



# United States Conference of Catholic Bishops Government Relations

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

Monday, March 23, 2009

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### *This Week's Hearings*

At the time of this writing, three Congressional panels had scheduled hearings for this week at which significant immigration- or refugee-related matters are expected to be discussed:

- Violence along the U.S. Border with Mexico. Two Committees are holding hearings examining violence along the U.S. border with Mexico—
  1. Senate Homeland Security. The Senate Committee on Homeland Security and Governmental Affairs has scheduled a hearing on violence along the U.S. border with Mexico; and
  2. House Appropriations Committee. The House Appropriations Subcommittee on Commerce, Justice, and Science has scheduled a hearing examining the Federal law enforcement response to U.S.-Mexico border violence; and
- FBI Oversight. The Senate Committee on the Judiciary has scheduled an oversight hearing on the FBI.

### House

**House Appropriations Panel to Hold Hearing on U.S.-Mexico Border Violence:** The House Appropriations Subcommittee on Commerce, Justice, and Science has scheduled a hearing for this week on the federal law enforcement response to U.S.-Mexico border violence. It

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

is scheduled for 2:00 pm on Tuesday, March 24, 2009, in Room 2359 of the Rayburn House Office Building.

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

- Bill Newell, Special Agent In Charge, Phoenix Division, Bureau of Alcohol, Tobacco and Firearms and Explosives;
- Joseph Arabit, Special Agent In Charge, El Paso Division, Drug Enforcement Administration;
- Phil Gordon, Mayor, City of Phoenix, Arizona; and
- David Shirk, Associate Professor of Political Science, University of San Diego, and Director, Trans-Border Institute. ☀

## Senate

**Senate Panel to Hold Oversight Hearing on the FBI:** The Senate Committee on the Judiciary has scheduled an oversight hearing for this week on the Federal Bureau of Investigation (FBI). This week's hearing is scheduled for 9:30 am on Wednesday, March 25, 2009, in Room SH-216 of the Hart Senate Office Building.

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

**Anticipated Witnesses.** At the time of this writing, the sole witness at this week's hearing is expected to be Robert S. Mueller III, Director of the FBI.



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

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

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

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

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

Seeking to put his announcement in perspective, Aytes said that, "[a]t the beginning of November 2007, there were nearly 350,000 pending name check requests. Of that total, more than 54,000 had been pending for more than two years. Another 55,000 had been pending for at least a year. Today, there's a grand total of 6,756 pending name check requests. And of that number, not one has been pending for more than six months. In fact as of that February 17 snapshot, the FBI was completing 99.2 percent of all requests in less than 30 days."

Aytes said that "[t]he results speak for themselves. The effective elimination of the name check backlog means that USCIS can make more timely decisions about immigration applications and petitions. That includes cases with derogatory information and those that are otherwise approvable. In both the present and the future, USCIS and the FBI will continue to focus on sustaining the rigorous and efficient screening of each name check request. Our joint attention to eliminating the name check backlog will ensure we reward deserving, eligible applicants with benefits like U.S. citizenship and permanent residency in a more timely manner."

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

Committee Chairman Patrick Leahy (D-VT) and Ranking Republican Arlen Specter (D-PA) wrote about the National Name Check Program in their fiscal year 2009 budget views and estimates letter to the Senate Committee on the Budget. In that letter, the senators noted that the NNCP receives millions of request for name checks annually and that more than 1.5 million of them are related to immigration cases from the Department of Homeland Security. The letter noted that, as of that date, 10 percent of the name checks can take years to complete, and that the difficulties in resolving the backlog of name checks had had an adverse impact on the timely processing of immigration benefits such as naturalization applications.

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

On March 11, 2008, Emilio Gonzalez, who was then the Director of the Department of Homeland Security's U.S. Citizenship and Immigration Services (USCIS) bureau, testified before the House Appropriations Subcommittee on Homeland Security about the National Name Check Program. In his testimony, Director Gonzalez acknowledged that the FBI Name Check backlog "has clearly been a significant challenge contributing to processing delays; growing litigation; and, to our ability to deliver both good service and excellent security at the same time." He contended that significant time, personnel, and resources have been committed to fixing this problem. He claimed "significant pr on this issue in terms of our policies, plans, and operations." Among the items he listed as signs of progress are the commitment of \$14.5 MILLION to the FBI to expand their contract workforce, the hiring and training of 200 contractors, and a separate \$20 MILLION spending plan that he said "will extend and expand this contractor workforce in FY 2008 through most of FY 2009."

Gonzalez said that USCIS and the FBI have "agreed to process improvements which refine the focus to concentrate on information within FBI files which is critical to adjudication decisions and security needs. For those persons with pending adjustment of status applications, such applications will be approved if the individual is otherwise eligible and no actionable derogatory or adverse information has been returned by the FBI within 180 days. Any applications that are approved under this policy will be

closely monitored and should any actionable adverse information be returned from the FBI, DHS can immediately initiate removal proceedings." Gonzalez stated that he is confident "that over the next several months we will see dramatic progress in reducing FBI's pending name check request backlog. While we are finalizing performance targets and timelines with the FBI, we expect significant improvements in the processing of name checks by next summer with the increases in personnel and additional monies to FBI. Soon we will have a joint FBI and USCIS schedule to report to the Committee."

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

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

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

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

- raising fees;
- revising the criteria to eliminate certain categories of records that have to be researched, prioritizing the workload;
- building a central records complex; and
- hiring over 200 contractors to work along with 40 FBI employees.

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

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

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

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

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

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

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

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

**Senate Panel to Hold Hearing on Border Violence:** The Senate Committee on Homeland Security and Governmental Affairs has scheduled a hearing for this week on the national and homeland security consequences of violence along the U.S.-Mexico border. This week's hearing

is scheduled for Wednesday, March 25, 2009, in Room SD-342 of the Dirksen Senate Office Building.

**Anticipated Witnesses.** At the time of this writing, the witnesses at this week's hearing had not yet been made public. ☼ ◇

## *This Week's Markups*

At the time of this writing, two Congressional committees were contemplating actions on measures that could become the vehicle for significant immigration- or refugee-related provisions or have a significant impact on immigration- or refugee-related matters:

- House Budget Resolution. The House Committee on the Budget has scheduled action for this week on its version of the fiscal year 2010 budget resolution; and
- Senate Budget Resolution. The Senate Committee on the Budget has scheduled action for this week on its version of the fiscal year 2010 budget resolution.

## House

**House Budget Committee Schedules All-Day Markup of FY '10 Budget Resolution:** The House Committee on the Budget has scheduled an all-day markup for this week, at which it will consider the fiscal year 2010 budget resolution. This week's markup is expected to occur on Wednesday, March 25, 2009, in Room 210 of the Cannon House Office Building. At the time of this writing, the time of the hearing had not yet been publicly announced.

**Background.** Each year, Congress adopts a concurrent resolution on the budget (Budget Resolution), which establishes a blueprint for Congress' actions on tax and spending legislation for the coming fiscal year. The Budget Resolution is not submitted to the President for his consideration. Instead, it is a non-binding concurrent resolution that must be passed by both chambers of Congress in identical form.

Under the budget process, the Budget Resolution must be approved in identical form by both the House of Representatives and the Senate by April 15 of each year. The probability of Congress meeting the April 15 deadline for a conferenced version of the budget resolution this year is remote. That is because the House and Senate are not likely to take up their respective versions of the budget resolution until next week, which is the last week before Congress leaves Washington for a two week-long April recess. Once it leaves town, it will not return until Monday, April 20, 2009, five days after the deadline for producing a conferenced version of the Budget Resolution.

Most budget resolutions have five distinct parts:

- Recommended Levels of Spending and Revenue. First, it generally contains recommended levels of discretionary spending (both in aggregate and broken down by broad budget functions), entitlement spending, revenue collection, and deficit or surplus for the coming fiscal year and the four subsequent fiscal years;
- Budget Enforcement Rules. Second, it generally contains budget enforcement rules that seek to tie Congress's hands during the consideration of tax and spending legislation;
- Budget Reconciliation Instructions. Third, it generally contains "reconciliation instructions" to authorizing and revenue committees instructing them to "reconcile" permanent law so that entitlement spending does not exceed a specified amount and revenues do not fall below or exceed a specified amount for the coming fiscal year and the four subsequent fiscal years. The reconciliation process is a particularly important feature in the Senate. Bills implementing the budget resolution's "reconciliation instructions" receive greater protection from amendments in the Senate than other bills and are not subject to filibuster;
- Sense of Congress. Fourth, it generally contains nonbinding "Sense of the Senate" or "Sense of the House" provisions putting Congress on record as favoring particular programs or activities; and
- Reserve Funds. In recent years, budget resolutions have contained "reserve funds". Reserve fund grant the chairs of the House and Senate Budget Committees the authority to revise the committee spending allocations and other budget levels, after a budget resolution has been adopted, if certain legislation is reported by the appropriate committee or other conditions are met.

Once the Budget Resolution has been adopted in identical form by the Senate and House of Representatives, a total amount of discretionary spending for the coming fiscal year is established. The Budget Resolution also establishes how much discretionary spending will be permitted in the coming fiscal year in each of 19 broad functions of government. These caps, called 302(a) allocations, get their name from section 302(a) of the Congressional Budget and Impoundment Act of 1974, as it has been amended over the years.

Once the function-by-function 302(a) allocations are made, the House and Senate leadership separately establish caps on spending for each of the 12 appropriations subcommittees. These allocations, referred to as 302(b) allocations, permit the annual appropriations bills to be produced.

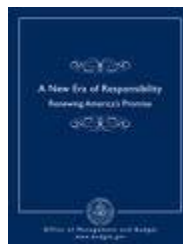
**Overview of the Federal Budget.** Federal spending is comprised of two types of expenditures. The first of these is discretionary spending, which is appropriated each year by Congress in its 12 regular appropriations bills. The second is mandatory spending (sometimes referred to as entitlement spending), which occurs automatically.

Entitlement spending takes place in such programs as Social Security, Medicare, and Food Stamps. In these and other such programs, federal funds flow automatically to everyone who is eligible for its benefits. The only way to cut entitlement spending is for Congress to change the eligibility criteria for an entitlement program so that fewer people are eligible to participate in or get funds from it.

Revenue comes into the Federal treasury automatically, as well, based on permanent tax law. The only way for Congress to increase or decrease projected revenue is for it to enact tax legislation either increasing or decreasing taxes.

The budget resolution does not actually spend funds or raise revenue; it merely establishes targets and spending caps and it issues reconciliation instructions to committees. Consequently, the only impact that the measure has on immigration- and refugee-related spending is the overall discipline on spending that forces proponents of increased immigration- or refugee-spending to compete with other areas of spending during the appropriations process. As such, it is impossible to discern what the precise impact will be on any specific program or activity of government.

**Potential Immigration-Related Consequences of the Budget Resolution.** The budget resolution does not usually contain provisions that would enable analysts to project how much will be spent in the coming fiscal year for particular immigration- or refugee-related departments, agencies, functions, programs or activities. The resolutions have, at times, contained directives to committees demanding that they produce legislation on specified immigration-related matters. And they have, in recent years, contained reserve funds for particular immigration-related functions.



Most immigration and refugee spending takes place in three broad functions of government: International Affairs; Education, Training, Employment and Social Services; and Administration of Justice. And so the key question at this stage of the process is the degree to which those broad functions of government are to be funded.

The chart that follows list the major agencies of government that deal with immigration and refugee matters, along with the broad functions of government that fund their activities:

**Functional Breakdown of  
Immigration and Refugee Spending**

Function	Name of Function	Agency
150	International Affairs	PRM <sup>290</sup>
500	Education, Training, Employment, and Social Services	ORR <sup>291</sup>
750	Administration of Justice	USCIS <sup>292</sup>
750	Administration of Justice	ICE <sup>293</sup>
750	Administration of Justice	CBP <sup>294</sup>
750	Administration of Justice	EOIR <sup>295</sup>

As far as floor consideration goes, in the House, floor amendments are usually limited to complete substitutes. Traditionally, the Congressional Black Caucus, the minority party, and Blue Dog Democrats have offered substitutes. In the Senate, floor amendments to the budget resolution generally take on one of two forms. They either express the “Sense of Congress” on budget issues or they state “assumptions” about the programmatic spending levels that the spending caps in the resolution would make room for.

**The Obama Budget.** On Thursday, February 26, 2009, President Barack Obama submitted a 142-page fiscal year 2010 “Budget Overview” to Congress. The Budget Overview, which he titled, ["A New Era of Responsibility:](#)

<sup>290</sup> *Department of State’s Bureau of Population, Refugees, and Migration, which oversees the Department of State’s refugee admissions and overseas refugee assistance programs*

<sup>291</sup> *Department of Health and Human Services’ Office of Refugee Resettlement, which oversees the Department’s refugee resettlement, torture victim assistance, trafficking victim assistance, and unaccompanied alien children programs*

<sup>292</sup> *Department of Homeland Security’s Bureau of Citizenship and Immigration Services, which administers immigration and refugee benefit adjudication and service activities*

<sup>293</sup> *Department of Homeland Security’s Bureau of Immigration and Customs Enforcement, which administers federal government’s interior immigration and customs enforcement activities*

<sup>294</sup> *Department of Homeland Security’s Bureau of Customs and Border Protection, which administers the federal government’s border enforcement activities*

<sup>295</sup> *Department of Justice’s Executive Office for Immigration Review, which administers the federal government’s immigration court system*

[Renewing America’s Promise”](#), sent a few encouraging smoke signals to the pro-immigrant and pro-refugee advocacy communities about where their priorities might fit within the new President’s budget plans. However, it did not contain sufficient detail to provide any meaningful guidance on that question. The President is expected to submit a fully detailed budget to Congress sometime in April.

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

The Congressional Budget Office (CBO) differs from the Obama Administration in its estimate of how large the deficit would be if Congress adopted the Obama fiscal year 2010 budget plan. According to CBO, rather than producing a \$1.17 TRILLION deficit as is claimed by the Obama Administration, the Obama budget would actually produce a \$1.38 TRILLION deficit in fiscal year 2009, a difference of \$208 BILLION. This is significant because it means that Congress will have to cut \$208 BILLION in projected fiscal year 2010 funding in order to meet the already extraordinarily high deficit projected by the Obama Administration.

As previously noted, the President’s Budget Overview contained little detail regarding proposed fiscal year 2010 spending for immigration- and refugee-related functions, departments, agencies, and activities. And so it is impossible at this time to discern with any accuracy how much the Administration proposes to spend on those functions.

The following is what can be discerned from the budget documents and conversations with Administration officials—

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

Despite the lack of specificity, refugee advocates were encouraged by the President’s Budget Overview. The Administration indicated it will ask for a 9.5 percent increase in spending for the Department of State and Other International programs in fiscal year 2010; it stated that the fiscal year 2010 budget would [put] “the United States on a path to double foreign assistance,” and it stated in the Overview that the budget would ensure “that

the United States continues to be the world's leader in providing food aid and life sustaining support for refugees and other conflict and disaster victims."<sup>296</sup>

Materials released in conjunction with the Budget Overview go a bit further, promising that the fiscal year 2010 budget would "strengthens assistance to help Iraqis who have been displaced because of the war." Encouragingly, these materials also assert that "[t]o increase transparency, the Budget reduces reliance on emergency supplemental appropriations by funding expenses that are predicable and recurring." On this last point, the materials get more specific, saying that, "[t]he Budget reduces reliance on emergency supplemental appropriations by increasing key accounts and programs with predictable and recurring funding requirements that have previously been funded in supplementals. While emergency supplementals may be required in the future, they should focus on truly unanticipated events and not be used to fund regular programs."<sup>297</sup>

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

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

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

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<sup>296</sup> "A New Era of Responsibility: Renewing America's Promise", Page 87-89

<sup>297</sup> [Click Here](#) to see a Fact Sheet on Department of State and Other International Programs, prepared by the White House Office of Management and Budget

While the budget speaks with some specificity about increases in spending that the Obama Administration is seeking for a number of immigration enforcement programs, the only thing it says about immigration services is that "[t]he Budget also supports strengthening the delivery of immigration services by streamlining and modernizing immigration application processes."<sup>298</sup> It makes no mention of how much funding will be devoted to the effort or whether the funding will be totally from fee revenue or whether the Administration will ask Congress to directly appropriate non-fee generated funds to enhance fee-generated money.

Materials released in conjunction with the Budget Overview go a bit further, but not much further. In those materials, the Office of Management and Budget declares that "[t]he Budget strengthens ... efforts to improve the delivery of immigration enforcement by streamlining and modernizing immigration application processes."<sup>299</sup>

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

1. Funding for Exit System. \$45 million for the expansion of an exit pilot at key land ports of entry and other border security priorities;
2. Customs and Border Protection Funding. funding of \$368 million within existing Customs and Border Protection funds support 20,000 Border Patrol agents protecting nearly 6,000 miles of U.S. borders.
3. Criminal Alien Removals. over \$1.4 billion for Immigration and Customs Enforcement programs to ensure that illegal aliens who commit crimes are expeditiously identified and removed from the United States; and
4. E-Verify System. funding of \$110 million is provided to continue expansion of E-Verify, an electronic employment eligibility verification system.<sup>300</sup>

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<sup>298</sup> "A New Era of Responsibility: Renewing America's Promise", Page 72

<sup>299</sup> [Click Here](#) to see a Fact Sheet on Department of Homeland Security Programs, prepared by the White House Office of Management and Budget

<sup>300</sup> "A New Era of Responsibility: Renewing America's Promise", Page 72

In addition to the above funding increases in the Department of Homeland Security's budget, the Budget Overview eludes to funding increases in the Department of Justice's budget relating to immigration. More specifically, the Budget Overview says that the Budget "includes additional funding for a comprehensive approach to enforcement along the Nation's borders that combines law enforcement and prosecutorial component efforts to investigate, arrest, detain, and prosecute illegal immigrants and other criminals."<sup>301</sup>

**Committee Consideration.** At the time of this writing, the text of the Chairman's mark had not yet been released and it was not possible to determine what immigration-related amendments would be offered to it.

There was only one immigration-, refugee-, or border security-related provision in the Chairman's Mark of [H.Con. Res. 312](#) that was put before the House Committee on the Budget last year. That provision, found in Section 603 of the measure, stated the sense of the House of Representatives relative to increased funding for homeland security.

Two immigration-related amendments were offered last year to the budget resolution during the House Budget Committee's consideration of the measure. Both amendments were either defeated or withdrawn:

- BARRETT LIMITED ENGLISH PROFICIENCY AMENDMENT--Representative J. Gresham Barrett (R-SC) offered an amendment that would have banned the use of federal funds to implement Executive Order 13166, which directs each federal agency to prepare a plan to improve access to its federally conducted programs and activities by people who are limited in their English proficiency.
- McHENRY SOCIAL SECURITY NUMBERS AMENDMENT--Representative Patrick T. McHenry (R-NC), offered an amendment that would have authorized and directed the House Committee on Ways and Means Committee to report a revision to the Social Security Act to limit taxpayer identification numbers to valid-for-work Social Security numbers of those legally present in the United States.

**Outlook.** At the time of this writing, too little information was known to make an informed prognostication about how immigration- and refugee-related matters will fare in the House Budget Committee's budget resolution. ☼

## Senate

**Senate Budget Committee Schedules Two-Day Long Markup of FY '10 Budget Resolution:** The Senate Committee on the Budget has scheduled a two-day

long markup this week, at which it will consider the fiscal year 2010 budget resolution. This week's markup is expected to begin on Wednesday, March 25, 2009, and continue through Thursday, March 26, 2009. The markup will occur in Room SD-608 of the Dirksen Senate Office Building.<sup>302</sup>

**Committee Consideration.** At the time of this writing, the text of the Chairman's mark had not yet been released and it was not possible to determine what immigration-related amendments would be offered to it.

There were no immigration-, refugee-, or border security-related provisions in the Chairman's Mark of [S. Con. Res. 70](#) that was put before the Senate Committee on the Budget last year, and only one immigration-related amendment was offered to the budget resolution during the Senate Budget Committee's consideration of the measure. The amendment, which is described below, was withdrawn prior to a vote:

- SESSIONS BORDER AMENDMENT--Senator Jeff Sessions (R-AL) offered an amendment that would have created a "deficit-neutral reserve fund" for border security and criminal alien removal programs.

More specifically, the Sessions amendment would have allowed the Chairman of the Senate Budget Committee to revise allocations for a committee that reports bills or resolutions that expand the zero tolerance prosecution policy for illegal entry to all 20 border sectors, complete the 700 miles of pedestrian fencing, deploy up to 6,000 National Guard members to the Southern border, or evaluate the prison populations that are non-citizens in order to identify removable criminal aliens, assuming the bills would not increase the deficit over fiscal 2008-2013 or fiscal 2008-2018.

**Outlook.** At the time of this writing, too little information was known to make an informed prognostication about how immigration- and refugee-related matters will fare in the Senate Budget Committee's budget resolution. ☼ ◇

## *This Week's Floor Activity*

At the time of this writing, no floor action was scheduled on legislation that contains significant immigration- or refugee-related provisions or legislation that is likely to be the vehicle for significant immigration- or refugee-related floor amendments. ◇

<sup>301</sup> "A New Era of Responsibility: Renewing America's Promise", Page 82

<sup>302</sup> See Pages 326-330 of this week's edition of the *Weekly Legislative Update* for background on budget resolutions, a brief overview of federal budgets, an analysis of potential immigration-related consequences of the budget resolution, and a brief summary of the treatment of immigration- and refugee-related matters in the Obama fiscal year 2010 Budget Overview

## *This Week's Conference Activity*

At the time of this writing, no measures containing significant immigration- or refugee-related provisions are currently pending in conference committees. ◇

## *This Week's Executive Activity*

**Administration Could Submit FY '09 War Supplemental As Early As This Week:** The Obama Administration is expected this week to submit a \$75.5 BILLION request for supplemental fiscal year 2009 funding for the wars in Iraq and Afghanistan. Past war supplemental appropriations requests from President George W. Bush often contained requests for additional funding for refugees. However, it was not known at the time of this writing whether the Obama Administration would include funding for refugee programs in its request. ✨ ◇

## *Last Week's Legislative Activity*

### Last Week's Hearings

Three House panels held hearings last week at which significant immigration- or refugee-related matters were discussed:

- Hearing on Human Trafficking. A House Homeland Security Committee Panel held a hearing on human trafficking;
- Hearing on Treatment of Refugees. A House Judiciary Committee panel held a hearing last week on the treatment of Latin Americans of Japanese Descent, European Americans, and Jewish Refugees During World War II; and
- Biometric Identification. A House Appropriations Committee panel held a hearing last week on biometric identification.

**House Homeland Security Subcommittee Holds Hearing on Human Trafficking:** The House Homeland Security Subcommittee on Border, Maritime, and Global Counterterrorism held a hearing last week at which it examined human trafficking. Last week's hearing took place on Thursday, March 19, 2009.<sup>303</sup>

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<sup>303</sup> [Click Here](#) to see a video of the March 19, 2009, House Homeland Security Subcommittee on Border, Maritime, and Global Counterterrorism hearing on human trafficking

**Witnesses.** The witnesses at this week's hearing included:

- Kumar Kibble, Deputy Director, Office of Investigations, Immigration and Customs Enforcement, Department of Homeland Security;
- Lt. Derek Marsh, Orange County California Human Trafficking Task Force; and
- Anastasia K. Brown, Director of Refugee Programs for the U.S. Conference of Catholic Bishops Migration and Refugee Services.

**Members' Opening Statements.** The following summarizes the opening statements made by Members of Congress at last week's hearing:

- Chairwoman Sanchez. In her opening statement, House Homeland Security Subcommittee on Border, Maritime, and Global Counterterrorism Chairwoman Loretta Sanchez (D-CA) said that was holding the hearing in order to gain a better understanding of how we can combat human trafficking worldwide and within our borders, and how we can provide assistance and support to victims of human trafficking. She said that the hearing was timely, given that March is International Women's month and more than 80 percent of all trafficked people worldwide are women and girls. She told the panel that this issue was close to her heart and that she has been a vocal advocate to stop and combat human trafficking.<sup>304</sup>

Chairwoman Sanchez noted in her opening statement that one week earlier the Subcommittee had held a hearing regarding drug trafficking and violence along the U.S. and Mexico border, but that one issue that was not addressed in the hearing was that human trafficking has become a leading source of income for the organized crime syndicates that are inciting violence along the border. She said that "frequently the same routes used to traffic illegal drugs are also used to traffic humans for sex and labor exploitation" and that, given that fact, she was looking forward to hearing from the ICE witness on the procedures that are in place to provide assistance to trafficked people who are located at U.S. borders.

Noting that she represented the largest Vietnamese population outside of Vietnam, she said that she has been

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<sup>304</sup> [Click Here](#) to see the complete text of the prepared statement of House Homeland Security Subcommittee on Border, Maritime, and Global Counterterrorism Chairwoman Loretta Sanchez (D-CA) at the March 19, 2009, House Homeland Security Subcommittee on Border, Maritime, and Global Counterterrorism hearing on human trafficking

very concerned about the fact that most human trafficking victims originate in Asia.

Chairwoman Sanchez went on to say that she was looking forward to learning more about what is being done globally by Immigration and Customs Enforcement and how that impacts us locally and at the U.S. borders.

- **Chairman Thompson.** In his opening statement, full House Homeland Security Committee Chairman Bennie G. Thompson (D-MS) said that “[h]uman trafficking poses a serious threat to human rights worldwide, with an estimated 2 million to 4 million victims each year. About 17,500 of these individuals are trafficked to the United States annually.”<sup>305</sup>

Chairman Thompson noted that “[m]ost of the victims are women, children, and individuals from vulnerable populations who are preyed upon by traffickers. Human trafficking jeopardizes the welfare of its victims, but it also poses a threat to our homeland security.” He also noted that “[t]he same transnational organizations that traffic in people may also traffic narcotics or weapons across our borders” and that “[s]ome of the same routes used to traffic persons into the U.S. may be used to smuggle terrorists or their weapons into the country. Proceeds from trafficking also could be utilized for other illicit activities that threaten our security.”

Based on those observations, Chairman Thompson said that “for both humanitarian and security reasons, it is imperative that we do everything possible to combat trafficking.” He added that “[t]hat is why the Committee on Homeland Security included provisions in the Implementing the 9/11 Commission Recommendations Act of 2007 to strengthen the capabilities of the Human Smuggling and Trafficking Center.”

Chairman Thompson said the he was looking forward to hearing about whether issues related to coordination, staffing, funding, and information sharing among federal agencies involved in combating human trafficking have improved. I am also interested to hear what more needs to be done to ensure we are fighting this terrible problem as effectively as possible. He concluded his statement by asserting that “[t]he fight against human trafficking is one we must win – for the sake of its victims and for America’s homeland security.”

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

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<sup>305</sup> [Click Here](#) to see the complete text of the prepared statement of House Homeland Security Chairman Bennie G. Thompson (D-MS) at the March 19, 2009, House Homeland Security Subcommittee on Border, Maritime, and Global Counterterrorism hearing on human trafficking

- **Kumar Kibble.** In his prepared testimony, ICE’s Deputy Director for the Office of Investigations, Immigration and Customs Enforcement Kumar Kibble, cited a number of statistics relating to human trafficking, both worldwide statistics and statistics relating to the trafficking of humans into the United States.<sup>306</sup>

He said that since the enactment of the Trafficking Victims Protection Act, “law enforcement has learned that trafficking is not limited to urban high crime areas. It is now acknowledged that human trafficking is found in rural agricultural sectors and in private homes in affluent neighborhoods. We know that adult men and women are victimized along with children, and that our own citizens are not immune to the actions of traffickers. ICE makes every effort to not only find and rescue victims, but to target and cripple the financial motivations and infrastructure that permit human trafficking organizations to thrive.”

He said that the United States is a destination country for thousands of trafficking victims. He said that “[t]hese victims are largely nationals of Asian and Central American countries, but traffickers do not restrict their efforts based on citizenship. United States citizens and lawful permanent residents are also trafficked within the United States, primarily for the purpose of sexual exploitation.”

Deputy Director Kibble said in his prepared statement that “[i]n Fiscal Year 2008, ICE initiated 432 human trafficking investigations, an increase of over 24 percent from the previous year. These investigations included 262 cases of alleged sexual exploitation and 170 cases of suspected labor exploitation. During the same period, ICE investigative efforts resulted in 189 arrests, 126 indictments and 126 convictions related to human trafficking.”

He said that ICE “conducts global investigations identifying and rescuing victims, has a prominent role on several cabinet-level working groups and leads the intelligence gathering and sharing effort through the Directorship of the Human Smuggling and Trafficking Center (HSTC). The HSTC serves as a fusion center for intelligence, law enforcement and other information to enhance coordination and communication within the Department of Homeland Security (DHS), including U.S. Customs and Border Protection (CBP) and U.S. Citizenship and Immigration Services (USCIS), along with other U.S. Government agencies in combating

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<sup>306</sup> [Click Here](#) to see the complete text of the prepared statement of Deputy Director Kumar Kibble at the March 19, 2009, House Homeland Security Subcommittee on Border, Maritime, and Global Counterterrorism hearing on human trafficking

human traffickers, smugglers and criminals facilitating terrorist travel. Our victim witness coordinators also work closely with the Department of Health and Human Services' grantees, contractors and coalitions in the provision of services for rescued victims."

Kibble said that "[h]uman trafficking cases require law enforcement agencies to be victim-oriented. ICE has trained and deployed 350 victim-witness coordinators. The testimony of victims is critical to successful prosecutions. Victims are our best evidence of the crime. Yet a victim should not and cannot be treated as simply a piece of evidence. While we know that the long-term care of victims is and should be in the hands of non-governmental organizations (NGOs), we in law enforcement also have a responsibility to treat victims fairly, with compassion, and with attention to their needs." He continued, saying that "ICE and USCIS are the principal agencies charged with providing immigration relief to victims of trafficking. ICE provides a short-term immigration relief known as "Continued Presence," and assists certified victims of trafficking to remain in the United States through certain types of non-immigrant visas, including the T and U visas. In each of the cases cited, we granted the victims Continued Presence, which is part of our "victim-centered approach." USCIS adjudicates applications for non-immigrant status related to an individual's certification as a victim of a severe form of trafficking. This non-immigrant status provides longer-term forms of relief for trafficking victims. Continued Presence or the award of a T-visa allows the Department of Health and Human Services to 'certify' victims so that they can access federal benefits and services to the same extent as refugees. Individuals granted T non-immigrant status can also adjust their status to that of lawful permanent resident pursuant to recently promulgated regulation."

Kibble said that "[t]his year, under an initiative called ICE Trafficking in Persons Strategy (ICE TIPS), ICE offices were required to conduct outreach to law enforcement agencies and NGOs to expand awareness of trafficking cases. ICE domestic field offices and ICE Attaché offices overseas provided training to over 27,900 staff from 1,200 NGOs and over 12,100 law enforcement personnel from 1,433 agencies worldwide. ICE previously established a toll-free tip number line for reporting human trafficking leads, as well as developed outreach materials for law enforcement and NGOs. These materials include brochures, a training video and laminated wallet-size cards with human trafficking indicators, which are available in seven different languages."

Kibble asserted in his testimony that "[t]he problems presented by human trafficking are so widespread that no one entity can adequately address them. Accordingly, ICE proudly partners with other law enforcement

agencies and NGOs through the Department of Justice-sponsored Human Trafficking Task Forces (HTTFs). These task forces are located across the United States, and play a vital role in combating human trafficking organizations. The HTTFs unite the investigative abilities of law enforcement with the victim services agencies in order to provide a coordinated response during trafficking investigations. The HTTFs ensure that the requirements of law enforcement are balanced against the needs of the victims discovered during the course of investigations. Without partners such as local law enforcement and the NGOs, the federal government would be limited in its efforts to dismantle trafficking organizations and assist in the recovery of the victims hurt by traffickers."

Kibble concluded his statement by asserting that "ICE is committed to combating those engaged in the exploitation of trafficking victims, and will continue allocating the resources necessary to end the threat human trafficking poses to our society. In addition, we will continue to expand our outreach and training efforts by sharing our expertise in employing a victim-centered approach to combating human trafficking."

- Derek Marsh. In his prepared statement, Lt. Derek Marsh, Orange County California Human Trafficking Task Force, said that the task force that he is involved in "was able to outreach more than 10,000 citizens at a variety of presentations, seminars, and community events. In addition, we were able to federally certify at least 8 human trafficking victims in Orange County during this time period as well, and provide alternate services to 30 other victims. Currently, we are finalizing our submission to the Bureau of Justice Assistance so we can begin to actively participate as one of the 42 federally funded task forces in the United States, along with our OVC partner, the Salvation Army."<sup>307</sup>

In his testimony, Lt. Marsh said that --

1. The semantics of the human trafficking laws still contribute to cases not being considered by federal and state prosecutors. Traffickers have developed an inspired strategy of allowing their victims to apparently possess money. This practice helps obfuscate the clear distinctions between trafficking victims and prostitutes, leading to cases that potentially lack jury appeal. Document servitude cases are being overlooked due to this trafficker strategy that is used across the country.

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<sup>307</sup> [Click Here](#) to see the complete text of the prepared statement of Lt. Derek Marsh at the March 19, 2009, House Homeland Security Subcommittee on Border, Maritime, and Global Counterterrorism hearing on human trafficking

2. The dialogues and attempts to legalize prostitution are of great concern. Law enforcement agencies are stretched thin with budget cuts. Well meaning but myopic attempts to benefit from prostitution will prove to be a great detriment, and involve state and local governments in the sexual exploitation of adults and minors. Enacting such laws would add to the workload of law enforcement, social services, and health care agencies, while potentially creating a government advocacy for an industry associated with criminal enterprises and the sexual exploitation of adults and minors.
  3. Enacting the federal model for anti-human trafficking is a challenge anti-human trafficking task forces welcome. However, the bifurcated funding stream for federally supporting these task forces can potentially hamper local efforts. Dual funding sources result in dual reporting requirements, and open the door for the potential duplication of data (or complete loss of data). Dual funding sources artificially separate task forces, which are at their best interrelated community and law enforcement partnerships developed in their local contexts to enact the federal anti-trafficking model. A single funding stream model, as if afforded in federal earmarks, may provide greater support of the federal model, support the interconnected locally diverse task forces, while allowing for more direct accountability with regards to funds expended and data collected and reported.
  4. Holding the users and enablers of slavery services accountable is a vital component to successfully developing anti-trafficking enforcement strategies. Historically, the users of sexually exploited persons, or "johns," have not been held criminally accountable to the same level as the pimp or trafficker. For instance, in California, it is a misdemeanor to solicit a prostitute. The situation is made even more complex, in that johns have information about brothels and massage parlors that law enforcement would not normally be aware of without debriefing them. Nonetheless, legal consideration of the john not as a solicitor, but a conspirator, appears to be supported in the anti-human trafficking research and best practice. In California law, this would allow for Johns to receive equal punishments to the traffickers themselves. While this discussion is at its infancy, I hope we can develop a unilateral strategy to deter, if not eliminate, the demand side of this trafficking equation.
- Anastasia K. Brown. In her prepared testimony, Ms. Anastasia K. Brown, Director of Refugee Programs for the United States Conference of Catholic Bishops Migration and Refugee Services, made a number of recommendations.<sup>308</sup> :
    1. First, with regard to the just-enacted TVPRA, we recommend that, working with other committees of jurisdiction, you use your oversight functions and responsibilities to ensure that -
      - A. As required by Section 235(a)(4) of the new law, DHS transfers custody of potential child trafficking victims to the Department of Health and Human Services (HHS) within 48 hours of apprehending them.
      - B. DHS establishes protocols to determine, as required by the new law, whether an unaccompanied alien child from a contiguous country who is apprehended at the border is a child trafficking victim or otherwise would be at risk of being victimized should the child be returned to that country. DHS should consider the use of appropriate child welfare experts to make this determination.
      - C. Consistent with Section 212 of the recently enacted TVPRA, the Department of Homeland Security (DHS) immediately refers potential child trafficking victims for interim benefit assistance rather than waiting until a final determination is made about their status.
      - D. DHS provides specialized training for federal enforcement personnel on identifying and referring for service trafficking victims, as required by Section 235(e) of the new law.
      - E. Consistent with section 212 of the new law, DHS not be permitted to interfere with the process by which the Department of Health and Human Services (HHS) makes determinations about the eligibility of trafficking victims for services under the TVPA.
      - F. The subcommittee should ensure that DHS provide assistance to HHS in their new responsibilities relating to unaccompanied alien children's access to Special Immigrant Juvenile Status (SIJS).

He concluded his statement by saying that "he continues to be impressed by the dedication and compassion of the law enforcement agencies and NGOs involved in the anti-human trafficking effort."

<sup>308</sup> [Click Here](#) to see the complete text of the prepared statement of Ms. Anastasia K. Brown at the March 19, 2009, House Homeland Security Subcommittee on Border, Maritime, and Global Counterterrorism hearing on human trafficking

2. Ms. Brown also recommended broader actions regarding the treatment of trafficking victims:
  - A. Services to trafficking victims should be made available from the point they are rescued to the point they are self-sufficient and in good health. The TVPRA of 2008 addresses some of these concerns in Section 212, but we suggest that services be made available for much longer than the current four months allowed after certification.
  - B. Federal agencies should better coordinate efforts, especially in the certification, protection, and care of victims.
  - C. The federal government should provide more education and guidance to federal, state and local law enforcement agencies on their authority to recommend that trafficking victims be referred for services. The TVPRA of 2008 addresses some of these concerns in Section 212.
  - D. More funding should be made available to victims of human trafficking. ☀

**House Appropriations Panel Holds Hearing on Biometric Identification:** The House Appropriations Subcommittee on Homeland Security held a hearing last week at which it examined biometric identification. Last week's hearing was held on Thursday, March 19, 2009.

**Witnesses.** The witnesses at last week's hearing included:

- Kathleen Kraninger, Deputy Assistant Secretary of Homeland Security for Policy, DHS Screening Coordination Office; and
- Bob Moczny, Director, United States Visitor and Immigrant Status Indicator Technology.<sup>309</sup> ☀

**House Judiciary Panel Holds Hearing on the Treatment of Refugees During World War II:** The House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law held a hearing last week on the treatment of Latin Americans of Japanese Descent, European Americans, and Jewish Refugees During World War II. Last week's hearing occurred on Thursday, March 19, 2009.

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<sup>309</sup> [Click Here](#) to see the combined prepared statement of Deputy Assistant Secretary of Homeland Security for Policy Kathleen Kraninger and US-VISIT Director Bob Moczny at the March 19, 2009, House Appropriations Subcommittee on Homeland Security Hearing on biometric identification

**Witnesses.** The Subcommittee heard from the following witnesses at last week's hearing:<sup>310</sup>

- Panel I
  1. Daniel Masterson, Professor of Latin American History, U.S. Naval Academy
  2. Grace Shimizu, Director, Japanese Peruvian Oral History Project (JPOHP)
  3. Libia Yamamoto, Former Japanese of Latin American Descent Internee
- Panel II
  1. John Christgau, Author of "Enemies: World War II Alien Internment"
  2. Karen Ebel, President, German American Internee Coalition
  3. Heidi Gurcke Donald, Board and Founding Member, German American Internee Coalition
  4. John Fonte, Director, Center for American Common Culture; and Senior Fellow, Hudson Institute
- Panel III
  1. Valery Bazarov, Director of Location and Family History Service, Hebrew Immigrant Aid Society (HIAS)
  2. David A. Harris, Executive Director, American Jewish Committee (AJC)
  3. Leo Bretholz, Author of "Leap Into Darkness"
  4. Michael Horowitz, Senior Fellow, Hudson Institute. ☀

### Last Week's Markups

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

### Last Week's Floor Actions

There was no floor action last week on measures containing significant immigration- or refugee-related provisions.

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<sup>310</sup> [Click Here](#) to see the complete text of each of the witnesses at the March 19, 2009, House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law hearing on the treatment of Latin Americans of Japanese descent, European Americans, and Jewish refugees during World War II.

### 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*

#### **Obama Signs Religious Worker and Conrad J-1 Visa Programs Extension Measure into Law:**

President Barack Obama last week signed legislation into law extending the special immigrant non-minister religious worker and the Conrad 30 J-1 visa programs. The President signed the measure, [H.R. 1127](#), into law on Friday, March 20, 2009, making it Public Law 111-9.

**Legislative History.** House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law Chairwoman Zoe Lofgren (D-CA) introduced H.R. 1127 on February 23, 2009. The House of Representatives bypassed the House Committee on the Judiciary, where the measure was referred, taking it up and passing it on Wednesday, March 4, 2009, by a voice vote.<sup>311</sup>

Upon receiving H.R. 1127 from the House, the Senate held it at the desk, passing it on Wednesday, March 11, 2009, by unanimous consent.

**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 enacted into law, P.L. 111-9 contains the following immigration-related provisions:

- Religious Worker Visa Program. Section 1 of P.L. 111-9 amends 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, the special immigrant nonminister religious worker visa program; and
- Conrad State 30 Program. Section 2 of P.L. 111-9 amends 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.

<sup>311</sup> See Pages 298-300 of the March 9, 2009, edition of the *Weekly Legislative Update* for a detailed description of the House action on H.R. 1127.

**House 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>312</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>313</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

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<sup>312</sup> [Click Here](#) to see a video of the March 4, 2009, House floor debate on H.R. 1127 or see Pages H2942–H2945 of the March 4, 2009, edition of the Congressional Record to read a transcript of the House floor debate on the measure

<sup>313</sup> [Click Here](#) to see a video of Representative Bart Stupak’s March 4, 2009, House floor statement in opposition to H.R. 1127

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 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.”

**Senate Floor Debate.** There was no floor debate on H.R. 1127 in the Senate.<sup>314</sup>

<sup>314</sup> [Click Here](#) to see a video of the March 11, 2009, Senate floor consideration of H.R. 1127

**Presidential Signing Statement.** The President did not issue a signing statement in connection with H.R. 1127. ☀

**Obama Extends Deferred Enforced Departure for Liberian Nationals in the United States:** According to both press reports and reports from Capitol Hill, President Barack Obama last week signed an executive order extending for 12 months the designation of Liberia for Deferred Enforced Departure (DED). Reports indicate that the President signed the order on Friday, March 20, 2009.

It is estimated that the President’s actions will protect approximately 3,600 Liberians who currently are living in the United States without permanent status.

**History of Temporary Protection for Liberians.** President George H. W. Bush first granted temporary protections to Liberians in the United States on March 27, 1991. At that time, he designated Liberia for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act. He extended the designation for another year on January 24, 1992.<sup>315</sup>

President Bill Clinton extended the Liberian TPS designation six times, in each of 1993 through 1998.<sup>316</sup> On two of those occasions (1997 and 1998), President Clinton redesignated Liberia for TPS, thus expanding the class of Liberians who were protected.

On September 27, 1999, President Clinton granted deferred enforced departure for Liberians. He extended that grant of DED for one year on September 28, 2000.

President George W. Bush extended the grant of Liberia for DED on September 25, 2001. However, beginning in 2002 and continuing through 2006, President Bush designated and extended designations of Liberia once again for TPS.<sup>317</sup>

In 2007, President George W. Bush granted Liberians an 18 month-long period of Deferred Enforced Departure, effective through March 31, 2009.<sup>318</sup>

TPS was originally granted for Liberia due to armed conflict and widespread civil strife. That conflict ended in 2003. President George W. Bush declared in 2007 that, because of the end of the conflict in Liberia, conditions there had

<sup>315</sup> 1991: 56 FR 12746; 1992: 57 FR 2932

<sup>316</sup> 1993: 58 FR 7896; 1994: 59 FR 9997; 1995: 60 FR 16163; 1996: 61 FR 8076; 1997: 62 FR 16608; and 1998: 63 FR 51958

<sup>317</sup> 2002: 67 FR 61664; 2003: 68 FR 46648; 2004: 69 FR 52297; 2005: 70 FR 48176; 2006: 71 FR 55000

<sup>318</sup> [Click Here](#) to see the September 12, 2007, fact sheet released by the Department of Homeland Security announcing the initial grant of DED for Liberians

improved such that TPS was no longer factually warranted. While acknowledging the progress in Liberia, President Bush said at the time that political and economic conditions in the country justified deferring the enforced departure from the United States of Liberians for 18 months for those whose TPS status was about to expire.

**Background on Temporary Protected Status.** Temporary protected status is an immigration status given to nationals of countries or parts of countries that are deemed by the U.S. government to be too unsafe for nationals to return. That status can be granted for reasons like an armed conflict or environmental disaster.

**Background on Deferred Enforced Departure.** Previous White Houses have contended that the authority to allow for deferred enforced departure of a class of aliens derives from the President's constitutional powers to conduct foreign relations. It is an authority exercised previously by President George W. Bush and by Presidents Bill Clinton and George H. W. Bush. Although DED is not a specific immigration status, individuals covered by DED are not subject to enforcement actions to remove them from the United States, usually for a specific period of time.

**Last Week's Action.** Advocates for Liberians in the United States had pressed the Obama Administration to extend the deferred enforced departure for Liberians for 18 months. Additionally, they have pressed for legislation to permit Liberians to gain permanent residency in the United States.  
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## Recently Introduced Legislation

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

### House

#### Civil Rights

- **Common Sense English Act:** Representative Thomas E. Price (R-GA) has introduced [H.R. 1588](#), a bill Act to ensure that an employer has the freedom to implement English in the workplace policies.

As introduced, H.R. 1588 would amend the Civil Rights Act of 1964 to provide that it shall not be an unlawful employment practice for an employer to require employees to speak English while engaged in work.

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

- **Pledge Language is English Declaration and Government Endorsement Act of 2009:** Representative Paul Broun MD(R-GA) has introduced

[H.R. 1621](#), a bill to withhold Federal funds from schools that permit or require the recitation of the Pledge of Allegiance or the national anthem in a language other than English.

As introduced, H.R. 1621 would withhold Federal funds from schools that permit or require the recitation of the Pledge of Allegiance or the national anthem in a language other than English.

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

## Control of Illegal Immigration

- **Putting Our Resources Towards Security (PORTS) Act:** Representative Silvestre Reyes (D-TX) has introduced [H.R. 1655](#), a bill to enhance the safety of ports of entry in the United States, and for other purposes.

As introduced, H.R. 1655 would increase the number of border patrol agents, border personnel, and agricultural inspectors during the period between fiscal years 2010 and 2014, as well as authorize \$1 BILLION in each of fiscal years 2010 through 2014 to existing ports of entry in the United States to improve border security.

It has been referred to the House Committee on Homeland Security, House Committee on Transportation and Infrastructure, and the House Committee on Ways and Means.

- **Civil Air Patrol Homeland Security Support Act of 2009:** Representative Charlie Dent (R-PA) has introduced [H.R. 1627](#), a bill to amend the Homeland Security Act of 2002 to direct the Secretary to enter into an agreement with the Secretary of the Air Force to use Civil Air Patrol personnel and resources to support homeland security missions.

As introduced, H.R. 1627 would direct the Secretary to enter into an agreement with the Secretary of the Air Force to use Civil Air Patrol personnel and resources to support homeland security missions.

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

## Due Process for Aliens in Removal Proceedings

- **Access to Justice Act:** Representative James P. Moran (D-VA) has introduced [H.R. 1651](#), a bill to amend the Immigration and Nationality Act to establish a right for an alien to file a motion to reopen a case in removal proceedings if the alien can demonstrate that counsel or a certified representative provided deficient performance.

As introduced, H.R. 1651 would establish a right for an alien to file a motion to reopen a case in removal proceedings if the alien can demonstrate that counsel or a certified representative provided deficient performance. It has been referred to the House Committee on the Judiciary.

### Legalization

- **HRIFA Improvement Act of 2009:** Representative Kendrick Meek (D-FL) has introduced [H.R. 1567](#), a bill to amend the Haitian Refugee Immigration Fairness Act of 1998.

As introduced, H.R. 1567 would amend the Haitian Refugee Immigration Fairness Act of 1998 to: (1) provide that determinations with respect to children shall be made using the age and status of an individual on October 21, 1998 (the enactment date of the Haitian Refugee Immigration Fairness Act of 1998); (2) permit an application based upon child status to be filed by a parent or guardian if the child is present in the United States on such filing date; and (3) include document fraud among the grounds of inadmissibility which shall not preclude an otherwise qualifying Haitian alien from permanent resident status adjustment.

The measure also would permit new status adjustment applications to be filed for a limited time period, and it would direct the Secretary of Homeland Security to establish procedures for reopening status adjustment applications that are affected by amendments made by this Act.

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

### Refugee Resettlement

- **Torture Victims Relief Reauthorization Act of 2009:** Representative Christopher H. Smith (R-NJ) has introduced [H.R. 1511](#), a bill to amend the Torture Victims Relief Act of 1998 to authorize appropriations to provide assistance for domestic and foreign programs and centers for the treatment of victims of torture, and for other purposes.

As introduced, H.R. 1511 would reauthorize funding for programs of assistance for domestic and foreign programs and centers for treatment of victims of torture. More specifically, the measure would authorize \$25 MILLION in each of fiscal years 2010 and 2011 for domestic torture victim assistance and \$12 MILLION for each of fiscal years 2010 and 2011 for foreign torture victim assistance.

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

### Senate

#### Legalization

- **Liberian Refugee Immigration Fairness Act of 2009:** Senator Jack Reed (D-RI) has introduced [S. 656](#), a bill to provide for the adjustment of status of certain nationals of Liberia to that of lawful permanent residents.

As introduced, S. 656 would allow Liberians who were granted temporary protection status classification to become legal permanent residents.

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

### *Bills in Development*

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

### *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 (\*\*).

### House

**\*\*House Judiciary Committee to Hold Hearing on 287(g) Program:** The House Committee on the Judiciary is expected to hold a hearing next week on the 287(g) program. No hearing date had been publicly announced at the time of this writing. However, advocates indicate they have been told that the hearing could be held as soon as next week.

### Senate

**\*\*Senate Debate on Mortgage Relief Measure Postponed Until After the April Recess:** Senate floor consideration of House-passed legislation to provide mortgage relief to homeowners filing for bankruptcy has been

postponed until after the April recess as senators seek to negotiate a compromise that the Senate can pass.

Should it occur, Senate action would be taken in connection with [H.R. 1106](#), the Helping Families Save Their Homes Act, which the House of Representatives passed H.R. 1106 on March 5, 2009, by a vote of [234-191](#). The House-passed version of the measure 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.

As passed by the House, H.R. 1106 did not contain any provisions specifically focused on immigrants. However, it is widely expected that the measure will become a target of amendments that would impose immigration-related restrictions in the Senate.

**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:

- [Fiscal Year 2010 Budget Resolution](#). Next week's Weekly Legislative Update will provide an analysis of the immigration- and refugee-related consequences that can be discerned from this week's House Budget Committee and Senate Budget Committee markups of the fiscal year 2010 budget resolution.
- [Immigration- and Refugee-Related Views and Estimates](#). Next week's Weekly Legislative Update will report on the immigration- and refugee-related items in various House and Senate authorizing committees' Views and Estimates on the fiscal year 2010 budget.
- [Oversight Hearing on the FBI](#). Next week's Weekly Legislative Update will report on any immigration-related matters that are discussed at this week's Senate Judiciary Committee oversight hearing on the FBI.
- [Fiscal Year 2009 War Supplemental](#). Next Week's Weekly Legislative Update will report on any refugee-related provisions contained in President Barack Obama's Fiscal Year 2009 war supplemental request should the President, as expected, submit such a request to Congress this week.
- [Preview of the Likely Immigration and Refugee Legislative Agenda for the 111<sup>th</sup> Congress](#). Next week's Weekly Legislative Update will preview the likely immigration and refugee legislative agenda that Congress will face during the 111<sup>th</sup> Congress. ◇

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*Appendix*

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No items this week.

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