG) to determine if an investigation into the circumstances of the detainee's passing is warranted. Facilities are also required to report all deaths to the local medical examiner or coroner's office, who will conduct an autopsy if required. DIHS also conducts an independent review of some in-custody deaths based on the individual circumstances. This year, we will start reporting all deaths in ICE custody to the Department of Justice's Bureau of Justice Statistics."

Mr. Hayes concluded his prepared statement by saying that "[d]espite steady improvement and increased investment in recent years, I believe our detention management system can be strengthened further. We have recognized the need for such improvement and have taken significant steps in working toward our goal of having the safest detention management system in the United States. I look forward to working with Dr. Schriro to build upon this progress. Our comprehensive detainee health program is based on comprehensive medical care, sound management, continuous review, and process improvement. Our detention oversight procedures work to ensure a safe, secure, and humane

detention environment. ICE's detention and medical service processes are continually monitored by both internal and external experts with the ultimate goal of providing the best possible conditions of confinement and health care to those in our custody. As I mentioned at the start of my statement, the well being of our detainees is among our highest priorities and most important responsibilities."

- Alicia Puente Cackley. In her prepared statement, Alicia Puente Cackley, Director of Health Care Issues for the Government Accountability Office (GAO), testified that the average daily population of detainees in ICE custody has increased by about 40 percent in recent years, with the most growth occurring since fiscal year 2005. She said that in fiscal year 2007, ICE held over 311,000 detainees at more than 500 detention facilities. Most of these were Intergovernmental Service Agreement (IGSA) facilities--state and local jails under contract with ICE to hold detainees. Some ICE detainees received health care services from IGSA staff, IGSA contractors, or community medical providers, and other ICE detainees received health care provided or arranged by the Division of Immigration Health Services (DIHS). DIHS is mainly composed of contract employees and officers from the U.S. Public Health Service (PHS) Commissioned Corps--a uniformed service of public health professionals who are part of the Department of Health and Human Services (HHS) and who provide services in different settings, including ICE detention facilities.

Ms Cackley noted that the Government Accountability Office has just released a report on medical treatment of immigration detainees. She said that the report provides—

1. a description of ICE's organizational structure for providing health care services to detainees, which includes the GAO's review of the relevant agreements between DHS and HHS regarding DIHS;
2. information about ICE's annual spending and staffing resources devoted to the provision of health care for detainees, and the number of services provided; and
3. an assessment of whether ICE's mortality rate can be compared with the mortality rates of the Federal Bureau of Prisons (BOP) and the U.S. Marshals Service (USMS)--two entities that are responsible for holding certain persons, such as criminals.

Ms. Cackley testified that ICE's organizational structure or providing health care to detainees is not uniform across facilities. She noted that in fiscal year 2007, 21 DIHS-staffed facilities provided or arranged for health

care for about 53 percent of the average daily population of detainees, while 508 IGSA facilities provided or arranged for health care for the remaining detainees--about 47 percent of the population. Before October 1, 2007, DHS and HHS maintained annual interagency agreements through which DIHS--a component of HHS's Health Resources and Services Administration (HRSA)--provided health care for ICE detainees. As of that date, the last annual interagency agreement was terminated, and DIHS no longer is a component of HRSA. DHS officials told us that this termination--along with a 2007 Memorandum of Agreement between HHS and DHS that placed PHS officers on detail to DHS on an open-ended basis and that allowed for additional PHS officers to be detailed to DHS in the future--affected 565 direct health care providers and administrative staff. According to DHS officials, ICE now has a component known as DIHS which provides health care services to detainees."

Ms. Cackley testified that the GAO "also found that although ICE's health care data are not complete, the available data on health care spending, staffing, and services provided generally showed growth in all three areas. For instance, from fiscal year 2003 through fiscal year 2007, reported expenditures for medical claims and program operations increased by 47 percent, while the average daily population of detainees increased by about 40 percent. However, ICE facilities do not use standardized record keeping, and are not required to routinely report data to DHS on the health care services provided to detainees. Furthermore, data were not available on the detainee health expenditures that are incurred by IGSA's."

Ms. Cackley said that "ICE's mortality rate cannot be directly compared with BOP's or USMS's mortality rate. This is due to differences in the three agencies' health care goals and scopes of services, as well as to demographic differences among the ICE, BOP, and USMS detainee populations."

Ms. Cackley said that, based on the GAO's work, they have identified a number of issues that may merit further assessment in the \$2 million external study that ICE was directed to fund. These include:

1. ICE's ability to access detainee population data that measure unique individuals in ICE custody, rather than the average number of beds used;
2. Reporting relationships between DIHS and ICE;
3. IGSA reporting requirements--including the frequency of reporting on health care services provided to detainees and the format in which health records are maintained;

4. ICE's ability to routinely ensure the transfer of medical records when detainees are transferred between facilities;
5. ICE's ability to identify and report the detainee health care costs incurred by IGSA's; and
6. ICE's ability to identify and report medical claims expenditures by facility type--such as for all IGSA's.

**Q&A Session.** Numerous immigration-related questions were asked during the question-and-answer session at last week's hearing. This includes questions on

- [Adequacy of Resources](#)
- [Authorization for Medical Treatment](#)
- [Care in County Facilities](#)
- [Facilities Housing Children and Families](#)
- [Initial Health Assessments of Detainees](#)
- [Inspection of Facilities](#)
- [Mortality Rate of Immigration Detainees](#)
- [Prioritization of ICE Resources](#)
- [Timely Access to Health Care](#)
- [Training of Detention Personnel](#)
- [Tuberculosis, Malaria, and Other Infectious Diseases](#)
- [Vaccinations](#)

The following summaries the question and answer session that took place between Committee Members and the witnesses at last week's hearing:

- [Adequacy of Resources.](#) Representative Jose Serrano (D-NY) asked the witnesses if the federal government was devoting adequate resources to health services for immigration detainees.

Mr. Hayes responded that "the fact of matter is we have grown tremendously. We went from detaining just over 18,000 people on a daily basis in 2003 to where we're at 33,400 now." He said that "the enhanced health care that we are seeking to provide ... are going to be resource intensive. It will require more resources as we continue to increase this population. But, certainly, the Congress has been very generous when it comes to appropriating funds to allow us to deal with these issues."

When asked more explicitly by Ranking Republican Rogers if the Department needs more money for medical care of detainees, Mr. Hayes responded, "No, sir."

- [Authorization for Medical Treatment.](#) Chairman Price referred to the case of an individual who complained of lesions while in custody. According to Price, doctors at the facility tried unsuccessfully for ten months to get authorization for the lesions to be biopsied. After the detainee was released, he was diagnosed with cancer and

died. Chairman Price asked about reviews of such requests.

Dr. Rodriguez said that nurses review requests and approves most of them. He said that those requests that the nurses cannot approve are referred to the medical director. He said that “in the four months that I have been in the division, I haven't seen any cases that rose to that level. When pressed, he expanded on his answer, saying he didn't see how the situation that Chairman Price could have occurred. He said, as well, that “since I have been in the division, we have made sure that we respond within 72 hours and that there is no requests that are required treatment that have been denied by our division.”

- Care in County Facilities. Representative Lucile Roybal-Allard raised the case of Juana Villegas, who she said was an eight-and-a-half month pregnant Mexican detainee who went into labor on last July. Representative Roybal-Allard contended that at the hospital, she remained chained to her bed by the foot and the wrist until the final stages of her delivery, even though the nurses asked for the handcuffs to be removed. Ms. Roybal-Allard alleged that the officers refused to do that until just about the time of delivery. After which, Ms. Villegas was taken back to the county jail, where she developed infections in both breasts because officers denied her the use of a breast pump. She was also separated from her baby for two days.

Representative Roybal-Allard asked Mr. Hayes to explain how you justify this type of treatment for pregnant women and if he intended to recommend changes in policies with regard to the detention of pregnant women, by for example considering expanding the use of parole for women who do not pose a flight risk, particularly pregnant or nursing mothers?

Mr. Hayes responded that Ms. Villegas “was not in ICE custody when that occurred.” He said that “[s]he was in the custody of the county. At the time of her release from the county, we processed her and did place her on a form of alternative detention; actually, placed her out on an order of supervision.” He went on to say that “[t]he treatment, if accurate, was certainly regrettable, but it did not occur while she was in ICE.”

Representative Roybal-Allard challenged Mr. Hayes, saying that DHS had contracted with the county. She asserted that DHS doesn't ask the county facilities to adhere to any standard in the health care of detainees. She pointed to an example of a doctor working for DIHS who questioned the efficacy of the mandate that they are given and asked the witnesses to respond.

Dr. Rodriguez responded that “DIHS is the medical authority for all those matters related to detainees.

Nobody else in ICE has used the authority to circumvent our recommendation when it comes to health care for a particular detainee. So what we do, we inform them of the medical condition of the patient, the treatment that is required. And we make sure that once the decision is made to either release or deport the detainee, we provide information about where that person is to be deported or released.” When challenged by Representative Roybal-Allard on that answer, he asserted that “In the four months I've been the director, I haven't seen that situation happen. And I meet regularly with DRO's leadership and they know that they should not go against our recommendations when it comes to providing health care to our detainees.”

- Facilities Housing Children and Families. Representative Ciro D. Rodriguez (D-TX) asked about health care in facilities housing children and families.

Mr. Hayes responded that unaccompanied alien children are under the care of the Department of Homeland Security's Office of Refugee Resettlement and that ICE must turn those children over to ORR within 72 hours.

He said that the Department maintains two facilities housing families, Berks County, Pennsylvania, and Huddle facility in Texas. Of the Huddle facility, he said that “[w]e've done a tremendous amount of work in making sure that the facility in Huddle not only conforms to the standards, but really exceeds the standards in many ways, in both the amenability of medical care as well as just a family-friendly atmosphere. It is not your typical detention setting.” He continued, saying that “[w]e understand that there are certain special differences when we're talking about detaining family units, in particular, children. And we've made great strides to make sure that Huddle is as friendly and as convenient an atmosphere to be detained as is possible.”

In response to a question from Representative John Carter (R-TX), Mr. Hayes said that DHS maintains family facilities in Berks County and Hutto, in part, because of trends they saw relating to the exploitation of children. He said that providing medical services to children in detention present special challenges and additional costs because of their vulnerability to opportunistic infections. Dr. Rodriguez agreed. He said that “one of our main concerns is a mental well-being of these children. Because they may have had gone through who knows what kind of emotional trauma on their way to the United States. So that's why we have probably twice as many social workers, psychologists, and that kind of mental health personnel in that facility than anywhere else in the nation.” He went on, saying that “[w]e also want to provide them an environment that doesn't appear to be like they are in a correctional facility, if you will, because, of course, that will add to the emotional trauma that they go through.” Dr.

Rodriguez explained that “that’s why they are provided with schooling that is age appropriate, sources for them to have entertainment appropriate for their age group, and everything that probably you might expect to see in any U.S. school system.”

Dr. Rodriguez said that he has visited the Hutto facility and that he was very impressed from he saw there. He said that “it doesn’t look like you are entering a correctional facility. It looks like some kind of a private school where you have computer labs. You have all kinds of things provided to those children. And it looks like a family-type setting, not a correctional facility.” He continued, saying that DIHS believes it is important that “they can move away from whatever experience they had, especially, emotionally, and carry on with their lives in a healthier way.”

In response to a specific question from Representative Carter about the personnel and practices used for screening children at Hutto, Dr. Rodriguez said that personnel used are trained nurses or nurse’s aides and that “we have developed a special screening tool for mental health problems that we really haven’t used in any other facility because we believe that that kind of a facility requires a higher level of screening to make sure that the family as a whole is healthy enough -- and if they’re not healthy enough that they can receive the health care that they require as a family unit.”

- Inspection of Facilities. Representative Lucile Roybal-Allard noted that facilities get 30-days notice of an ICE inspection of their facilities and speculated that a lot of clean-up can occur during a 30 day period. She asked if ICE should be doing drop-by inspections with little or no notice.

Mr. Hayes responded by saying, “I completely agree. I think that’s one of the best ways that you can really get a true feel for what’s going on at a facility is when they don’t have time to prepare. And that’s one of the things that our detention facilities inspection group will do. Whether I request it or the assistant secretary can request it, they will do unannounced inspections.” He went on to say that “one of the reasons why I directed that all deficiencies be immediately reported to me is because I wasn’t satisfied with 30-day notice either. I want to know immediately about the efficiencies to determine if there is more immediate action that should be taken, as in past inspections there could have been.

- Initial Health Assessments of Detainees. Chairman Price asked what happens to an immigrant detainee in the first 12 hours.

Mr. Hayes responded that “[w]ithin 12 hours of booking into an ICE facility, they receive an initial intake screening, which will be a visual observation as well as

documentation of their medical history, being asked questions related to any pain or suffering that they may be currently undergoing. They’ll be asked if they are currently taking any medication, things of that nature.” Mr. Hayes said detainees also receive a dental evaluation and screening for tuberculosis, either by doing a skin test or by having X-rays, which is what happens in most facilities. He said that female detainees between ages of 10 and 55 receive a pregnancy test also.

Dr. Rodriguez agreed with Mr. Hayes, saying that detainees undergo an initial screening consisting of simple medical questions that address issues about past medical history, medications, anything that is medically related. It does not involve at that time a medical hands-on examination. It’s just based on a series of questions.

In response to questioning by Representative Sam Farr (D-CA), Mr. Hayes and Dr. Rodriguez said that the initial screenings are performed by persons other than doctors and that physical exams come sometime within 14 days of the initial intake but that, “certainly where more serious conditions are noted in the initial intake, then that would prompt more immediate action depending on the type of condition ... “

Ranking Republican Rogers commented that 90 percent of immigration detainees come from the 10 least developed countries in the world. He asked if that fact meant that detainees come to the U.S. with higher instances of health problems, whether the initial screenings that detainees get save lives, and if in many instances, these initial examinations are the first examinations that the detainees have received in their lives.

Dr. Rodriguez agreed with those assertions and said that “[w]e have found conditions that if not treatable within weeks or months from the diagnosis, they would have died.” He said that “most of these have had no type of medical care in their lives, not even going to a doctor, clinic -- outpatient clinic. So we are sometimes the first time they see a physician who will do examination on them.”

Dr. Rodriguez responded further to Ranking Republican Rogers, agreeing with him that serious medical conditions are often uncovered and life-saving treatment has often ensued because of initial examinations.

When pressed by Ranking Republican Rogers, he estimated that 75 percent of the detainees get the first medical examination of their lives while in ICE custody.

Representative Nita Lowey (D-NY) pressed the witnesses on medical services for detainees between their initial screening and the end of the 14-day period by which they are supposed to have a head-to-toe medical

examination. She asked, specifically, whether waiting 14 days for a medical examination was adequate to prevent the spread of infectious disease.

Dr. Rodriguez responded that “if we were to test for any possible infectious disease that there is, we would have to do a whole battery of blood tests. I don't think, not even in the civilian sector or in the community, is done on a regular basis on anybody.”

Representative Sam Farr (D-CA) asked about translation services available for immigrant detainees during the initial health screenings that they receive.

Mr. Hayes responded that there are either officers available who are native speakers in the detainee's language or they use translation services through private contractors.

Representative Farr asked whether there was uniformity of standards across all facilities that detain aliens for initial health assessments of detainees.

Dr. Rodriguez replied that the standard is that all detainees receive a screening within 12 hours and a physical exam within 14 days.

When pressed by Representative Farr on the question of whether that standard is met, Dr. Rodriguez replied, that's our policy, but they have been found deficient, at times. When problems occur, they go to the facility and ask the facility to correct the situation.

When pressed further, Dr. Rodriguez replied that “the problem is that some of these facilities are only required to comply with state standards. And that can vary from one state to the next. And the only thing that we expect them to be consistent with will be the intake screening and the 14 day physical.”

- Mortality Rate of Immigration Detainees. Ranking Republican Rogers asserted that the mortality rate of immigration detainees in 2008 was 2.7 deaths per 100,000 detainees. Using information supplied by ICE, Representative Rogers asserted that the mortality rate has decreased from 10.8 per 100,000 in 2004, down to 2.7 in 2008. He also asserted that ICE health care spending has increased from \$74 million in '04 to \$151 million in '09.

He asked how ICE's mortality rate compares to other relevant mortality rates.

Mr. Hayes responded that “GAO recognized in their report that our mortality rate was lower than other prison populations. However, one of the factors that makes it difficult to compare is the fact that we've been talking about for the last couple of minutes, which is our population is generally in poor health, certainly than the

prison population -- of other prison populations in the United States.”

Representative Ken Calvert (R-CA) amplified on the theme of Representative Rogers, that ICE's mortality rate was actually very small. He asked Ms. Schriro how ICE's mortality rate compared to that of the Missouri and Arizona prison systems, which she once managed.

Ms. Schriro responded that ICE's rate is “appreciably small.”

Representative Jose Serrano (D-NY) and Chairman Price challenged the contention that the mortality rate for ICE detainees can be compared to the mortality rate in federal and state prisons, saying that the length of detention and other factors make direct comparisons invalid. Ms. Cackley of GAO agreed with that assertion and said that “you need to do a statistical calculation to compare them accurately.”

Representative Rogers followed up on his question, citing statistics that there have been “only” 90 deaths out of 1.7 million detainees in recent years. He asked, rhetorically, “to me that's remarkable. I don't know what we're complaining of here. In fact, I think we ought to be complimenting you for this tremendous reduction.”

- Prioritization of ICE Resources. Representative Sam Farr (D-CA) complained about what he perceived was a lack of prioritization of ICE resources, complaining that it seems to go after dishwashers and others who are not committing crimes and not fugitives and criminals.

Mr. Hayes responded by touting what he claimed was ICE's success in identifying and arresting fugitives and criminals. He said that the “last year we made approximately 34,000 arrests in the fugitive operations program. This year we anticipate that that percentage will be higher.” He went on to assert that “[a] great deal of the people who are going to come through our custody, however, will come into our custody through our work in the Criminal Alien Program.” He continued, saying that “[w]e have greatly, through the generosity and determination of Congress, been able to expand that program from, where in fiscal 2006 we identified 64,000 illegal aliens or individuals who are in violation of immigration law in U.S. jails and prisons to over 260,000 last year identified individuals in U.S. jails and prisons who are either in the country illegally or subject to removal proceeding, that is.”

Mr. Hayes said that “[w]ithin our enforcement platform, the highest priority that we have is to identify those criminal aliens who are in U.S. jails and prisons. Additionally, we believe that for some of those individuals a deportation has not proven an effective enough to turn and so we began a program in fiscal 2006

to target the most egregious recidivist criminal aliens, those individuals who come to the United States, commit crimes, get deported and come back again. And starting from zero in fiscal 2006 we secured 3,000 convictions last year for those types of individuals, and we expect that that number will grow higher this year. So, I hope that gives you some comfort in the fact that we are targeting the worst of the worst, people who are demonstrated public safety threats.”

- Timely Access to Health Care. Chairman Price cited the case of a detainee in Virginia who complained of sharp pains but did not receive treatment for more than a week and who later died as a result. He asked the witnesses what kind of medical standards or requirements are imposed on the different categories of facilities? Are all facilities required to have doctors or nurses on staff at the facility? If not, what kind of arrangements are they required to have? What kind of standards are they supposed to observe for a timely medical attention? He also asked if ICE routinely measures the amount of time its detainees have to wait for medical care, so that can be some indication of whether the standards are being met and if ICE maintains separate statistics for different classes of facilities?

Mr. Hayes responded that “[a]ll facilities are required to have a medical authority that governs the care that’s provided in that facility. They’re also required to have plans in place to provide routine care, day-to-day care, emergency care.” He continued, saying that “[o]ne of the things that we began doing just a few months ago, in consultation and together with DIHS, is reviewing weekly cases that we believe are involving individuals who are faced with significant medical conditions. It’s our first step toward building a real medical risk classification system.”

Mr. Hayes said that “[o]ne of the challenges that goes to a number of your points that we face has to do with our ability to collect data to -- data management information systems that we’re actively working to improve. That’s the whole point behind the electronic health record system is to be able to capture information related to the delivery of health care to every detainee who comes into our custody, regardless of what type of facility it is, whether it’s an intergovernmental service agreement facility, a contract detention facility or one of our own facilities. And so, the goal where we want to get to is where every detainee that comes in and receives these screenings is classified based on risk, and therefore once we identify detainees with a particular risk, we can move them, if need be, to a different facility in a location or with a community around them that can provide a better standard of care.”

Mr. Hayes said that facilities that house detainees are not required to have medical personnel on premises but are

required “to be in a position to provide health care.” He said that “we are actively reviewing all of the IGSA contracts that we currently have to make them much stronger for the health and the care of our detainees.”

Dr. Rodriguez said that “all the care that cannot be provided on site by the IGSA or a DIHS facility goes through a process called a TAR request, which means treatment authorization request. He said that, depending on the request, it could be approved automatically. If it is not, then the request is reviewed by a medical director who either approves or disapproves of the request based on medical necessity.

He said that they approve 98 percent of the TAR requests and that most that are disapproved are disapproved “based only on lack of information to make a determination or because of the request is for what we consider to be non-medical or elective care.” He went on to say that DIHS has no accurate measurement of the amount of time it takes for detainees to get medical care.

Pointing to a Washington Post article that reported that one facility in Texas has a backlog of 2097 medical appointments, Representative Nita Lowey (D-NY) asked the witnesses about the nature of backlogs of medical appointments.

Her question was not answered.

- Training of Detention Personnel. Representative Jose Serrano (D-NY) asked whether detention personnel were receiving adequate training to detect health problems.

Mr. Hayes responded that “I don’t want to have lay people trying to diagnose certain things. I don’t want our detention enforcement officers to have to feel like they have to diagnose things or make medical determinations. And we’re exploring ways that we can make it much easier for detainees to have immediate, direct contact with trained health professionals, or at the very least department personnel, to immediately signal that they have some type of problem that they feel isn’t being taking care of or appropriately addressed.”

- Tuberculosis, Malaria, and Other Infectious Diseases. Representative Ken Calvert (R-CA) asked about instances of tuberculosis among immigrant detainees.

Dr. Rodriguez responded that “[o]ur epidemiologic unit has contacts with the CDC. And also they have a network of treatment centers in different countries to which detainees might be deported to, to ensure that they have continuum of care and that they can continue the treatment that has been started in the U.S.

He said that the agency tries “to get as much information as possible [about contacts that TB-infected detainees

have had with American communities] despite the fact that sometimes the detainees might not be forthcoming in telling us where they've been, sometimes because they don't want to expose other friends or family members to detention."

In response to further questioning from Calvert, he said that he had no information that tuberculosis is now resurging back into the general population of the United States, especially in the Southwest, because of immigrants.

He also said he had no knowledge in a surge of malaria or other infectious diseases within the United States because of immigrants.

Representative Nita Lowey (D-NY) asked what happens to a detainee who is suspected of having an infectious disease.

Dr. Rodriguez said that, with respect to tuberculosis, "[w]e have, in our facilities, negative pressure isolation rooms, where we used to segregate those patients from the rest of the population to prevent any potential spread of tuberculosis to other detainees. And they are put there even if we just suspect that they have that illness, even before we can prove, by either a chest X-ray or a sputum culture, that they do have tuberculosis." He said that "we try to be very proactive and aggressive in trying to separate them from the rest of the population, until we can determine that they actually do not have a contagious form of tuberculosis."

- **Vaccinations.** Representative Ken Calvert (R-CA) asked if ICE provided vaccinations to detainees.

Dr. Rodriguez responded, no. He said vaccinations are usually provided as part of a continuing protocol and that a single shot wasn't usually effective. ☀

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

**Law:** The House Committee on Homeland Security held a hearing last week at which it examined state and local enforcement of immigration law. Last week's hearing occurred on Wednesday, March 4, 2009.

**Witness List.** The witness list at last week's hearing included the following:

- 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);
- J. Thomas Manger, Chairman of the Legislative Committee for the Major Cities Chiefs Association and

Chief of Police the Montgomery County, Maryland Police Department;

- Charles A. Jenkins, , Frederick County, Maryland Sheriff and
- Muzaffar Chishti, Director, New York Office, Migration Policy Institute.

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

- **Chairman Thompson.** In his opening statement, House Committee on Homeland Security Chairman Bennie Thompson (D-MS) said that, "[a]ccording to Immigration and Customs Enforcement, the main goal of the [287(g)] program is to increase the safety and security of our communities by apprehending and removing undocumented criminal aliens who are involved in violent and serious crimes. According to ICE, the local sheriffs, police officers, would work with ICE to identify, locate and apprehend these dangerous people. The 287(g) program, as intended, would achieve two parallel goals. Number one, participating jurisdictions would have dangerous people removed from their communities. And number two, the federal government would have a force multiplier to enhance efforts to remove dangerous aliens from the country." Chairman Thompson continued, saying that, "[i]n theory, it seems like a good idea and a good deal for everyone involved. ... Participation has grown from 29 programs in 2006 in 13 states to 67 programs in 23 states today. There is even a waiting list to join. Forty-two state and local law jurisdictions are on the waiting list. As the popularity of this program has grown, so has funding. In the last three years, the 287(g) program's budget has increased from \$5 million to nearly \$60 million.

"Like everyone else, I applaud the growth of successful programs. But the record is incomplete, at best, as to whether or not this program is a success. For instance, in 2008, it was credited with resulting in the removal of 29,000 people. Its budget for fiscal year 2008 was just under \$40 million. To determine whether that was a prudent way to spend the taxpayer's money we would need to know whether the people removed were dangerous aliens. Unfortunately, we do not know the critical piece of information.

"We cannot answer this basic question because, as we will hear from the Government Accountability Office, ICE does not require that specific data be collected, does not require that specific information be reported and does not have any performance measures. Without objective data, we cannot evaluate the effectiveness of this program nor can we determine whether better results

could be achieved by other means such as increasing the number of ICE agents.

“While I do not know whether 287(g) is an effective program, I do know that it is a program that has been accused of racial profiling. And that accusation should concern all of us. Effective law enforcement and discrimination cannot coexist. Our communities must be safe and our nation must be secure. We will only achieve that goal by making sure that our efforts are strategic and tailored. Popularity cannot be a replacement for documented performance and constitutional principles.”

- **Representative Souder.** In his statement, Representative Mark Souder (R-IN), who was sitting in for Committee Ranking Republican Peter King (R-NY), called the 287(g) program “a cornerstone Department of Homeland Security law enforcement information sharing program. He said there “are clear benefits for the jurisdictions who volunteer for this program. They get access to immigration status information, a direct link to ICE to identify and remove aliens in the custody of local law enforcement, deterrent for aliens to commit crimes and engage in gang activity in the community, the ability to remove aliens from jail, saving space and money.”

Souder said that under the 287(g) program, “officers undergo federally sponsored training, receive equipment and most importantly have access to information.” This, he contended, “allows them to accurately check the immigration status of the aliens they encounter during their day-to-day activity such as arresting an individual for narcotics violations, driving without a license or drunk driving, investigating a violent crime or booking an individual into a correctional facility. All of these things are in fact crimes in addition to the illegal status.”

Souder went on to contend that “ICE depends on data provided by local law enforcement. Illegal immigration investigations are similar to counter-narcotics in that a significant amount of data is necessary to connect the dots and find systems of smuggling. For the entire nation as well as for foreign assignments, ICE has 6,000 agents and 6,000 detention and removal officers. ICE resources are stretched thin. For ICE to tackle the large smuggling networks, they rely on partnerships with state and local law enforcement and correctional facilities -- by the way, just like we do in narcotics.”

Souder complained that his “biggest frustration is that ICE, under both Republican and Democratic administrations, has not done enough to support the program.”

**Prepared Testimony.** The following summarizes the immigration-related comments that were contained in the prepared statements of the witnesses at last week’s hearing:

- **Muzaffar Chishti.** In his prepared statement, Muzaffar Chishti, Director of the New York Office of the Migration Policy Institute at New York School of Law, said that the 287(g) program was initially conceived with a narrow mandate but that it has grown exponentially in recent years and its mission has been dramatically transformed during that time.

Mr. Chishti warned about three problems that he saw with 287(g) programs: excessive cost, negative community impacts, and negative impacts on community policing.

With regard to costs, Mr. Chishti estimated that the first year of the 67program that currently are in place is probably \$1.1 BILLION and questioned whether that was an efficient use of resources.

With regard to community impact, Mr. Chishti said that, “[g]iven the complexity of immigration law and the apparent paucity of supervision and training offered to agents under the current 287(g) program, harmful errors and even racially motivated law enforcement tactics may be inevitable. Whereas regular ICE agents receive five months of training in the intricacies of immigration law, 287(g) officers receive four weeks of ICE training. Furthermore, because immigration enforcement is not the primary job of local law enforcement agents, they do not accumulate the experience and expertise of ICE agents. Noting that immigration law is intricate, voluminous and distinct, the International Association of Chiefs of Police (IACP) has expressed concern that local law enforcement agents acting under 287(g) agreements will violate the unique standards and constitutional requirements surrounding immigration enforcement: “What constitutes ‘probable cause’ in immigration matters may not be easy to discern.” Indeed, evidence shows that 287(g)-authorized officers purporting to enforce immigration law have illegally detained and even deported U.S. citizens.”

With regard to community policing, Mr. Chishti asserted that “the core functions of law enforcement officers are to protect the public and keep communities safe. By deputizing state and local law enforcement officials to enforce civil immigration law, the 287(g) program may detract from officers’ ability to fulfill their core mission in addition to diverting scarce local law enforcement resources to general immigration enforcement.” He said that “[i]n 2005, an IACP representative testified before this Committee that local enforcement of civil immigration laws “would likely have a chilling effect on both legal and illegal aliens reporting criminal activity or assisting police in criminal investigations” and could thereby “diminish the ability of law enforcement agencies to effectively police their communities and protect the public they serve.”<sup>29</sup> IACP and the Major Cities Chiefs (MCC) both have publicly expressed

concern that 287(g) agreements weaken their capacity to police their communities.”

Mr. Chishti contended in his testimony that “[f]ear and distrust of law enforcement agencies have broad reverberations. Immigrant victims of crime are less likely to seek police assistance and therefore more vulnerable. Immigrant women facing domestic violence may not report or seek protection from abuse out of fear that they, their partners or their relatives will be deported. Likewise, witnesses to street crime and violence may not come forth with valuable evidence and testimony. With respect to national security and counterterrorism, DHS has long emphasized the necessity for all individuals to report information and intelligence to law enforcement agencies. The underlying message is clear: building safe communities requires that all residents feel safe turning to and cooperating with law enforcement.”

Mr. Chishti went on to contend that “failure to abide by strict priorities in immigration enforcement inevitably blurs the distinction between immigrants who are unlawfully present and those convicted of violent crimes.” He contended in his testimony that “[t]he 287(g) agreements, as they have been applied, potentially collapse the important distinction between civil immigration violations and criminal offenses by affecting all individuals, citizen or non-citizen, suspected of being unauthorized immigrants. In so doing, these agreements send a message to the public that immigrants are criminals thus, reinforcing harmful stereotypes.”

Mr. Chishti asserted that the 287(g) program suffers from a lack of guidance regarding immigration enforcement functions, inadequate supervision, and inadequate accountability measures.

In conclusion, Mr. Chishti recommended that—

1. Expansion of the program should be put on hold to permit a thorough review and potential redesign. Congress or DHS should impose a moratorium on new 287(g) agreements while a broad, in- depth, empirically based study is undertaken to evaluate cost effectiveness and community impact.
2. The Committee should hold field hearings on the 287(g) program. I would encourage the Committee to consider today’s hearing a starting point to further examination of the program by holding field hearings in communities that have MOAs as well as those that have chosen not to pursue an agreement.
3. If Congress chooses to continue the 287(g) program, it should enumerate specific and meaningful programmatic objectives with clear reporting requirements. The program would benefit from coherent, transparent objectives that fit logically into

the overall DHS enforcement priorities. With respect to its fugitive operations, ICE has set forth priority categories in which individuals posing a threat to national security are specifically identified as most important. ICE should adopt a similar set of publicly articulated priorities for 287(g) operations. Local law enforcement agencies should be required to regularly report arrest data, with specific indication of the individuals’ priority levels. As part of that process, 287(g)-authorized agencies should also record and report the violation for which each individual was arrested as well as the individual’s race and country of origin.

4. If the 287(g) program is continued, the Committee should examine whether it should be confined to the jailhouse model and whether only those convicted of serious crimes should be screened for civil immigration violations.
  5. All existing agreements should be reviewed to determine how well they advance federal objectives, how efficaciously they allocate resources, and whether they are sufficiently cost- effective. Agreements that do not advance DHS’ objectives or suffer from other problems of management or oversight should be modified or terminated.
  6. Congress should make clear any law enforcement agency that consistently exceeds its authority shall have its MOA terminated. All MOAs should also undergo a mandatory, periodic review to monitor compliance.
  7. The basic MOA itself should ensure sufficient training and supervision by ICE and include clear reporting and accountability measures. Moreover, processes should be included that require law enforcement agencies to seek the input of affected communities.
- Charles A. Jenkins. In his prepared statement, Frederick County, Maryland Sheriff Charles A. Jenkins said that his county “has been identified as one of the top five counties in the United States in terms of seeing increases of immigrants moving into the community, a significant number here illegally.” He said that he initially sought entry into the 287(g) program for two reasons:
    1. “the identification of individuals encountered through arrests and investigations, which may be a potential terrorist threat inside of our borders”; and
    2. “the enormous increase in crime throughout the United States, to include this region which can be tied directly to the unchecked flow of illegal immigrants through our southern borders with Mexico. Federal, state, and local law enforcement

agencies across the country know and have attributed much of the increase in violent crime and drug trafficking to the rapid growth of trans-national gangs and organized crime tied to drug cartels outside of our borders.”

Sheriff Jenkins asserted that the 287(g) program had greatly benefited his county. He said that “[s]ince April 11, 2008, the following statistics on arrest reflect the effectiveness and significance of the 287g Program in Frederick County, Maryland:

1. Frederick County has lodged detainers on 337 arrestees identified through the program as being in the U.S. illegally, with 309 of those placed into removal proceedings.
2. The program has allowed us to identify and place into removal proceedings 9 members of the notoriously violent gangs MS-13 and 18th Street, originally out of El Salvador, now thriving across the U.S. Also, among those arrested and identified were a Nicaraguan military trained sniper and a Salvadorian guerilla fighter trained in knife fighting.
3. Some of the most serious offenses in which criminal aliens have been arrested as offenders and identified include: Attempted 2nd Degree Murder, 2nd Degree Rape, Armed Robbery, 1st Degree Assault, Child Abuse, Burglary, and Possessing Counterfeit U.S. Currency.
4. Over the past two years, all of the largest (multi-kilo) narcotics investigations and seizures by our Frederick County Narcotics Task Force, for both cocaine and marijuana, have involved the arrests of illegal criminal aliens and the trafficking of those illegal drugs in Frederick County. Several cases have involved drugs being trafficked directly from the southern Border States.

Sheriff Jenkins contended that the 287(g) program was enormously popular in his county. He said that some detractors have accused the county of racial profiling and discrimination, but that those accusations are untrue. He said that claims that the costs to the county in running the program also have been untrue.

He contended that there have been no complaints of discrimination or profiling based on ethnicity since implementation of the program, and the program has not harmed the police’s relationship with the immigrant community or increased distrust of law enforcement.

- **J. Thomas Manger**. In his prepared statement, J. Thomas Manger, Chairman of the Legislative Committee for the Major Cities Chiefs Association and Chief of Police the Montgomery County, Maryland Police Department, said

that while the Association is not critical of agencies that participate in 287(g) programs, “[t]he overwhelming majority of major city police agencies have elected not to participate in 287(g) training. In fact, the last figures I’ve seen indicate that over 95% of police and sheriffs’ departments in the U.S. have elected not to participate in the 287(g) training.”

Mr. Manger said that the nation’s largest police agencies have declined to participate in the 287(g) program for several reasons—

“First, it undermines the trust and cooperation with immigrant communities that are essential elements of community policing. We need to have strong policies that take into full account the realities of local law enforcement. One of those realities is that public safety increases when people have trust and confidence in their police department. Consequently, unreported crime goes down. Another reality is that immigrants both documented and undocumented are more likely to be victims of crimes than are U.S. citizens. Delivering fair and consistent police service to all crime victims has to be a priority.

“A second reason that most jurisdictions are not taking the 287(g) training is that local agencies do not possess adequate resources to enforce these laws in addition to the added responsibility of Homeland Security. Enforcing federal law is an unfunded mandate that most agencies jut cannot afford to do.

“Third, immigration laws are very complex and the training required to understand them would significantly detract from the core mission of the local police to create safe communities.”

Mr. Manger concluded his prepared testimony by asserting that “[p]rior to a few years ago, enforcing immigration law was solely a federal responsibility. It was a specialty like the IRS and tax law. If the federal government comes to the conclusion some day that too many people are tax evaders, will the solution be to authorize local police to enforce tax laws? It is contrary to our mission.” He continued, saying that “working cooperatively with our federal partners is essential for public safety. Using the IRS again as an example, when we make a case against an individual as a major narcotics distributor, notifying and working closely with the IRS is the effective thing to do.” He said that “[i]n the same way, working closely with ICE on human-traffic cases, gang investigations, and fraudulent-document cases is a proven crime-fighting technique.”

Mr. Manger asserted that “[t]he bottom line is this: local law enforcement needs to work closely and effectively with ICE . . . but we cannot do their job for them.” He said that “[t]he Major Cities Chiefs have sent a clear and

consistent message to each attorney general for the past eight years:

1. securing our borders must be a top propriety
2. remove the civil-immigration detainees from the NCIC data base.

In August 2003, Attorney General John Ashcroft put these civil warrants in a national database that had previously been for criminal warrants. Our current Attorney General can remedy this with the stroke of a pen.

3. Consulting and involving local police agencies when developing any immigration initiative is imperative if the initiative is to involve local law enforcement.”

- Richard M. Stana. In his prepared statement, Richard M. Stana, Director of the Homeland Security and Justice division of the Government Accountability Office, spoke to the Committee about a January 30, 2009, report issued by the GAO on the 287(g) program.

In his statement, he asserted that ICE Lacks Key Internal Controls for Implementation of the 287(g) Program. He said, further, that “ICE and state and local participating agencies cite a range of benefits associated with the 287(g) partnership. For example, as of February 2009, ICE reported enrolling 67 agencies and training 951 state and local law enforcement officers. At that time, ICE had 42 additional requests for participation in the 287(g) program, and 6 of the 42 have been approved pending approval of an MOA.

Mr. Stana said that “[a]ccording to data provided by ICE for 25 of the 29 program participants we reviewed, during fiscal year 2008, about 43,000 aliens had been arrested pursuant to the program. Based on the data provided, individual agency participant results ranged from about 13,000 arrests in one location, to no arrests in two locations. Of those 43,000 aliens arrested pursuant to the 287(g) authority, ICE detained about 34,000, placed about 14,000 of those detained (41 percent) in removal proceedings, and arranged for about 15,000 of those detained (44 percent) to be voluntarily removed. The remaining 5,000 (15 percent) arrested aliens detained by ICE were either given a humanitarian release, sent to a federal or state prison to serve a sentence for a felony offense, or not taken into ICE custody given the minor nature of the underlying offense and limited availability of the federal government’s detention space.”

Mr. Stana testified that “[p]articipating agencies cited benefits of the program including a reduction in crime and the removal of repeat offenders. However, more than half of the 29 state and local law enforcement agencies we reviewed reported concerns community

members expressed about the 287(g) program, including concerns that law enforcement officers in the 287(g) program would be deporting removable aliens pursuant to minor traffic violations (e.g., speeding) and concerns about racial profiling.

Mr. Stana cited several recommendations that the GAO made in its report that it thought would strengthen internal controls for the 287(g) program to help ensure the program operates as intended. Specifically, the GAO recommended that ICE

1. document the objective of the 287(g) program for participants,
2. clarify when the 287(g) authority is authorized for use by state and local law enforcement officers,
3. document the nature and extent of supervisory activities ICE officers are expected to carry out as part of their responsibilities in overseeing the implementation of the 287(g) program,
4. specify the program information or data that each agency is expected to collect regarding their implementation of the 287(g) program and how this information is to be reported, and
5. establish a plan, including a time frame, for the development of performance measures for the 287(g) program. DHS concurred with each of our recommendations and reported plans and steps taken to address them.

- William F. Riley. In his prepared statement, William F. Riley, Acting Executive Director of ICE’s Office of State and Local Coordination, said that “many benefits have been realized by the agencies participating in the 287(g) Program. Program participants reported to GAO a reduction in crime, the removal of repeat offenders and other safety benefits. The cost savings associated with crime reduction are not being easily quantified, but there has undoubtedly been a positive impact on many communities.”

Mr. Riley said that he is “proud of the partnerships ICE has formed with 287(g) trained State and local law enforcement officers. These partnerships are essential to ICE carrying out its mission of deterring criminal alien activity and threats to national security and public safety throughout the United States.” He said that “[w]hile ICE has expanded the 287(g) Program rapidly and its internal management controls can be improved, I believe that we have a strong framework in place to effectuate improvements, and I look forward to the challenges that lay ahead.”

In commenting on a recent GAO report that found that better controls were needed over the 287(g) program, Mr. Riley said that “soon after her confirmation as Secretary of Homeland Security, Secretary Napolitano issued a wide-ranging action directive on immigration and border security. The directive requires specific Department offices and components to work together and with State and local partners to review and assess current plans and policies in this area.” He continued, saying that “Secretary Napolitano is looking for metrics of success, gaps in service and resources, partnerships with State and local governments and other federal agencies as well as other suggestions for reforms, restructuring and consolidation where needed. Included in that directive is a review of the current 287(g) Program. With that in mind and in response to the GAO recommendations, ICE has begun the process of redrafting the template that is used to form 287(g) agreements. Once redrafted, the template will be submitted to DHS headquarters for comment and approval. Upon being approved, this template will incorporate many of the recommendations made by GAO.”

Mr. Riley said that at least six features will be incorporated into future memoranda of agreement with state and local agencies participating in the 287(g) program:

1. The MOAs will include the nature and extent of supervisory activities ICE officers are expected to carry out as part of their responsibilities in overseeing the implementation of the 287(g) Program;
2. Communicating that information to both ICE officers and State and local participating agencies;
3. The MOAs will outline how and under what circumstances 287(g) authority is to be used by State and local law enforcement officers in participating agencies;
4. Also incorporated in each MOA are ICE’s detention priorities. These priorities ensure that ICE’s finite detention space is used to detain the aliens who pose the greatest risk to the public. Specifically, the following list reflects the categories of aliens that are a priority for detention, with the highest priority being Level 1 criminal aliens.
5. “Sunset” dates will be incorporated into all MOAs to ensure regular review and modification as needed; and
6. ICE will also specify the program information or data that each agency is expected to collect

regarding their implementation of the 287(g) Program and how this information is to be reported.

**Q&A Session.** Numerous immigration-related questions were asked during the question-and-answer session at last week’s hearing. This includes questions on

- [Backlog in 287\(g\) Enrollments](#)
- [Controversy Over the Program](#)
- [Enforcement When No 287\(g\) Agreement Exists](#)
- [Measurement of Success](#)
- [Oversight and Supervision](#)
- [Profit from the 287\(g\) Program](#)
- [Racial Profiling](#)
- [Termination of Programs](#)

The following summaries the question and answer session that took place between Committee Members and the witnesses at last week’s hearing:

- [Backlog in 287\(g\) Enrollments.](#) Representative Pete Olson (R-TX) asked whether funding was the reason for the current backlog in 287(g) enrollments.

Mr. Riley responded no. He said that “we currently have approximately 42 requests pending. The slow process of reviewing the agreements -- the reason why there has been a significant delay in the past year is that we were looking at enhancing the program, looking at, you know, working with GAO in their audit and also internally had been working on additional measures to enhance the program, building performance measures and identifying those agreements where we feel that ICE’s priority is the best. So going back to the program only really having expanded dramatically in the past two years, it is a growing process, and that’s why we do have a backlog. But we haven’t really seen much of a reduction. There’s been a slight reduction in the number of requests, but we still have quite a few pending.”

- [Controversy Over the Program.](#) Representative Mike Rogers (R-AL) took issue with a statement made by GAO’s Richard Stana that the 287(g) program “is a controversial and even a polarizing program.” Saying that it isn’t controversial in his world, he asked Mr. Stana to explain his statement.

Mr. Stana said in response, “[o]f the 29 jurisdictions we looked at in detail that were in place as of October 1st, 2007, about half of them made that observation that the Hispanic communities in their jurisdictions were a little wary of the program. Now, some tried to overcome that wariness with public outreach, like the chief mentioned, trying to put some transparency to the program. Others -- we found one jurisdiction that found a woman who passed a bad check, found out her status, and she was out of status. Rather than deport her, they

told her that that crime didn't rise to the level they were really looking at in this program, sent her back to the community with the message that we're after people who are serious criminals, so tell your friends and associates that it's OK to report crimes to us; you're not in danger if you're not a serious criminal. So I think it is not disagreeing with you. It's a matter of how the program's being implemented and to what end."

- Enforcement When No 287(g) Agreement Exists. Representative Shelia Jackson Lee (D-TX) asked Chief Manger how he deals with immigration violators in the absence of a 287(g) agreement.

Chief Manger said that when they arrest someone, they run a warrant check and serve any warrants pending against the person. Moreover, he said that when they determine that a person they have arrested is foreign-born, they send that information to ICE. But that they don't seek to enforce immigration law, themselves.

Chief Manger agreed with Mrs. Jackson Lee that it is important that immigrant communities not feel intimidated to the point where they won't report crimes that they are the victims of or witnesses to.

- Measurement of Success. Noting that the GAO has said that ICE has had no performance measures or program goals for the 287(g) program, Chairman Thompson asked Mr. Riley how we can measure whether or not the 287(g) program is a success or a failure.

Mr. Riley agreed with the GAO assessment and a strategic plan that currently is being drafted will contain baseline performance measures. Moreover, he said that "Secretary Napolitano on January 30th issued an action directive to ICE specifically for a full review of the 287(g) program, and part of that program is for us to start getting performance measures by which we can judge the success of all the agreements that we have in place."

In response to a more pointed question from Representative Henry Cuellar (D-TX), Mr. Riley said that there was no strategic plan in place currently for the 287(g) program.

Chairman Thompson asked the GAO whether it had made recommendations on how ICE could determine success or failure in the 287(g) program.

Mr. Stana responded that GAO had not done so because the objectives of the program are not clear.

Chairman Thompson asked what the definition of a serious crime was. Mr. Riley, of ICE, could not give an answer to the question. Mr. Stana, also, had difficulty with the question. He noted that three-quarters of the arrests in Maricopa County, Arizona, resulted in persons

voluntarily departing the country which, he said, was an indicator that the persons hadn't been involved in serious crimes.

- Oversight and Supervision. Representative Sanchez asked what kind of oversight and supervision ICE exercises over 287(g) agreements.

Mr. Riley responded that "[e]arly on, a lot of the MOAs, and as GAO noted, did not specify the specific duties. ICE is working to fix those duties but still retain the flexibility because the agreements are unique in nature. Each one is different. Some range from programs that may only encounter a dozen apprehensions a month to some that encounter hundreds per month." He said that "to have an exact template with that is difficult because it does vary between the different programs. We're looking at instituting SOPs specifically formulated with the field office and in conjunction with ICE's review of the 287(g) program to specify exactly what we see as the supervisor needs for each of these individual programs. And that's something we hope to achieve in the near future."

Sheriff Jenkins said his department needed constant oversight at first but less as time went on.

Mr. Stana responded that "this is a controversial and even a polarizing program, and so I think it requires sort of an extra measure of supervision. It starts with articulating what you want out of the program, collecting performance data, visiting the program periodically and sometimes unannounced to understand what's going on." He said that "about half of the jurisdictions told us they were just fine with the supervision. But when you peeled that back a little bit and asked them why they were fine with it, they'd say because they leave me alone; they don't come around. And I agree to some extent that this is a program that is a work in progress, and that might have been true for the first 10. But we're up to number 67 now. We ought to know now what we want out of these jurisdictions in this program." He went on, saying that "the criminal alien problem needs to have some help and some resolution and some control. This population is like any other population; there are bad people in it, and we have to identify the bad people and we have to deal with them. But if we spend a lot of time on people who aren't bad, there are other programs to deal with that." He declared that "[t]hese are resources that we want to devote to the worst of the worst. That's what Assistant Secretary Myers said a year ago. That's what ICE's informal guidance says. But it's just not articulated and not understood by the program participants in all cases."

In response to Mr. Stana's comment, Sheriff Jenkins asked, "when we talk about what is the worst of the worst. Well, is a -- is a person who is driving drunk through a school zone during the daytime with a violent

criminal past any worse -- or -- or less a bad person than a drug dealer? How do you measure who are the worst of the worst?"

- Profit from the 287(g) Program. Chairman Thompson asked Sheriff Jenkins if he profits from detaining illegal immigrants. Sheriff Jenkins replied that the county makes \$7.00 profit per day for each detainee.
- Racial Profiling. Representative Sanchez complained that performance, in some cases, is dependent on the type of person executing the program. She said that "in one of the jurisdictions that I have without the program, I had a particular officer who was picking people up on normal traffic stops, putting them in his police car, driving them down about an hour and a half to the border, to the secondary border area we had, and dropping them off to INS agents. So this type of officer, I mean, obviously just doesn't want anybody that looks, in this particular case, Mexican, in my opinion, in my city." She said that "it's very important to understand who's going into the program, that we have MOAs that articulate what the program and what the objectives are and what the measurement is and that we have good oversight, as I think Mr. Stana said, if we're going to continue with these types of programs."

Representative Mike Rogers (R-AL) asked if there had been any reports of racial profiling in Alabama. Mr. Riley responded that he wasn't aware of any. Mr. Stana reported that he found no racial profiling complaints in the file about Alabama. But that he didn't know how to square that finding with media reports of complaints about racial profiling.

Representative Jackson Lee asked Mr. Chishti to expand on his concerns about racial profiling. Mr. Chishti said that immigration laws are so complex and local law enforcement officers receive only a few weeks of training, that for them, a person's race serves as a proxy for illegal immigrant.

In response to a question from Representative Ben Lujan (D-NM) about racial profiling, Mr. Stana said that "[t]here are fundamentally three different models that this program uses. One is the jail model, and that's when people come in and they're booked and then they check the -- the status and most people, the vast majority of people have no problem with that. You have a -- a felon or at least a very bad person who is arrested. They're brought before you; they did something wrong.

"Then there's what used to be the patrol model, and I believe ICE has -- has stopped that one. But the patrol model enabled officers to, in the course of their normal patrol duties, to identify people who are out of status, supposedly in -- in the course of arrest action. But some allege that this is not being done in the course of arrest

action, that there are people who are arrested for minor traffic violations, cracked windshield or something like that -- this is the allegation -- and they felt that there was profiling going on.

"That model, I believe, is not in use anymore. It's -- it was now turned over into what's known as the task force model. These are supposed to be ICE-led task forces. I looked at the list and I don't know if all of them are ICE led. But this is to provide another measure of control where ICE is a partner among other agencies to work on, say, a drug case or a trafficking, human-trafficking case or something like that. Haven't heard much noise about that one either.

"It was the patrol model that seemed to generate the most concern. Now, the issue is people feeling that they're maybe committing a crime -- a crime is sort of a loose term -- but a relatively minor infraction but that the officers were just waiting for them. Some of the -- some of the allegations we had heard were corn vendors on the street, and they were brought in on charges that they didn't comport with food and safety laws -- or people with cracked taillights and someone who looks Hispanic. And -- and the people who raised the issues were people of Hispanic descent who happened to be U.S. citizens who were concerned about being pulled over too. So those were the kinds of complaints that we're, you know, we're aware of.

"Now this is a program that set a rather high bar of serious crime that is supposed to be the target here. If you want to lower that bar, that's within the, you know -- Congress hasn't defined where the bar is, so ICE could reasonably define where that bar should be. If you want to lower it, that would be fine if they articulate that. But the cost is going to go up. The cost is going to go up in terms of detention space needed, officers needed to supervise and another cost very well may be what Chief Manger pointed out, a cost in are you going to get community cooperation in your pursuit to root out crime."

- Termination of Programs and Officers. Representative Linda Sanchez (D-CA) asked if any 287(g) programs have been terminated because state or local agencies failed to abide by agreements.

Mr. Riley said that the Department is undertaking reviews at the various programs this time but that there had been no such terminations.

Representative Ben Lujan (D-NM) asked if there is a process for terminating individual officers who violate 287(g) agreements. Mr. Riley said there was such a process and that one officer has been terminated for serious offenses unrelated to the 287(g) program. ☀

### Last Week's Markups

No committees held markups last week of measures containing significant immigration- or refugee-related provisions.

### Last Week's Floor Actions

Two measures containing significant immigration- or refugee-related provisions were considered last week by the full House or Senate:

- Fiscal Year 2009 Omnibus Appropriations. The full Senate cleared an omnibus appropriations measure appropriating funds for the remaining fiscal year 2009 appropriations bills for the President's consideration; and
- Extension of the Religious Worker Visa and Conrad 30 Immigration Programs. The full House passed a measure extending the special immigrant nonminister religious worker visa and the Conrad 30 programs

### **Senate Begins Consideration of FY '09 Omnibus Appropriations Bill:**

The Senate last week began but did not complete consideration of the fiscal year 2009 omnibus appropriations bill, which contains funding for the nation's immigration court system and its refugee admissions, overseas refugee assistance, and refugee resettlement programs. Last week's Senate floor action occurred in connection with the House-passed version of [H.R. 1105](#), the Omnibus Appropriations Act, 2009.<sup>272</sup> Senate floor consideration of the measure began on Monday, March 2, 2009, and continued throughout the week.

The Senate is expected to complete consideration of the measure this week.<sup>273</sup> ☀

### **House Passes Bill Extending Religious Worker Visa and Conrad State 30 Programs:**

The House of Representatives last week passed a measure that would extend two expiring immigration programs through the end of fiscal year 2009. Last week's House action occurred on Wednesday, March 4, 2009, in connection with [H.R. 1127](#), a measure that was introduced in the House of Representatives by House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law Zoe Lofgren (D-CA). The House passed the measure on that date by a voice vote.

<sup>272</sup> See Pages 249-258 of the March 2, 2009, 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>273</sup> See Pages 275-276 of this week's edition of the *Weekly Legislative Update* for a preview of this week's Senate's floor consideration of H.R. 1105

**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.

**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 passed by the House—

- 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.

**Floor Debate.** The House debated H.R. 1127 for about 30 minutes. The measure was floor managed by House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law Chairwoman Zoe Lofgren (D-CA) for the majority and

Representative Ted Poe (R-TX) for the majority. Both Members supported the measure.<sup>274</sup>

Members who spoke on the House floor in favor of H.R. 1127 were:

- Representative Zoe Lofgren (D-CA)
- Representative Ted Poe (R-TX)
- Representative Earl Pomeroy (D-ND)
- Representative Steve King (R-IA)
- Representative Jerry Moran (R-KS)
- Representative Lamar Smith (R-TX)

Only one Member spoke against H.R. 1127: Representative Bart Stupak (D-MI)

- Debate in Opposition to the Measure. Only one Member spoke out against H.R. 1127 during floor on the measure. That Member, Representative Bart Stupak (D-MI), indicated that his opposition to H.R. 1127 was not because of the merits of the legislation or the merits of measures it would extend. Instead, he indicated that he opposed the bill because Congress was not also taking up a bill to extend the returning worker H-2B program.<sup>275</sup>

While, as a technical matter, their floor speeches were made in favor of House passage of H.R. 1127, House Judiciary Committee Ranking Republican Lamar Smith (R-TX) and House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law Ranking Republican Steve King (R-IA) both spent most of their floor time saying negative things about the religious worker visa program.

Representative King concentrated his remarks on allegations of fraud in the religious worker visa program. He said that in 2006, “the U.S. Citizenship and Immigration Service's Office of Fraud Detection and National Security conducted a fraud benefit assessment on the Religious Worker Visa Program. They selected 220 cases at random--of which we're very familiar with on the committee--they found an astonishing 33 percent fraud rate. That's one of every three were fraudulently based. In 32 of the fraudulent cases, the religious institution either didn't exist or only existed on paper. And 39 of the fraudulent petitions included fraudulent supporting documentation or material representations within a document.” He said that in other instances, “fraud included cases where the petitioner could not be

<sup>274</sup> [Click Here](#) to see a video of the March 4, 2009, House floor debate on H.R. 1127

<sup>275</sup> [Click Here](#) to see a video of Representative Bart Stupak's March 4, 2009, House floor statement in opposition to H.R. 1127

located or connected to any religious entity and where the petitioning religious entity was unaware that the petition had been filed and was unaware of the beneficiary.” Representative King asserted that, “in the modern era, in 2003, Mohammed Khalil and three of his sons were arrested in connection with submitting false applications to bring over 200 individuals to the United States using the religious worker visa program.” King asserted that “[d]uring court proceedings, prosecutors revealed that Khalil made statements to an undercover witness professing allegiance to Osama bin Laden. He also allegedly stated, ‘Hopefully, another attack in the United States will come shortly.’”

Representative King also complained that the United States accepts religious workers from countries that don’t accept United States religious workers. He declared that he soon will be introducing legislation “that sets up a reciprocity program in this religious workers visa program” and indicated he would pursue the issue in September or prior to September.

House Judiciary Committee Ranking Republican Smith agreed with many of Representative King’s assertions, declaring that “[o]ne way to help advance religious freedom is to do as Representative King suggests and prevent citizens of countries that are hostile to religious freedom from participating in our religious worker visa program.” He also commented on what he asserted were large instances of fraud in the religious worker visa program.

- Debate in Support of the Measure. All of the other Members who spoke during the debate on H.R. 1127 supported it. In her statement, Representative Lofgren asserted that “the 5,000 religious workers eligible for these visas each year are called to a vocation or are in traditional religious occupations with bona fide nonprofit religious organizations. They are missionaries, counselors, instructors, and pastoral care providers. Considering the current economic crisis we are experiencing and the degree to which Americans are turning to religious organizations for help, these religious workers are needed now more than ever.” She went on to assert that the Conrad “J” Waiver program “is’ a critically important immigration program that helps medically underserved communities attract highly skilled physicians. This program is crucial to the States as it helps them attract doctors who have received their medical training in the United States to work in areas that desperately need doctors.” She declared that the Conrad “J” Waiver program’s importance “was demonstrated again a year and a half ago when a tornado utterly destroyed the town of Greensburg, Kansas. Without this program, that town would not have had any doctors. They were of tremendous help in keeping casualties to a minimum. We need to keep this program going so that States can attract medical talent and can

keep the doors of small town clinics open.” She said that both the religious worker and the Conrad “J” visa programs “have strong bipartisan support, and this bill would extend the programs through the end of the fiscal year when the issue can be revisited, hopefully, in a much broader context.”

Representative Earl Pomeroy and Jerry Moran spoke in favor of H.R. 1127, as well. Both of their statements concentrated on the benefits of the Conrad “J” Waiver program to rural, medically underserved communities.

Representative Lofgren responded to both the arguments made against the bill by Representative Stupak and concerns about fraud and reciprocity raised by Representatives King and Smith by saying.

In her response, Representative Lofgren said, “we are struggling mightily to see if we can reach consensus on [the H-2B program] that. We have efforts underway. I can make no guarantee that we will be successful, but there are active efforts underway to see if consensus can be reached.” She went on to say that, “[a]s for the other issues raised, I would just like to note that Mr. Smith and I have worked very closely to make sure that this program, the Religious Workers Program, has integrity. And we now have 100 percent site visits for every church that applies, which we are advised informally by DHS, has really brought a much greater level of integrity to this system. And I think it’s a product of the work that we did in the last Congress that helped us to be able to say that today.”

Representative Lofgren concluded by addressing the reciprocity issue raised by Representatives King and Smith, asserting, “I look forward to hearing the ranking member’s proposals. I would just note, however, that because Russia is not very happy when we send evangelicals to their country, it doesn’t mean that we should deny Russian Orthodox believers in the United States the assistance of Russian Orthodox member laypeople. I think that we’ll work through these issues.”

**Next Steps.** Now that the House has passed H.R. 1127, the next step in the legislative process is consideration of the measure by the full Senate.

The Senate received H.R. 1127 and held it at the desk. It could take up the measure by unanimous consent as soon as Tuesday, March 10, 2009. ☀

### Last Week’s Conference Activity

There was no conference committee activity last week on measures that contain significant immigration- or refugee-related provisions. ◇

## *Last Week's Executive Activity*

**USCIS Claims It Has Eliminated Backlog in FBI Name Checks:** The Department of Homeland Security's U.S. Citizenship and Immigration Services (USCIS) bureau announced last week that it had eliminated the backlog for Federal Bureau of Investigation (FBI) name checks pending more than six months. In a press release issued on Wednesday, March 4, 2009, USCIS announced that it had reached this, the fourth milestone of its joint plan with the FBI to completely eliminate the backlog of pending name checks.

According to the press release, “[j]ust 16 months ago, more than 349,000 name checks were pending; of that, nearly 150,000 had been pending for more than six months. All USCIS requests pending for six months or more as of February 28, 2009, have now been responded to by the FBI's National Name Check Program (NNCP).”

In April 2008, USCIS and the FBI established milestones prioritizing work based on the age of the pending name check. Priorities included processing all name checks pending more than three years by May 2008 (the FBI had already eliminated all cases pending more than four years); those pending more than two years by July 2008; and those pending more than one year by November 2008.

The Department contends that USCIS and the FBI are on schedule to meet the next two goals: all name checks requests pending longer than 90 days to be completed by May 30, 2009 and, by the end of June 2009, the FBI will complete 98 percent of USCIS name check requests within 30 days and process the remaining two percent within three months. The Department press release said that “USCIS and the FBI will continue to focus on sustaining a rigorous and efficient screening of each name check request.”

**DHS Inspector General Fails to Issue Report on Fraud in the Religious Worker Visa Program:** The congressionally-mandated deadline has come and gone for the Department of Homeland Security Inspector General to issue a report on fraud in the religious worker visa program.

On October 10, 2008, Congress enacted [P.L. 110-391](#), the “Special Immigrant Nonminister Religious Worker Program Act”, which extended the Special Immigrant Nonminister Religious Worker Visa program through March 6, 2009. Section 2(b)(1) of the measure required the Secretary of Homeland Security to issue regulations aimed at reducing or eliminating fraud in the program. Section 2(c) of that measure requires that, “[n]ot later than March 6, 2009, the Inspector General of the Department of Homeland Security shall submit to Congress a report” on the effectiveness of the regulations required by subsection (b)(1).

The DHS Inspector General Report was not issued on or before March 6, and there is no word on when the Department will the report mandated by Congress. ◇

## *Recently Introduced Legislation*

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

### House

#### **Criminal Aliens**

- **Expansion of State Eligibility for Reimbursement Through the State Criminal Alien Assistance Program:** Representative Linda T. Sanchez (D-CA) has introduced [H.R. 1314](#), a bill to amend the Immigration and Nationality Act to provide for compensation to States incarcerating undocumented aliens charged with a felony or two or more misdemeanors

As introduced, H.R. 1314 would expand state eligibility for reimbursement through the State Criminal Alien Assistance Program (SCAAP) by making states eligible for reimbursement of the costs of incarcerating aliens who are charged with a felony or two or more misdemeanors, as well as for the costs of incarcerating aliens who are convicted of such crimes.

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

#### **Refugee Admissions**

- **Tibetan Refugee Assistance Act of 2009:** Representative George Miller (D-CA) has introduced [H.R. 1340](#), a bill to provide for the admission to the United States of certain Tibetans

As introduced, H.R. 1340 would make 3,000 immigrant visas in the 3-fiscal-year period beginning with fiscal year 2010 available for certain displaced Tibetans.

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

#### **Visa Reciprocity**

- **Saudi Arabia Accountability Act of 2009:** Representative Anthony Weiner (D-NY) has introduced [H.R. 1288](#), a bill to halt Saudi support for institutions that fund, train, incite, encourage, or in any other way aid and abet terrorism, to secure full Saudi cooperation in the investigation of terrorist incidents, to halt the issuance of visas to citizens of Saudi Arabia until the President certifies that the Kingdom of Saudi Arabia does not

discriminate in the issuance of visas on the basis of religious affiliation or heritage, and for other purposes

As introduced, H.R. 1288 contains among its provisions one that would halt the issuance of visas to citizens of Saudi Arabia until the President certifies that the Kingdom of Saudi Arabia does not discriminate in the issuance of visas on the basis of religious affiliation or heritage.

It has been referred to the House Committee on Foreign Affairs and House Committee on the Judiciary.

### 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 Sets Subcommittee Rosters for the 111<sup>th</sup> Congress:**

The Senate Committee on Appropriations has finally set its subcommittee rosters for the 111<sup>th</sup> Congress, making a number of changes to the rosters of the four subcommittees that have appropriating jurisdiction over the federal

government's immigration- and refugee-related departments, agencies, functions, programs, and activities.

#### **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.

- 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 111<sup>th</sup> Congress. Senators who are known to be leaving the committee in the 111<sup>th</sup> Congress are denoted with a ~~stricken-through line~~. New committee members are marked with an asterisk (\*):

**Senate Committee on Appropriations  
 111<sup>th</sup> Congress**

**Committee Ranking Minority Member.** Returning as Ranking Republican of the Senate Committee on Appropriations in the 111<sup>th</sup> Congress is Senator Thad Cochran (R-MS), who served as the Committee’s Ranking Republican during the 110<sup>th</sup> 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 110<sup>th</sup> Congress drew to a close, there were 15 Democrats and 14 Republicans on the Senate Committee on Appropriations. The Committee ratio in the 110<sup>th</sup> Congress will be 17-Democrats-to-13-Republicans.

**Departed Committee Members.** No Democrats who served on the Committee during the 110<sup>th</sup> Congress are leaving it in the 111<sup>th</sup> Congress. However, four Republican 110<sup>th</sup> Congress Committee members have departed the Committee in the 111<sup>th</sup> 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 110<sup>th</sup> Congress have joined it in the 111<sup>th</sup> Congress. Two of the new senators are Democrats and three are Republicans. The new senators are:

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:

**Weekly Immigration and Refugee Legislative Update (continued)  
Monday, March 9, 2009**

- 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 Bureau 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). The Ranking Minority Member during the 111<sup>th</sup> Congress will be veteran Senator George Voinovich (R-OH), who is retiring at the end of 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. That ratio has been adjusted in the 111<sup>th</sup> Congress to 8-Democrats-to-6-Republicans.

- 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). Both Senators Leahy and Gregg have returned to their 110<sup>th</sup> Congress roles during 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. That ratio has been adjusted in the 111<sup>th</sup> Congress to 8-Democrats-to-6-Republicans.

- 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. That ratio has been adjusted in the 111<sup>th</sup> Congress to 8-Democrats-to-6-Republicans.

- 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 has returned 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 has returned 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. That ratio has been adjusted in the 111<sup>th</sup> Congress to 10-Democrats-to-8-Republicans.

**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 (8)	Republicans (6)
Byrd (D-WV)	*Voinovich (R-OH)
Inouye (D-HI)	Cochran (R-MS)
Leahy (D-VT)	Gregg (R-NH)
Mikulski (D-MD)	<del>Stevens (R-AK)</del>
<del>Kohl (D-WI)</del>	Specter (R-PA)
Murray (D-WA)	<del>Domenici (R-NM)</del>
Landrieu (D-LA)	Shelby (R-AL)
Lautenberg (D-NJ)	<del>Craig (R-ID)</del>
<del>Nelson (D-NE)</del>	Alexander (R-TN)
*Tester (D-MT)	*Brownback (R-KS)

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

Democrats (8)	Republicans (6)
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)
<del>Reed (D-RI)</del>	
*Lautenberg (D-NJ)	

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

Democrats (8)	Republicans (6)
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)
<del>Lautenberg (D-NJ)</del>	*Alexander (R-TN)
*Pryor (D-AR)	

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

Democrats (10)	Republicans (8)
Mikulski (D-MD)	Shelby (R-AL)
Inouye (D-HI)	Gregg (R-NH)
Leahy (D-VT)	<del>Stevens (R-AK)</del>
Kohl (D-WI)	<del>Domenici (R-NM)</del>
<del>Harkin (D-IA)</del>	McConnell (R-KY)
Dorgan (D-ND)	Hutchison (R-TX)
Feinstein (D-CA)	Brownback (R-KS)
Reed (D-RI)	Alexander (R-TN)
Lautenberg (D-NJ)	*Voinovich (R-OH)
*Nelson (D-NE)	*Murkowski (R-AK)
*Pryor (D-AR)	

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

As predicted in this space last week, President Barack Obama has nominated Governor Kathleen Sebelius (D-KS) to be Secretary of Health and Human Services. President Obama announced Governor Sebelius' nomination on Monday, March 2, 2009, at a White House press conference. Should she be confirmed, 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.



Working through its [Office of Refugee Resettlement](#) (ORR), the Department of Health and Human Services 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.

Governor Sebelius has had a significant amount of exposure to immigration and refugee matters while governor of Kansas. See Pages 266-267 of the March 2, 2009, edition of the Weekly Legislative Update for a more detailed analysis of Governor Sebelius' record and views on immigration and refugee matters. ☼ ◇

### *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's immigration- and refugee-related departments, agencies, functions, programs, and activities 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. However, they also face a deadline of the date on which the Budget Committee produces its budget resolution to complete their work on their Views and Estimate reports.

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
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 Congress 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 possible Senate floor 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.
- Hearings on Violence along the U.S. Border with Mexico. Next Week's Weekly Legislative Update will report on the three hearings that are scheduled to take place this week in the U.S. House of Representatives on violence along the U.S. border with Mexico.
- Hearing on the Secure Border Initiative. Next week's Weekly Legislative Update will report on this week's House Appropriations Subcommittee on Homeland Security hearing on the Secure Border Initiative.
- 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. ◇

---

*Appendix*

---

No items this week.

☀ ◇