



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

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

Monday, April 20, 2009

Page 363

Legislative Highlights

<i>House and Senate Returns from Two Week-Long Recess</i>	363
<i>Senate Expected to Advance Sebelius HHS Nomination This Week</i>	365-367
<i>Secretary Clinton to Testify on Administration's FY '09 Supplemental Request</i>	364-364
<i>Obama Requests \$293 MILLION in additional refugee funding in Iraq Supplemental</i>	387-388
<i>Obama and Administration Send Cloudy Smoke Signals on Comprehensive Immigration Reform</i>	388-388
<i>House Judiciary Holds Hearing on State and Local Enforcement of Immigration Law</i>	367-381
<i>House and Senate Pass Separate Versions of the Fiscal Year 2010 Budget Resolution</i>	383,385
<i>House Passes Bill Increasing Penalties for Alien Smuggling</i>	383-383
<i>Administration Pledges Additional Funds to Help Refugees Meet Increasing Housing Costs ..</i>	387-387

Congress returns this week from its two week-long Spring Recess. Upon its return, Congress will remain in session through the close of business on May 22, 2009, at which time it is scheduled to begin a week-long Memorial Day recess. Immigration and refugee issues are expected to move to the front burner during this period, along with a continued focus on budget, appropriations, and economic issues.

This Week's Hearings

Continued on Page 364

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

- Hearing on Obama Foreign Policy Priorities. A House Foreign Affairs Committee hearing on the Obama Administration's foreign policy priorities, at which Secretary of State Hillary Rodham Clinton is expected to testify;
- Hearing on Border Violence. A Senate Homeland Security and Governmental Affairs Committee field hearing on southern border violence;
- Confirmation of ICE Assistant Secretary. A Senate Homeland Security and Governmental Affairs Commit-

Inside This Week's Edition

Legislative Highlights	363
This Week's Hearings	363 - 364
This Week's Markups	364 - 367
This Week's Floor Activity	367 - 367
This Week's Conference Activity	367 - 367
This Week's Executive Activity	367 - 367
Last Week's Legislative Activity	367 - 387
Last Week's Executive Activity	387 - 388
Recently Introduced Legislation	389 - 390
Bills in Development	390 - 390
Over the Horizon	390 - 391
Next Week's Weekly Legislative Update ..	391 - 391
Appendix	392 - 392

- tee confirmation hearing on the nomination of John T. Morton to head the Immigration and Customs Enforcement bureau; and
- Fiscal Year 2009 War Supplemental. A House Appropriations panel hearing on the Obama Fiscal Year 2009 Iraq/Afghanistan Supplemental Appropriations request for programs administered by the Department of State.

House

House Foreign Affairs Committee to Hold Hearing on Obama Foreign Policy Priorities: The House Committee on Foreign Affairs has scheduled a hearing for this week on the Obama Administration's foreign Policy priorities. This week's hearing is titled "New Beginnings: Foreign Policy Priorities in the Obama Administration." It is scheduled for 9:30 am on Wednesday, April 22, 2009, in Room 2172 of the Rayburn House Office Building.

Anticipated Witnesses. At the time of this writing, the sole witness for this week's hearing was expected to be Secretary of State Hillary Rodham Clinton. ☼

House Appropriations Subcommittee to Hold Hearing on Obama Iraq/Afghanistan Supplemental Request: The House Appropriations Subcommittee on State, Foreign Operations, and Related Agencies has scheduled a hearing for this week on the Obama Administration's fiscal year 2009 Iraq/Afghanistan supplemental appropriations request for programs administered by the Department of State. This week's hearing is scheduled for 10:00 am on Thursday, April 23, 2009, in Room 2358 of the Rayburn House Office Building.

Anticipated Witnesses. At the time of this writing, the sole witness for this week's hearing was expected to be Secretary of State Hillary Rodham Clinton. ☼

Senate

Senate Homeland Security Committee to Hold Field Hearing on Violence along U.S.-Mexico Border: The Senate Committee on Homeland Security and Governmental Affairs has scheduled a field hearing for this week to examine violence along the U.S. border with Mexico. This week's hearing is titled "Southern Border Violence: State and Local Perspectives." It is scheduled for 9:00 am Mountain Standard Time on Monday, April 20, 2009. It is being held in the chamber of the Phoenix City Council.

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

Panel I

- Governor Jan Brewer (R-AZ);
- Terry Goddard, Arizona Attorney General;

Panel II

- Phil Gordon, Mayor, Phoenix, Arizona;
- Octavio Garcia-Von Borstel, Mayor, Nogales, Arizona;
- Ned Norris Jr., Chairman, Tohono O'odham Nation

Panel III

- Jack F. Harris, Public Safety Manager, Phoenix, Arizona;
- Clarence W. Dupnik, Sheriff, Pima County, Arizona; and
- Larry Dever, Sheriff, Cochise County, Arizona. ☼

Senate Homeland Security Committee to Hold Confirmation Hearing for ICE Nominee: The Senate Committee on Homeland Security and Governmental Affairs has scheduled a confirmation hearing for this week on the nomination of John T. Morton to be Assistant Secretary of Homeland Security for Immigration and Customs Enforcement. This week's hearing is scheduled for 10:00 am on Thursday, April 22, 2009, in Room SD-342 of the Dirksen Senate Office Building.

Anticipated Witnesses. At the time of this writing, it is anticipated that the sole witness witnesses at this week's hearing will be John T. Morton. ☼ ◇

This Week's Markups

Only one markup is anticipated this week having implications for immigration- or refugee-related matters:

- Vote on Sebelius Nomination. The Senate Committee on Finance could vote this week on the nomination of Governor Kathleen Sebelius (D-KS) to be Secretary of Health and Human Services.

House

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

Continued on Page 365

Writer

Micheal E. Hill, Associate Director
United States Conference of Catholic Bishops
Government Relations Office (USCCB/GR)
Voice: (202) 541-3161
Mobile: (202) 257-1520
Fax: (202) 541-3313
E-Mail Address: MHill@usccb.org
Real-Time Updates: www.twitter.com/MicEvHill

This Week's Markups (continued)

Senate

Senate Finance Committee to Vote This Week on the Sebelius HHS Nomination: The Senate Committee on Finance has scheduled a markup for this week at which it anticipates voting on the nomination of Governor Kathleen Sebelius (D-KS) to be Secretary of Health and Human Services. This week's markup is scheduled to take place sometime after 10:00 am on Tuesday, April 21, 2009, in SD-215 of the Dirksen Senate Office Building.

President Obama announced Governor Sebelius' nomination to be Secretary of Health and Human Services on Monday, March 2, 2009. Hers was the last of the four cabinet departments with significant jurisdiction over immigration- or refugee-related functions and programs to have their cabinet secretaries confirmed. The three departments that have heads in place are the Department of Homeland Security, department of State, and Department of Justice.

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

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

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

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

- Unaccompanied Alien Children. These programs provide care and custody for unaccompanied aliens in federal custody while their immigration status is being resolved.

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

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

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

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

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

In 2004, Governor Sebelius signed a measure granting in-state tuition to qualifying students who are illegal immigrants. Under the 2004 law, children of illegal immigrants are eligible to pay in-state tuition if they have lived in Kansas for at least three years, graduated from a Kansas high school and are on the path toward citizenship. Upon passage of the legislation, Governor Sebelius issued a

statement declaring that she was “delighted that the immigrant tuition bill was finally approved by the Legislature after two years of efforts by supporters, students and citizens who came from across Kansas to lobby for this measure.” She went on to assert that the bill “will remove financial barriers and open the doors of our colleges and universities to all Kansas high school graduates.” She continued, saying that “[w]e know that 21st Century workers need post-secondary training, but too many talented Kansas students found higher education too expensive to pursue. In the long-run, we will be a stronger state with a better-educated workforce because of this measure.”³⁴¹

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

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

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

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

permit to any person who fails to provide proof of lawful presence in the United States.³⁴² 320

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

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

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

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

A group of immigration restrictionists in the Kansas legislature made a determined, but unsuccessful effort in 2008 to pass a comprehensive immigration enforcement bill. The measure never made it to the Governor’s desk.

In May of 2008, Governor Sebelius vetoed legislation that sought to impose identification requirements on persons seeking to vote. The measure was aimed at preventing illegal immigrants from voting. In her veto message, the Governor asserted that the measure “goes against our state’s long standing tradition of striving to achieve greater voter participation in our democratic process. The needless, additional identification requirements of HB 2019 will only

³⁴¹ [Click Here](#) to see the press release issued by Governor Kathleen Sebelius on May 5, 2004, upon approval by the Kansas Legislature of Immigrant Tuition Bill

³⁴² [Click Here](#) to see the press release issued by Governor Kathleen Sebelius upon signing SB 9, relating to drivers license fraud, into law

work to disenfranchise many of the electorate and serve as a barrier to their participation in the democratic process.”³⁴³ 321

Outlook. At the time of this writing, Governor Sebelius’ nomination was not facing any major opposition in the Committee. ☼ ◇

This Week’s Floor Activity

At the time of this writing, no floor action was anticipated for this week in either the House of Representatives or the Senate on measures containing significant immigration- or refugee-related provisions. ◇

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

No items this week. ◇

Last Week’s Legislative Activity³⁴⁴

Last Week’s Hearings

Six Congressional panels held hearings during the week of March 30, 2009, at which significant immigration- or refugee-related matters were discussed:

- **State and Local Enforcement of Immigration Law.** Two House Judiciary Committee Panels held a hearing during the week of March 30, 2009 on state and local enforcement of immigration law;
- **Nomination of Kathleen Sebelius to be Secretary of Health and Human Services.** Two committees held hearings during the week of March 30, 2009 on the nomination of Kathleen Sebelius to be Secretary of Health and Human Services—

³⁴³ [Click Here](#) to see the complete text of the May 18, 2008, veto message of Governor Kathleen Sebelius regarding HB 2019

³⁴⁴ Congress was in recess between April 6, 2009, and April 19, 2009. The Weekly Legislative Update was not published during that period. This is the first edition of the Weekly Legislative Update since March 30, 2009. Accordingly, items in this section that are expressed as having occurred “last week” may have occurred at any point between March 30, 2009, and April 19, 2009

1. The **Senate Committee on Health, Education, Labor, and Pensions** held a hearing during the week of March 30, 2009 on the Sebelius nomination.

2. The **Senate Committee on Finance** held a hearing during the week of March 30, 2009 on the Sebelius nomination;

- **Immigration and Citizenship.** The House Appropriations Subcommittee on Homeland Security held a hearing during the week of March 30, 2009 on immigration enforcement and citizenship verification; and

- **U.S.-Mexico Border Violence.** Two panels held hearings during the week of March 30, 2009 on U.S.-Mexico border violence—

1. The **Senate Committee on Foreign Relations** held a field hearing on violence along the U.S.-Mexico border.

2. The **House Homeland Security Subcommittee on Emergency Communications, Preparedness, and Response** held a hearing on violence along the U.S.-Mexico border.

House Judiciary Panels Hold Joint Hearing on State & Local Enforcement of Immigration Law:

Two subcommittees of the House Committee on the Judiciary held a joint hearing during the week of March 30, 2009 examining public safety and civil rights implications of state and local enforcement of federal immigration laws. The hearing was conducted by the House Judiciary Committee’s Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law and its Subcommittee on Constitution, Civil Rights, and Civil Liberties. It occurred on Thursday, April 2, 2009. ³⁴⁵

Witnesses. The witness list for last week’s hearing included the following:

Panel I

- Julio Cesar Mora, Avondale, Arizona;
- Antonio Ramirez, Frederick, Maryland Community Advocate;
- Deborah Weissman, Professor of Law and Director of Clinical Programs, University of North Carolina at Chapel Hill School of Law; and

³⁴⁵ [Click Here](#) to see a video of the April 2, 2009, House Judiciary Committee hearing on Public Safety and Civil Rights Implications of State and Local Enforcement of Federal Immigration Laws

- Ray Tranchant, Operations Director, Advanced Technology Center, Virginia Beach, VA and Adjunct Professor at Cambridge College, Cambridge, MA, Chesapeake Campus and Bryant and Stratton College Virginia Beach, Virginia.

Panel II

- David Harris, Professor of Law, University of Pittsburgh School of Law;
- Hubert Williams, President, Police Foundation;
- George Gascon, Chief, Mesa Police Department, Mesa, Arizona; and
- Kris Kobach, Professor of Law, University of Missouri – Kansas City School of Law.

Opening Statements. The following summarizes the comments made by Members of Congress in their opening statements at the April 2nd hearing:

- Chairwoman Lofgren. In her opening statement, House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law Chairwoman Zoe Lofgren (D-CA) noted that Congress has long recognized the particular threat that immigrant women face, both from domestic violence and human trafficking. As evidence of this, she pointed to two laws in particular: the Violence Against Women Act (VAWA) and the Trafficking Victims Protection Act (TVPA), two laws that Congress have recently reauthorized. She noted that special visas have been created for abused undocumented immigrant women, as well as for the victims of trafficking and that these laws ensure that victims of violence have an opportunity to escape their abusers. She asserted that the 287(g) program, however, “appears to fly in the face of all of the work that Congress has done to protect victims of violence.” She said the problems with the 287(g) program are due, in part, to bad implementation and poor federal supervision of the program.

She said that everyone should agree that the program “should be implemented and supervised in an appropriate manner to ensure the public safety and the protection of civil rights.” Chairwoman Lofgren asserted that the stories she has been told suggest much more should be done to make sure that the agreements do not undermine the protection of our communities, victims of violence, or civil rights.

She noted that 60 of the 67 287(g) programs have been signed in the last two years, despite the fact that the program has been around for more than 13 years. She said that more and more state and local law enforcement agencies have begun to enforce immigration laws without having 287(g) agreements in place.

Chairwoman Lofgren recounted several examples of people who she believes have been subjected to abuse because of poor implementation or supervision of 287(g) programs, including—

1. Julio Cesar Mora, one of the witnesses at last week’s hearing, who she said was pulled over by Maricopa County law enforcement officials, arrested by them, and detained for hours despite being a United States citizen.
2. An unnamed woman in Maryland who is afraid to call the police when her husband beats her because he has threatened to turn her in for deportation and take their child. She has said that she tolerates the beatings rather than call the police because she is afraid that the police will turn her in for deportation.
3. Rita Fanny Coat, a woman whose sister called the police when her boyfriend attacked her, but who, herself, was arrested because she was suspected of being an illegal alien.

She said that “if this Congress is committed to protecting public safety, protecting the victims of crime, and protecting civil rights, we are required to examine the effects of state and local law enforcement of immigration law. It is important that as we seek to enforce the law, we also live under the law.”

- Chairman Nadler. In his opening statement, House Judiciary Subcommittee on the Constitution, Civil Rights, and Civil Liberties Chairman Jerold Nadler (R-NY) said that the Committee has “received many reports from around the country about law enforcement officials in some jurisdictions going beyond the law and engaging in abusive activities we had hope were not longer found in this country.” He said it was “important that the law is enforced effectively and that the rule of law is respected by everyone -- especially by those charged with enforcing it.” He said, “unfortunately, it appears that in their zeal to enforce immigration laws, some local law enforcement officials have gone far afield, violating our civil rights laws, violating the constitution, violating the rights of U.S. citizens and of noncitizens who are here legally. That’s not law enforcement; that’s subversion of the law.”

Chairman Nadler asked a number of rhetorical questions:

1. Is it appropriate to have local police enforcing the immigration laws or is that federal function better left to the federal government?
2. Are federal dollars being spent correctly with proper oversight and within the requirements of the law?

3. If a particular local police enforcement agency is violating the law systematically, should the Department revoke the agency's 287(g) contract on the grounds that the agency is not conducting itself within the bounds of the law and cannot be trusted to enforce the law under the law?

Chairman Nadler said that in some instances we have seen a pattern and practice of civil rights violations. He said that we've seen reports of widespread racial profiling, threats against the exercise of First Amendment rights, retaliation against newspaper reporters who print unflattering comments about local officials, selective prosecutions, the abuse of arrestees and prisoners. He said these problems demand a careful investigation.

Chairman Nadler said "whatever your views on immigration policy, I hope we can all agree that the police power does not give anyone the right to declare open season on anyone who may "look foreign" to someone else. He said that "that's not the American way; in fact, it's illegal and the federal government has a duty, just as we did when local law enforcement colluded with the Ku Klux Klan many years ago, to intervene and protect individual rights against local law enforcement if they are violating such rights, without fear or favor."

- Chairman Conyers. In his opening statement, House Judiciary Committee Chairman John Conyers, Jr. (D-MI) noted that out of 17,000 law enforcement jurisdictions throughout the country, only 67 are using the 287(g) program. He said that racial profiling as a policy, in and of itself, is not acceptable except where it is in connection to a specific crime where a description of the perpetrator is available. He said that, "otherwise, it is considered a pretty gross violation of the 14th Amendment equal protection clause" [of the United States Constitution]. Chairman Conyers reminded the Committee that President George W. Bush, in his first inaugural address, spoke very strongly against racial profiling as a unsatisfactory police technique. He also reminded the Committee that former Attorney General John Ashcroft recently has decried the improper use of racial profiling.

Chairman Conyers said that frequently, sheriffs have made a practice of racial profiling for a political gain. He said that immigrant bashing is a pretty popular sport, unfortunately, in some areas. He noted that some time ago, African Americans were stopped merely for being black in what was then called, "driving while Black." He noted that "now, Hispanic Americans are even more frequently being violated."

- Representative Mel Watt. Representative Mel Watt (D-NC) spoke briefly at the beginning of the hearing, expressing his appreciation to the Chairs for examining

an issue that is raging in communities both where 287(g) programs exist and where they don't exist. He said that the issues that are being outlined are all legitimate. He said they're being addressed in local communities. But they need to be addressed in Congress.

- Ranking Republican King. In his opening statement, House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law Ranking Republican Steve King (R-IA) defended the use of race- and national origin-based immigration enforcement targeting by both federal and state and local law enforcement officials, declaring that "the use of race or national origin in law enforcement is only strictly prohibited when race or national origin is the sole criterion for the law enforcement action." To be prohibited, he declared, the action "has to be based upon an invidious purpose." Ranking Republican King went on to cite several United States Supreme Court cases, which he said, held that "mere racial disproportions in the level of law enforcement activity for a particular crime may be unobjectionable if they merely reflect a racial disproportionality in the commission of that crime." He said that the United States Supreme Court has upheld the selective referral of persons who appear to be of Mexican origin for secondary inspection at fixed checkpoints as long as they were made largely on the basis of apparent Mexican ancestry. He said that law enforcement has broad discretion to reasonably rely on the factors of race and national origin as long as those criteria are not the sole criteria that invidiously motivate their actions.

Ranking Republican King suggested that, when used correctly, the reliance by state and local officials of race and nationality in conducting operations results in safer communities, and that safer communities also result from state and local law enforcement officials' enforcement of federal immigration law. In defense of this assertion, Ranking Member King pointed to the cases of four of the individuals who are alleged to have participated in the hijackings of September 11, 2001, resulting in the four terrorist attacks on the United States. He said that four of those individuals were in the United States illegally and had come into contact with state and local law enforcement officials in the months before the terrorist attacks on the United States because of traffic infractions they committed. But that the officials did not report that contact to the federal government.

Representative King pointed to Operation Community Shield, as an example of the benefits of coordination of federal and state law enforcement entities. He said that 7,655 street gang members and associates from over 700 gangs have been arrested. He said that 107 were gang leaders and that more than 2,500 of them had violent histories.

Representative King pointed to a number of Americans who have been victimized by illegal aliens who had criminal histories but who had not been reported to the federal government by local authorities as examples of what can happen when state and local authorities do not cooperate in the enforcement of federal immigration law.

Representative King concluded his remarks by saying that, “if we have to choose between political correctness and ensuring the safety of the American people, I will choose the American people in a heartbeat.”

- Ranking Republican Smith. In his opening statement, House Judiciary Committee Ranking Republican Lamar Smith (R-TX) expressed his hope that the hearing would examine the detrimental effects of sanctuary cities that prohibit local law enforcement officials from helping to enforce federal immigration laws. He said that the 740,000 local law enforcement officials should do all they can to protect Americans, including enforcing immigration laws. He cited numerous cases of illegal immigrants who committed horrific crimes against Americans as evidence of why state and local law enforcement officials should participate in the enforcement of federal immigration law.

Ranking Republican Smith said that the 287(g) program was created to allow DHS to enter into agreements with states and localities to assist in the investigation, apprehension, and detention of illegal aliens. He said it is completely voluntary and that the number of agencies that want to participate in the program outstrip the ability of DHS to keep up with the demand. He said that the 287(g) program has been credited with identifying more than 79,000 individuals who are suspected of being in the United States illegally.

Ranking Republican Smith said that the program was not intended to only deal with serious criminal activity. Rather, he said, it was created to allow state and local law enforcement officials enforce all immigration laws and to remove illegal immigration from the streets before the commit crimes.

- Ted Poe. Representative Ted Poe (R-TX) began his opening statement by asserting that “of course, profiling a person based on race is abhorrent to our system. But we must also deal with the reality of the problems that we have with illegals that have committed crimes in this country.” He noted that the city of Houston, Texas, has over 400,000 illegals. It has decided, based on the fact that a number of peace officers who recently have been shot in the city were shot by people who are illegally in the United States, to participate in the 287(g) program. He said we should make sure that the program works and that it should be enhanced so that more local departments can participate in the program.

Prepared Testimony. The following summarizes the prepared testimony by the witnesses at last week’s hearing:

Panel I

- Julio Cesar Mora. In his prepared remarks, Julio Cesar Mora, a citizen of the United States who was born in Arizona, told the committee of his experiences in February of 2009, when he and his lawful permanent resident father were stopped by Maricopa County, Arizona Sheriff’s deputies while driving in Phoenix, Arizona, arrested, and detained, apparently out of a suspicion that one or both of them were illegal immigrants.³⁴⁶

Mora said that when his father indicated that he was driving to work at a location that was a short distance away, they were taken to the worksite where all of the employees were lined up with handcuffs. He told the Committee of being humiliated by the deputies, and of what he viewed as the ill treatment by the sheriff deputies of his 66 year-old father, who has diabetes.

He concluded his statement by asserting, “To this day, I don’t know why the officers stopped us out of all the cars on the road. Maybe it was because of the Campesina radio station sticker on our bumper or maybe it’s because my dad was wearing his Mexican tejana and they thought we were illegal. But they never bothered to ask us. I don’t think it’s fair the way we were treated.

“I have heard that the Sheriff has an agreement with ICE, and that’s why he was able to ask everyone about their immigration status. I had heard that he was arresting people in Guadalupe and Mesa, but I never thought it would happen to me. Now I know it can happen to anyone, citizens too. My dad says he’s always tried to protect me from these kinds of things, but that day I saw a man begging an officer not to deport him, offering him some candy as a bribe. It opened my eyes to what is happening in Arizona. Most of the people in my neighborhood, they are just trying to get by and make a better life for their kids. The police are supposed to keep us safe, but they are arresting us instead of the real criminals. I still think of that day sometimes when I have to go to the bathroom. And I still think of the guy with the candy. They took away our pride -- my dad’s, this man’s, and mine.”

- Antonio Ramirez. In his prepared remarks, Antonio Ramirez, a naturalized United States citizen, told the

³⁴⁶ [Click Here](#) to see the complete text of Julio Cesar Mora’s prepared remarks before the April 2, 2009, House Judiciary Committee hearing on Public Safety and Civil Rights Implications of State and Local Enforcement of Federal Immigration Laws

committee of his experiences and observations as a community activist in Frederick County, Maryland.³⁴⁷

Mr. Ramirez told the Committee that “I have always shared with others my belief that this is the greatest country in the world, where everyone’s rights are respected, and where no one is judged because of what they look like. And so it is with great sadness that I report to you that this is no longer true in Frederick County, Maryland. In Frederick, Latinos are not seen as people anymore; instead, we are just “illegals” – including many, like me, who are proud citizens of this great country.”

He said that “Latino citizens and immigrants in Frederick feel like we are walking around with huge targets on our backs. We get stopped by the police in Frederick County for all kinds of reasons – or no reason at all – and then asked for ‘papers’.”

Mr. Ramirez told the Committee a number of stories about people he knows who were treated in a disparate manner by law enforcement officials in Frederick because, in his view, they were Hispanic. Among the stories were –

1. “One Saturday about a month ago, a Latino man I know was pulled over at about 7:30 in the morning. He was told by the police officer that it was because the little tree air freshener hanging from his rearview mirror was illegally blocking his view of the road. I have heard that this has happened to several other Latino drivers in Frederick, but I have never heard of it happening to non-Latinos.
2. “I know two Latino men who were pulled over in separate incidents – one in October, and one in November – both because the police officers told them they were driving too slowly. I have heard of at least two other people – both Latino – who have been pulled over for the same thing. Only one of the four was given a ticket for driving too slowly.”
3. “Other Latinos – both immigrants and citizens – have said that they have been stopped by police and asked for identification while they were just walking on the sidewalk or sitting on a bench. Most of them are also asked if they have drugs on them, and the police usually pat them down. This especially happens in Hillcrest, a mostly Latino neighborhood of Frederick. However, last Saturday a Latino man I know was stopped by police in downtown Frederick,

who asked him if he was selling drugs. They only let him go after they searched him and he showed them his driver’s license.”

Ramirez asserted that the actions of the police in Frederick since it entered into a 287(g) agreement “have made even Latino citizens change the way we live our lives to avoid being harassed. We avoid driving on certain roads that we know the police stake out. We avoid driving at all late at night, when it is too easy for police to pick out the Latino drivers and make up a reason to pull us over. For over 20 years, I had a rosary hanging from my rearview mirror as a reminder of my faith. After my friend was pulled over for having the air freshener on his mirror last month, I took it off. I didn’t want the police to have it as an excuse to pull me over and harass me.”

Ramirez continued, asserting that “[t]he Frederick County Sheriff’s Office has claimed that this program is about catching violent criminals. Last summer I met with him and one of his officers in his office. I offered to work with him to improve relations between his office and Frederick’s Latino community and to help him catch criminals. After listening for a few minutes, he asked me why the Latinos don’t understand that “we don’t want them here.” He explained that he “want[s] Frederick County to look the way it did fifteen years ago,” and that that was a reason why he joined the 287(g) program.”

Mr. Ramirez testified that while the Frederick County sheriff has so far declined his offer to help the county reduce crime in the Hispanic community and has refused to meet with the Hispanic community to listen to the community’s concerns about the 287(g) program, the sheriff has met several times with a group called “Help Save Maryland” that he describes as a “nativist extremist group.” Mr. Ramirez also complained that the Frederick County sheriff has “boasted about how the program has helped him bring money to the County because the federal government pays him \$83 a day to detain immigrants, but it only costs him \$7 a day to hold them.”

Mr. Ramirez said “another problem with the program is that even though the police of the City of Frederick is not in the 287(g) program, there is only one jail in the County. So when anyone is arrested in the County by any police agency, they go to the Sheriff’s jail. That means that Latinos and immigrants are now afraid of not just the Sheriff, but all police.” As a result, he said, “Latinos and immigrants do not report crimes anymore. I know one woman who is the victim of domestic violence who will not report it because her husband has said that if she does, he will call immigration, have her deported, and keep their child. And therefore she just tolerates being beaten.” He also said that he knows a mother “who is too afraid to call the police about the drug dealer who lives in her neighborhood, even though he has tried to

³⁴⁷ [Click Here](#) to see the complete text of Antonio Ramirez’s prepared remarks before the April 2, 2009, House Judiciary Committee hearing on Public Safety and Civil Rights Implications of State and Local Enforcement of Federal Immigration Laws

give drugs to her children. She confronted the drug dealer, and demanded that he stop, but he just laughed at her, both because she is a little woman and he is a large man, but mainly because he knows that she will not call the police. I also know a Latino man who was robbed last summer on Patrick Street in downtown Frederick. He was approached by a man who demanded that he give him all his money or else the thief would call the police and tell them that the Latino man was selling drugs. Instead of risking problems with immigration, he gave up his money. I have heard of several other Latinos being threatened like this, but none of them have reported it to police.”

Mr. Ramirez concluded his prepared statement by asserting that “[t]he Sheriff testified to Congress last month that immigrants don’t trust his officers because of our “cultural problems,” because we come from countries where the police are corrupt. It is true that many of us come from countries where you cannot trust the police. But he is wrong that this is a reason why we do not trust him or his officers; to the contrary, we come expecting much better from this country. We expect to be able to trust the government and law enforcement. But we have been disappointed by Frederick, where the problem of culture is not ours – it is the culture of fear that has been spread with the 287(g) program.”

- Deborah Weissman. In her prepared remarks, Deborah Weissman told the committee about a policy review recently released by the University of North Carolina School of Law’s Immigration/Human Rights Policy Clinic and the ACLU of North Carolina Legal Foundation entitled *The Policies and Politics of Local Immigration Enforcement Laws, 287(g) Program in North Carolina*.³⁴⁸

The policy review about which Professor Weissman testified made a number of findings about the detrimental impact of 287(g) programs.³⁴⁹ According to the report, the negative effects include:

1. The marginalization of an already vulnerable population, as 287(g) encourages, or at the very least tolerates, racial profiling and baseless stereotyping, resulting in the harassment of citizens and isolation of the Hispanic community.

³⁴⁸ [Click Here](#) to see the complete text of Deborah Weissman’s prepared remarks before the April 2, 2009, House Judiciary Committee hearing on *Public Safety and Civil Rights Implications of State and Local Enforcement of Federal Immigration Laws*

³⁴⁹ [Click Here](#) to see the policy review on the 287(g) program conducted by the University of North Carolina School of Law’s Immigration/Human Rights Policy Clinic and the ACLU of North Carolina Legal Foundation

2. A fear of law enforcement that causes immigrant communities to refrain from reporting crimes, thereby compromising public safety for immigrants and citizens alike.
3. Economic devastation for already struggling municipalities, as immigrants are forced to flee communities, causing a loss of profits for local businesses and a decrease in tax revenues.
4. Violations of basic American liberties and legal protections that threaten to diminish the civil rights of citizens and ease the way for future encroachments into basic fundamental freedoms.

Professor Weissman testified that “[t]he current implementation processes of 287(g) also present a number of legal issues which implicate many individual rights and threaten to compromise the rights of the community as a whole.”

Professor Weissman went on to say that “[i]mplementation of 287(g) in North Carolina must be considered in the context of the state’s increasing Latino population and the negative attitudes that whites have about that the state’s changing demographics. She said that elected officials and citizens, alike have often made disparaging comments about Latinos regardless of their legal status, and that the emotions embodied in these attitudes have helped fuel the desire for more 287(g) programs in the state.

Professor Weissman said that, contrary to prevailing opinion, foreign-born residents are less likely to commit crimes than native-born Americans.

Professor Weissman criticized the 287(g) program for having an unfocused mission. She said that the original purpose of the 287(g) program was to “target and remove undocumented immigrants convicted of violent crimes, human smuggling, gang/organized crime activity, sexual-related offenses, narcotics smuggling and money laundering.” However, she noted, that data shows that “the majority of undocumented immigrants caught in the snare of 287(g) in North Carolina have been charged with traffic infractions and low level misdemeanors.” Indeed, she said, there is strong evidence that police target Latino communities with roadblocks and other tactics.

Professor Weissman testified that there has been involvement of hate groups in pushing for 287(g) programs.

Professor Weissman complained that the North Carolina Sheriffs Association (NCSA) has been designated as the agency responsible for administering an allocation of state funds to support the 287(g) programs throughout the state, despite the adoption by the NCSA Executive

Committee of a resolution that she believes “demonstrates cause for concern.” She said the resolution “perpetuates many myths and misinformation about immigrant populations; indeed it is a document which a proper immigration enforcement training program should discourage.” She said that the resolution “claims that there is ‘reliable documented evidence’ that terrorist groups are entering the US through the southern border, that the influx of ‘illegal aliens’ drains the resources of the State, and that ‘illegal aliens’ do not pay taxes.” Professor Weissman said that “[a]ll these claims are disputable at best and have largely been proven to be inaccurate.” She said that “[t]he resolution also refers to undocumented immigrants as ‘illegal alien invaders.’ And perhaps most notably, the resolution advocates not only for the reduction of illegal immigration but also for the reduction of legal immigration as well.” She said that “[s]ince the NCSA functions as an advisor to sheriffs in counties considering implementation of 287(g) MOAs, the content of the resolution indicates the need for additional or other oversight as to the use of funds and implementation of the program.”

Professor Weissman went on to assert that “the nativist and racist commentary by law enforcement officials suggests that federal programs cannot simply be passed on to localities without concern for troubling attitudes that may control the way the program is implemented at the local level. Consider again the comments of Johnston County Sheriff Steve Bizzell, who was president of the NCSA from July 2007 until he was named the association’s chairman in July 2008 and described an incident of drunk driving that resulted in the death of a young boy by saying that the child paid the ‘ultimate price for another drunk Mexican [emphasis added].’” She said that “Bizzell further vocalized his hostility toward immigrants. He stated that they are ‘breeding like rabbits,’ and that they ‘rape, rob and murder American citizens.’” She said that “[h]e classified ‘Mexicans’ as ‘trashy’ and said that he thinks ‘all they do is work and make love.’” She said that, additionally, “Bizzell announced his resentment toward civil rights advances that have helped the immigrant population in Johnston County.” She said that he reminisced in a recent article “about the ‘Johnston County of his youth’ when immigrants ‘were all in a group, down a path somewhere in a camp’ even though living that way ‘was bad for them as human beings.’” She said that “Sheriff Bizzell claimed to be fulfilling the requests of Johnston County residents. He maintained that everywhere he goes, people say, ‘Sheriff, what are we going to do about all these Mexicans?’” And she said that “[h]e acknowledged that his goal is to reduce if not eliminate the immigrant population of Johnston County.” She concluded this section of her testimony by asserting that “[t]hrough 287(g) agreements, deputies and officers across the state, who may be led by men like Sheriff Johnson, or influenced by Sheriff Bizzell who have held a leadership

position with the NCSA that has championed the 287(g) program, have the resources and virtually unfettered authority to act on the discriminatory sentiment that they have espoused. Such a situation cultivates the illegal activity of racial profiling.”

Professor Weissman said in her prepared statement that “[t]he method of implementation of 287(g) has serious implications for the larger community. Indeed, the 287(g) program must be understood to have a universal impact on the community. It encourages, or at the very least tolerates, racial profiling and baseless stereotyping, resulting in the harassment of local residents and the isolation of an increasingly marginalized community. Racial profiling is not only legally impermissible, but because it is based on stereotypes and wrongful assumptions about the propensity of certain groups to commit crimes, it is also immoral and ineffective.”

Professor Weissman said in her testimony that “[r]egardless of one’s personal stance on this issue, history demonstrates that there is a very thin line dividing anti-immigrant laws from those that diminish the civil rights and due process protections of citizens. Today’s anti-immigrant law facilitates tomorrow’s encroachments on American liberties. Examples of racial profiling against U.S. citizens and lawful permanent residents who are foreign-appearing or Latino are not hard to come by, although individuals who have experienced such discrimination are nonetheless fearful and reluctant to tell their stories publicly, often for fear of retribution or because they do live in ‘mixed status’ families.”

Professor Weissman’s prepared testimony cited a number of findings with regard to local law enforcement compliance with the MOA on 287(g) from her report:

1. Complaint mechanisms. The 287(g) programs are required to offer a complaint mechanism for individuals who believe they have been aggrieved in the implementation of the program. However, because of (1) confusion caused by the complaint mechanism as described in the MOA, (2) the lack of notice and information about the right to file a complaint, (3) insufficient guidelines regarding the complaint forwarding process, (4) conflicts of interest in reviewing a complaint, and (5) unclear complaint resolution procedures, this aspect of the MOA is elusive and ineffective.
2. Designation of functions. Nowhere does the Alamance County MOA publicize the policies and procedures that must be followed in immigration enforcement.
3. Nomination of personnel. While the MOA requires a background check and evaluation of Alamance

County Sheriff's Office law enforcement personnel who may be authorized to participate in the program, there is no indication as to how suitability is to be determined. Lack of transparency in the implementation of the program prevents assessment of suitability determinations.

4. Training of personnel. Although it appears that there is a curriculum in place for the training of personnel, the length of the training appears to be too short given the complexities of the subject matter, and content of the curriculum is unclear. Lack of transparency in the implementation of the program prevents assessment of the training.
5. Certification and authorization. While authorization of the MOA by ICE may be revoked at any time, the language indicating what merits such a revocation is unclear making oversight of and remedy for the program uncertain.
6. ICE supervision. Although the MOA requires that there be ICE supervision before any local officer can perform an immigration function, there is no indication as to the nature or degree of the necessary supervision, nor is there any mechanism for review to ensure that the officers comply with immigration law and procedure.
7. Civil Rights standards and interpretation services. In addition to the obligations set forth in federal civil right statutes and regulations, including the U.S. Department of Justice 'Guidance Regarding the Use of Race by Federal Law Enforcement Agencies,' the language in the MOA requires an interpreter for those who do not speak English. Yet how law enforcement should comply with this requirement is unclear. The MOA fails to establish the process by which an interpreter is obtained, the procedure through which law enforcement officers confirm that an interpreter is necessary, whether an interpreter must be requested before one must be provided, and how the affected individual will be informed of the right to an interpreter.
8. Required steering committee. The MOA requires that ICE and the local Sheriff establish a steering committee. However, the existence, purpose, function, and the selection process of the steering committee are not sufficiently clear.
9. Community Outreach. Although the MOA provides that the local agency will engage in community outreach programs with organizations interested in the MOA, there is a great deal of discretion left with the agency in determining with which organizations to work, thereby creating the opportunity to limit or deny participation from critics of the program.
10. Relations with the news media. This provision of the MOA also allows too much discretion with the local agency creating the possibility that important information about the MOA will not be communicated to the public in order to enhance the program's accountability and transparency.
11. Modification of the MOA. While the MOA can be modified, there is no mention as to how these amendments will be communicated to the public or whether the amended document will be made publicly available.
12. Duration and termination of the MOA and liability disclaimers. Although the MOA states that authorization of immigration enforcement can be revoked at any time, there is no requirement that the termination of the program be made public. Additionally, language in the agreement attempts to insulate ICE and the local agency from liability if they fail to comply with the requirements agreed upon in the MOA.

Professor Weissman gave the committee a number of recommendations for moving forward with the 287(g) program, including the following:

1. Transparency in the implementation of the program.
2. Full conformity with the letter and the spirit of the law.
3. Increased community participation in the program's implementation and/or oversight.
4. Revision of all current 287(g) programs and implementation in all new 287(g) programs, to permit 287(g) processing only for those convicted of felonies.
5. Amendments to the complaint mechanism in the MOA, including clarification of the process, providing notice of the right to file a complaint, enacting amendments to the guidelines regarding the complaint forwarding process, and changes to the method of complaint review.
6. Ensuring the availability of the MOA and detailing the MOA purpose and policy.
7. Improving personnel performance by outlining personnel designation and functions, providing guidelines for nomination of personnel, detailing and updating the training of personnel, continued certification and authorization of personnel through consistent complaint reports, and monitoring ICE supervision of personnel.

8. Clarification of notice of the Civil Rights standards and provision of interpretation services.
9. Detailing the steering committee's selection process that includes a broad range of community interests and setting forth the committee's required review of activities.
10. Opening executive steering committee meeting to the public.
11. Increasing information and participation for effective community outreach and input.
12. Improving relations with the news media and other organizations.
13. Updated officer training and MOA availability after modification as well as providing duration and termination of the MOA and avoiding impunity.

Professor Weissman concluded her prepared remarks by saying that, “[u]ltimately, the complexities of the 287(g) program and the difficulties in its implementation, suggests that the program is actually an ineffective means of immigration enforcement. It is too problematical, too costly, and too difficult to implement. The reliance on local law enforcement by the federal government for the enforcement of immigration laws is a strong indication of a systemic problem in the federal program, which points to the need for comprehensive immigration reform at the federal level that would allow local police and county sheriffs to return to their primary function of protecting their local communities from crime. Until this reform occurs, the deficiencies and illegalities of 287(g) agreements must be remedied and communities and lawmakers must be encouraged to implement change under the current system.”

- Ray Tranchant. In his prepared remarks, Ray Tranchant of Virginia Beach, Virginia told the committee about the death of his 16 year-old daughter, Tessa Tranchant, in an automobile accident caused by an intoxicated illegal alien.³⁵⁰

Professor Tranchant told the Committee that he discovered during the perpetrator's trial that the perpetrator had twice been arrested for driving under the influence of alcohol and public intoxication, that he “had a fake driver's license from Florida,” and that he could not speak English. Professor Tranchant maintained that because Virginia Beach, Virginia and Chesapeake, Virginia had sanctuary policies at the time, neither the

judge in his case nor the police who arrested him asked him about his immigration status. Professor Tranchant said that “[i]nstead of being deported to his home country, he stayed on the streets of Virginia Beach to drink, drive, and take two innocent lives in a way that displayed a wonton disrespect for the laws of our land.”

Professor Tranchant testified that, because of his activism and the activism of others in the wake of his daughter's death, things have changed in Virginia. He said that “Virginia Beach now requires that police check the immigration status of all arrested. Virginia Beach and Chesapeake passed measures requiring that companies doing business with the cities pledge not to hire illegal immigrants. Last July, a statewide law took effect which requires local jails to contact federal authorities to check the immigration status of all foreign-born inmates, irrespective of whether they are in the country legally. And, local police officers are working more closely with federal authorities than ever before.”

Professor Tranchant told the committee that despite the advances that have taken place in the commonwealth of Virginia since his daughter's death, the threat remains. He said that “[d]espite recommendations from the state's Attorney General and the Virginia State Crime Commission, Virginia's Governor has yet to ask federal authorities for a 287 (g) agreement; and ICE may not have the resources to support such a request. The 287(g) program would allow the state to enter into an agreement with the federal government so that state law enforcement officers can assist in the investigation, apprehension and detention of illegal immigrants.” Professor Tranchant warned that “[o]pponents of 287(g) cite a supposed “chilling effect” on cooperation between immigrant communities and police, the cost of the program, or the potential for racial profiling as reasons to reject it.” He responded preemptively by saying that “[w]hile I sympathize with those arguments, I am not compelled. I know about chilling experiences. They happen on the average of twice a month with Illegal Immigrants in America, transparent criminals in a broken system that lets them kill or injure honest citizens.” He said that “[a] family should not have to mourn the death of a loved one just because of an unrelated policy or the political correctness of not offending or inconveniencing a few people. This prevents us from making our communities safer, a Constitutional right to all citizens of the United States.”

Panel II

- David Harris. In his prepared remarks, David Harris told the committee that “[t]he American people need to know that using state and local police forces for immigration enforcement raises significant public safety and civil rights issues that pose a danger to everyone.” He said that “[w]e now have a severely dysfunctional immigration system, in which problems have built up

³⁵⁰ [Click Here](#) to see the complete text of Ray Tranchant's prepared remarks before the April 2, 2009, House Judiciary Committee hearing on Public Safety and Civil Rights Implications of State and Local Enforcement of Federal Immigration Laws

and compounded for years. But putting state and local police into the position of enforcing immigration law will create new problems that will endanger the safety of all Americans, and subject state and local law enforcement agencies and their officers to possible liability for racial and ethnic profiling. In short, moving our state and local police into the business of immigration enforcement risks the gains we have made against crime over the last fifteen years, and creates significant new perils for the men and women who dedicate themselves to public safety. This explains why the overwhelming number of state and local police departments and law enforcement professional organizations want no part of immigration enforcement.³⁵¹

Mr. Harris asserted that few local police departments actually want to participate in enforcement of federal immigration law because they know it would harm their relationships with the communities they must serve.

Mr. Harris said that “[i]nserting local police into immigration enforcement represents a serious mistake for another reason: it will force our police officers into an untenable position by giving them an assignment which most cannot carry out without relying on racial or ethnic appearance.” This, he said, “will lead them into profiling, and will subject them and their departments to legal liability.” He asserted that “[i]mmigration law ranks among the most complex bodies of rules, statutes, regulations and court cases that this country has.”

Mr. Harris continued, saying that “the task of immigration enforcement demands high specialized knowledge, training, and experience. Thus the importance of having expert immigration officers in agencies like Immigration and Customs Enforcement makes sense.” He said that, in contrast, “state and local police get no training in the intricacies of immigration law during their training. (Even those officers who are among the few in the U.S. who get training in immigration law under Section 287(g) MOAs receive only five weeks of training – not long enough to thoroughly grasp the rules.) And no officer can pick up crucial subtleties – of what makes specialized immigration documents genuine or fraudulent, of understanding when an individual allowed into this country legally may or may not have fallen out of status, or of knowing whether a work permit has or has not expired – simply from spending time on the street.” Thus, he concluded, “when state and local officers become involved in immigration enforcement, they operate without vital knowledge that usually enables

police to make intelligent distinctions on the street between law abiding persons and possible criminals. This inevitably results in the use of substitute clues: racial or ethnic appearance, inability to speak English, or the presence of an accent. All of these, of course, constitute racial and ethnic markers. Relying on race or ethnicity this way may not be the intent of the officer in any way, but because they do not have access to other clues or intelligence, since they do not have the requisite training and direct immigration experience, they inevitably fall back on what is easily perceivable: ethnic appearance or accent.”

Mr. Harris was particularly critical of Maricopa County, Arizona, where Sheriff Joe Arpaio reigns, citing studies and statistics to criticize Sheriff Arpaio’s performance in enforcing federal immigration law. He said of Sheriff Arpaio, “less than a month ago, Sheriff Arpaio’s actions earned his department a dubious distinction. In the first action of its kind for the new Administration, the Department of Justice announced a formal investigation of the Maricopa County Sheriff’s Department under 42 U.S.C. Section 14141, for a “pattern or practice” of constitutional violations.”

Mr. Harris concluded his statement by asserting, “[f]or public safety and civil rights, the implications of immigration enforcement by state and local police departments could not be clearer, or more negative. Immigration enforcement by these non-federal law enforcement agencies will lead to a decrease in public safety and an increase in crime, because vital relationships between police and the communities they serve will break down, corroding under the fear generated by immigration enforcement. And going in this direction almost guarantees that police, no matter how well intentioned, will fall back into identifying suspects by racial or ethnic appearance – racial profiling by any other name. By and large, our state and local police do not want to do this; they want no part of this doomed effort, and rightfully so. We must do everything in our power to support them and their desire to do what it takes to make us safe and to avoid the barriers immigration duties would put in their way.”

- Hubert Williams. In his prepared remarks, Hubert Williams, president of the Police Foundation, told the committee about a project that the Police Foundation has undertaken entitled, *The Role of Local Police: Striking a Balance Between Immigration Enforcement and Civil Liberties*, that examined the implications of state and local law enforcement of federal immigration laws.³⁵²

³⁵¹ [Click Here](#) to see the complete text of David Harris’ prepared remarks before the April 2, 2009, House Judiciary Committee hearing on *Public Safety and Civil Rights Implications of State and Local Enforcement of Federal Immigration Laws*

³⁵² [Click Here](#) to see the complete text of Hubert Williams’ prepared remarks before the April 2, 2009, House Judiciary Committee hearing on *Public Safety and Civil Rights Implications of State and Local Enforcement of Federal Immigration Laws*

Mr. Williams said during his testimony that “[t]he reluctance of local police to enforce federal immigration law grows out of the difficulty of balancing federal and local interests in ways that do not diminish the ability of the police to maintain their core mission of maintaining public safety, which depends heavily on public trust. In communities where people fear the police, very little information is shared with officers, undermining the police capacity for crime control and quality service delivery. As a result, these areas become breeding grounds for drug trafficking, human smuggling, terrorist activity, and other serious crimes. As a police chief in one of our focus groups asked, ‘How do you police a community that will not talk to you?’”

Mr. Williams said that “[l]aw enforcement leaders are also concerned about the impact of local law enforcement of immigration laws on already strained state and local resources, the high possibility of error given the complexity of immigration law, a possible increase in police misconduct, the possibility of racial profiling and other civil lawsuits, and increased victimization and exploitation of immigrants.”

He submitted the following recommendations and policy positions to the Committee that he said “were widely held among law enforcement executives participating in our project:”

1. The costs of participating in the U.S. Immigration and Customs Enforcement’s (ICE) 287(g) program outweigh the benefits.
2. Police officers should be prohibited from arresting and detaining persons to solely investigate immigration status in the absence of probable cause of an independent state law criminal violation.
3. If a local agency nevertheless enters the 287(g) program, its participation should be focused on serious criminal offenders and should be limited to verifying the immigration status of criminal detainees as part of the 287(g) Jail Enforcement Officer program.
4. Local and state authorities participating in federal immigration enforcement activities should develop policies and procedures for monitoring racial profiling and abuse of authority.
5. In order to preserve the trust that police agencies have built over the years by aggressively engaging in community oriented policing activities, local law enforcement agencies should involve representatives of affected communities in the development of local immigration policies.

6. There is a need for empirical research on ICE’s 287(g) program and other methods of police collaboration with federal immigration authorities so that we have more objective data by which to better understand the way in which these programs are carried out in the field and their impact on public safety and civil liberties.
7. Local law enforcement agencies should employ community-policing and problem-solving tactics to improve relations with immigrant communities and resolve tension caused by expanding immigration.
8. The federal government must enact comprehensive border security and immigration reforms, because the federal government’s failure on both issues has had serious consequences in cities and towns throughout the country.

Mr. William asserted that “[l]ocal police chiefs recognize that mutually cooperative and supportive relationships among law enforcement authorities strengthen the capacity of government at all levels to ensure that our communities and our nation remain safe and secure. But when local police execute the powers of immigration enforcement officers—as is the case when they check for green cards at roadblocks, or stop people for motor vehicle violations and request documentation or information associated with immigration status—they execute an immigration enforcement function in contacts with the general public. As a result, they assume all of the attendant risks and consequences associated with such activities. These risks are diminished considerably when the exercise of police authority does not involve contacts with the general public, such as would be the case when officers are processing prisoners in connection with DHS to determine whether there are any outstanding warrants or holds against those individuals, or when transferring prisoners with warrants or holds into the custody of DHS.”

Mr. Williams concluded his prepared testimony by declaring that “[t]he effectiveness of local police is heavily dependent upon the nature of the relationship they have with the general public and the degree to which the police and community are able to work collaboratively to resolve crime problems. Local police must serve and protect all residents regardless of their immigration status, enforce the criminal laws of their state, and serve and defend the Constitution of the United States. Local law enforcement agencies that opt to enforce federal immigration law should do so in a manner that does not erode their relationship with immigrant communities or subordinate municipal interests to those of the federal government. Local law enforcement must be careful to strike a balance between immigration concerns, civil liberties, and maintaining public safety”

- George Gascon. In his prepared remarks, George Gascon, who is the Chief of Police in Mesa, Arizona, told the committee that the application of 287(g) programs by local police “has created a variety of challenged for public safety.” He said that “[i]ncreased political pressure on local law enforcement to reduce undocumented immigration coupled with the Federal deputation of local police to enforce federal immigration statutes is jeopardizing sound and well established policing practices.”³⁵³

Chief Gascon told the committee that “[i]t is imperative that the federal government act to remedy this situation.” He went on to say that—

1. “First, we need clear guidelines that provide police with the tools necessary to deal effectively with serious criminal activity committed by removable undocumented immigrants.
2. “Second, we need to ensure that any federally sponsored program for this purpose contains clearly stated constitutional protections to ensure communities and individuals are not being racially profiled.
3. “Finally, it needs to ensure that sound community policing practices are encouraged. To do so, positive and respectful public engagement and partnerships must be embedded into any federally supported process aimed at addressing serious criminality by undocumented immigrants through the use of local police.”

Chief Gascon acknowledged some role for local law enforcement in immigration enforcement, saying that “[t]o be sure, providing local and state police with the tools necessary to address serious criminal behavior by non-citizens here without legal authority is a priority. Our police officers need the tools and support necessary to do their job safely. To that end, fast access to relevant information concerning wanted criminal aliens must be made available to police field personnel so that they can protect themselves and our communities.” He said that “[c]urrently, that level of information is not readily available in the field for police personnel regardless of their 287(g) status.”

Chief Gascon asserted that “the constitutional concerns created by the current state of affairs should be troubling to all of us.” He said that in some cases, “it is setting the police profession back to the 1950s and 60s, when police officers were sometimes viewed in minority

communities as the enemy.” He complained that as a result of the 287(g) program, “allegations of race-based enforcement practices are driving a wedge between the police and the impacted communities.”

Chief Gascon concluded his prepared remarks before the Committee by saying that “[i]n the case of the 287(g) program, any future participation should be predicated on clearly stated guidelines that ensure (1) all field officers of the concerned agency have immediate access to information regarding non citizens who are charged with or convicted of serious criminal conduct; (2) strict constitutional requirements are placed on any participating agency; and (3) engagement strategies by the impacted community in the form of participation and problem solving partnerships must be required to partake in the program.”

- Kris Kobach. In his prepared remarks, David Harris told the committee that the 287(g) program is “a proven mechanism for securing our homeland and restoring the rule of law in immigration.”³⁵⁴

Professor Kobach said in his testimony that state and local law enforcement officials have “inherent authority” to make immigration arrests and pointed to a June 2, 2002, Department of Justice Office of Legal Counsel (OLC) memorandum declaring that this is the case. He said that this “inherent authority” has never been preempted by Congress. He said that “[t]his inherent authority is simply the power to arrest an illegal alien who is removable, detain the alien temporarily, and then transfer the alien to the custody of the Bureau of Immigration and Customs Enforcement (ICE).”

Professor Kobach said that, “[i]n contrast, Section 287(g) delegates authority that is broader than the power to merely arrest an alien and transfer him to ICE custody. Section 287(g) encompasses the spectrum of basic enforcement powers. Such 287(g) authority includes not only the power to arrest and transfer, but also the power to investigate immigration violations, the power to collect evidence and assemble an immigration case for prosecution or removal, the power to take custody of aliens on behalf of the federal government, and other general powers involved the routine enforcement of immigration laws. This broader enforcement authority can only be delegated to state and local law enforcement agencies through a formal Memorandum of Agreement (MOA), which effectively deputizes members of state or local law enforcement agencies to perform the ‘function[s] of an immigration officer.’ 8 U.S.C. § 1357(g). The state and local officers that exercise this authority do so only after receiving extensive

³⁵³ [Click Here](#) to see the complete text of George Gascon’s prepared remarks before the April 2, 2009, House Judiciary Committee hearing on Public Safety and Civil Rights Implications of State and Local Enforcement of Federal Immigration Laws

³⁵⁴ [Click Here](#) to see the complete text of Kris Kobach’s prepared remarks before the April 2, 2009, House Judiciary Committee hearing on Public Safety and Civil Rights Implications of State and Local Enforcement of Federal Immigration Laws

immigration enforcement training at the Federal Law Enforcement Training Center (FLETC) in Glynco, Georgia. The officers receive training in many areas, including the procedures of immigration investigations, the identification of fraudulent immigration documents, the use of national immigration databases, the details of immigration law, identifying illegal aliens, and the avoidance of racial profiling. Once trained, the officers only exercise their Section 287(g) authority in a part time capacity and only do so under the coordination of the Bureau of Immigration and Customs Enforcement (ICE).”

Professor Kobach asserted that the 287(g) program has been a great success and cited a number of statistics justifying that assertion. He said that the 287(g) program has a number of purposes. He said it is a myth that the program is intended solely to arrest illegal aliens who have committed serious felonies. Instead, he said, “[t]here are at least six distinct purposes that Section 287(g) MOAs have accomplished: (1) addressing terrorism-related concerns, (2) compensating for a lack of federal immigration enforcement personnel within a jurisdiction, (3) removing convicted alien criminals after completion of their prison sentences, (4) dealing with dangerous illegal alien criminals, such as gang members, (5) restoring the rule of law generally in an area with unusually high levels of illegal immigration, and (6) protecting unemployed U.S. citizens from competition with illegal alien labor.” He went on in his prepared statement to describe each of these purposes in detail.

Professor Kobach concluded his prepared statement by saying that “Section 287(g) is a program that has dramatically improved the rule of law in the immigration arena. It has provided vital support to an agency that has been chronically undermanned for decades. The Department of Justice originally, and the Department of Homeland Security now, have recognized the extraordinary value of this program. The Departments have also recognized that one-size-fits-all is the wrong approach. Each 287(g) MOA is different, so that it meets the particular law enforcement needs of the jurisdiction in question. For Congress to attempt to put this program in a straightjacket would undercut the very flexibility that makes it so useful. For Congress to scale the program back or limit its scope would send a clear message that rigorous enforcement of our nation’s immigration laws is not a congressional priority. Even worse, to do so at this time of economic crisis would be grave disservice to the millions of unemployed U.S. citizens who are struggling to put food on the table, but finding that competition with unauthorized alien labor prevents them from doing so.”

Q&A Session. Members asked questions about the following matters during the question and answer session at last week’s hearing:

- [Civil Rights Abuses](#)
- [Community Complaints](#)
- [Police/Immigrant Relations](#)
- [Inconvenience vs. Loss of Life](#)
- [NCIC Data](#)
- [Racial Profiling](#)
- [Resources for Federal Immigration Enforcement](#)
- [Sanctuary Policies](#)
- [Training of 287\(g\) Officers](#)
- [Treatment of Minor Children](#)
- [Vigilante Raids](#)

- [Civil Rights Abuses.](#) Representative Shelia Jackson Lee asked Mr. Ramirez to comment on the civil rights abuses he has faced.

Mr. Ramirez said that when he is stopped by the police, they do not view him as a human being. Instead, they see a drunk or robber or murderer.

- [Community Complaints.](#) Representative Jerald Nadler (D-NY), noting that in a previous hearing, the sheriff of Frederick County, Maryland testified that there had been no complaints about racial profiling as a result of his 287(g) program, asked Mr. Ramirez if this was the case.

Mr. Ramirez replied that residents are afraid to complain against the sheriff’s department because they fear harassment.

Professor Harris responded that many people who are victims of police activity don’t complain because they are afraid of retaliation or of subjecting themselves and their loved ones to scrutiny from immigration authorities.

- [Inconvenience vs. Loss of Life.](#) Ranking Republican Steve King (R-IA) asserted that some of the Hispanic witnesses had merely been inconvenienced by being stopped, arrested, or detained by police, yet one of the witness’s children had been killed by an illegal immigrant because of a lack of local enforcement of federal immigration law. He asked Mr. Ramirez how he could compare the two.

In response to a question from Chairman Nadler, Professor Harris said that Professor Tranchant’s daughter died, not because of a failure of the community to have a 287(g) program but because of a failure of authorities to deport the perpetrator after his previous drunk driving sentences were completed.

[NCIC Data.](#) Representative Jason Chaffetz (R-UT) asked what data was entered into the NCIC system relating to illegal immigrants.

Professor Kobach said that state and local law jurisdictions place arrests and convictions information

into the NCIC system. He said that the federal government places information about three categories of aliens into the system: previously deported felons, absconders, and aliens who are a national security risk.

Professor Kobach said that if more information about illegal aliens was put into the NCIC system, police stopping one of the 9/11 hijackers would have been able to arrest him after a traffic stop.

Ranking Republican Steve King asked Professor Harris about the complaint he levied in his testimony that the federal government places tens of thousands of civil immigration violators into the NCIC database in violation of the rules of the database.

Professor Harris said that it is being done in violation of the rules of the database. Professor Kobach said that there are no rules that prohibit putting absconders in the database, and he said it was perfectly reasonable and wise to place felony deportees into the system so that police officers know what they are facing when they make a traffic stop.

- Police/Immigrant Community Relations. Representative Jerald Nadler (D-NY), noting that in a previous hearing, the sheriff of Frederick County, Maryland testified that the 287(g) program in his county has not harmed community relations and that any fear in his county of police is culturally-based, asked Mr. Ramirez to comment on that assertion.

Mr. Ramirez replied that no relationship exists between the Hispanic community in Frederick and the sheriff's department because the Department refuses to meet with the community. He said, as well, that the Hispanic community does not fear the sheriff's department for cultural reasons. Rather, he said, they fear the sheriff's department because of the activity of that department that harasses and profiles them.

In response to a question from Representative Harper about whether people in immigrant communities are afraid to report crimes that they are witness to or victims of, Professor Kobach said that this was not the case. He pointed to visa programs that are available to informants as a reason why people in immigrant communities need not fear police in departments that have 287(g) programs.

Chairman Nadler cited statistics that he said showed that violent crime has exploded in Maricopa County since it entered into 287(g) agreements but that, at the same time, crime in the city of Mesa has decreased or remained steady. He asked Chief Gascon why this was so.

Chief Gascon responded that he believed that the Maricopa County Sheriff's department was focusing too much attention on immigration and not enough on local

law enforcement needs, where his police department was doing the opposite.

Professor Harris agreed, saying that crime goes up with local law enforcement authorities divert their attention to immigration and away to local problems.

- Racial Profiling. Chairwoman Lofgren noted that in Professor Weissman's testimony, the professor gave statistics that more than 80 percent of the 287(g) arrests in one North Carolina county were arrested on traffic violations and that the police in North Carolina set up roadblocks and checkpoints in front of churches that are frequented by Latinos. She asked Professor Weissman if she thought that was a lawful use of 287(g).

Professor Weissman responded that they are not lawful. She said that the racial profiling that is going on is a contravention of the law but that it actually undermines the actual purpose of 287(g). She said that "we are pulling local law enforcement resources into a program and really away from their primary function." She said DUI is something that local law enforcement must first and foremost handle. If they are swept into checkpoints in front of churches and flea markets where families shop on Saturdays and traffic offenses and filling out federal forms and requesting detainers, they will not do their job of local law enforcement. She said that she feared that the failure to uphold the way the program should be operated in accordance with a contract between local law enforcement and federal agencies has derailed the program.

In response to a question about racial profiling, Professor Kobach said that local officers who are trained pursuant to in 287(g) receive more training on racial profiling than any other officers. He maintained that there have been no verified claims of racial profiling in the 287(g) program.

Representative Trent Franks (R-AZ) cited statistics that one-third of people in Maricopa County, Arizona jails are illegal immigrants and that 53 percent of the perpetrators of serious crime in the county are illegal immigrants. He asked Professor Kobach if those statistics were consistent with the notion that racial profiling is occurring in the county.

Professor Kobach said that statistics, alone, cannot produce an answer to the question. At the same time, he said that the statistics do not support the notion that there is racial profiling going on in the county.

Professor Kobach said that if racial profiling is occurring, there are many tools that "victims" would have at their disposal, including the filing of federal civil rights suits. He said that there have not been such suits filed or won.

Representative Hank Johnson (D-GA) asked if there was a correlation between where police departments participating in 287(g) programs are concentrated and ethnicity.

Professor Kobach said 287(g) programs are distributed around the country but that there was more of a concentration in the southeast and the southwest, where there are large concentrations of illegal immigrants.

- Resources for Federal Immigration Enforcement. Representative Shelia Jackson Lee (D-TX) complained that the 287(g) program places the burden of immigration enforcement on local governments. She asked Professor Tranchant if enhanced resources to the federal government to put ICE officers in the jails give him comfort. She also asked if he thought it would be helpful to have laws that deported people who need to be deported and that those who are here to work could stay in the United States and work.

Professor Tranchant said that allowing local law enforcement to have integrated databases so they can run a fingerprint and catch someone who is going state from state committing crimes.

- Sanctuary Policies. Representative Ted Poe (R-TX) asked Chief Gascon if he thought his police department should enforce immigration law.

Chief Gascon replied that, generally, he wouldn't have a way of knowing if a person was an illegal immigrant or not. He said if the person told him that he was an illegal immigrant, the officer would have the option of informing federal immigration officers if he so chose.

- Training of 287(g) Officers. Representative Jason Chaffetz (R-UT) asked about the level of training that 287(g) officers get. Both professor Harris and Professor Kobach indicated that there were four-to-six weeks of training.

Professor Harris said that four weeks of training is not enough. He said he would support increased training.

- Treatment of Minor Children of Detained Aliens. Chairwoman Lofgren asked Professor Weissman about the treatment of minor children after immigrants are picked up by local police in North Carolina and arrested immigration authorities.

Professor Weissman told the Committee about the case of a woman in one county who was pulled over by the local police who was pulled over and arrested because the local police suspected her of being an illegal alien. Professor Weissman said that the woman's two young

children were left on the side of the road for several hours.

- Vigilante Raids. Chairwoman Lofgren asked about an incident in Maricopa County, Arizona, where the Maricopa County Sheriff's office conducted a raid on the Mesa, Arizona city hall and library in search of a janitor they thought was an illegal immigrant.

Chief Gascon responded that a group of 60 people, dressed in police tactical gear, raided the facilities at 1:30 am. He said that when asked why they were there, a Maricopa County Sheriff department officer lied about why they were there.

He said that they stormed the building and arrested several people who were taken out of one of the building because they were suspected of being illegal aliens. He said that the raid was executed under false pretenses.

Mr. Gascon said that there have been other inappropriate raids that have been conducted by the Sheriff's office in Mesa. He said that in some instances, he has had to deploy his own police department to protect people from the Sheriff's office. ☼

House Panel Holds Hearing on U.S.-Mexico Border Violence: The House Homeland Security Subcommittee on Emergency Communications, Preparedness, and Response held a hearing during the week of March 30, 2009 on violence along the U.S. border with Mexico. Last week's hearing, which was titled, "Examining Preparedness and Coordination Efforts of First Responders Along the Southwest Border", was held on Tuesday, March 31, 2009.³⁵⁵

Witnesses. The witness list for last week's hearing included:

- Richard C. Barth, Acting Assistant Secretary of Homeland Security, Office of Policy;
- Janice Ayala, Deputy Assistant Director, Office of Investigations, Immigration and Customs Enforcement, Department of Homeland Security;
- Maj. Gen. Peter Aylward, Director, Joint Staff, National Guard Bureau; and
- Sigifredo Gonzalez Jr., Sheriff, Zapata County, Texas. ☼

³⁵⁵ [Click Here](#) to see a video of the March 31, 2009, House Homeland Security Subcommittee on Emergency Communications, Preparedness, and Response hearing on examining preparedness and coordination efforts of first responders along the Southwest border

Senate Foreign Relations Committee Holds Field Hearing on U.S.-Mexico Border Violence: The Senate Committee on Foreign Relations held a field hearing last week, at which it examined U.S.-Mexico border violence. Last week's hearing was held on Monday, March 30, 2009, in the Tomas Rivera Conference Center in El Paso, Texas.³⁵⁶

Witnesses. The witness list for last week's hearing included:

Panel I

- Mr. Jamie Esparza, District Attorney, El Paso, TX;
- Mr. William McMahon, Deputy Assistant Director, US Bureau of Alcohol, Tobacco, Firearms and Explosives; and
- Mr. Joseph Arabit, Special Agent in charge, Drug Enforcement Administration, El Paso, TX

Panel II

- Mr. Ricardo Garcia Carriles, Former Police Chief of Ciudad Juarez, El Paso, TX;
- The Honorable Harriet C. Babbitt, Former Ambassador to Organization of American States; and
- Mr. Howard Campbell, Professor, University of Texas at El Paso. ☼

Senate HELP Committee Holds Hearing on Nomination of Kathleen Sebelius to be Secretary of Health and Human Services: The Senate Committee on Health, Education, Labor, and Pensions held a hearing last week on the nomination of Governor Kathleen Sebelius (D-KS) to be Secretary of Health and Human Services. Last week's hearing was held on Tuesday, March 31, 2009.³⁵⁷

Witnesses. The sole witness at last week's hearing was Governor Sebelius.³⁵⁸

³⁵⁶ [Click Here](#) to see a link to prepared statements and testimony at the March 30, 2009, Senate Foreign Relations Committee field hearing on U.S.-Mexico border violence

³⁵⁷ [Click Here](#) to see the video of the March 31, 2009, Senate Health, Education, Labor, and Pensions Committee hearing on the nomination of Governor Kathleen Sebelius to be Secretary of Health and Human Services

³⁵⁸ [Click Here](#) to see the text of the prepared statement of Governor Kathleen Sebelius at the March 31, 2009, Senate Health, Education, Labor, and Pensions Committee hearing on the nomination of Governor Kathleen Sebelius to be Secretary of Health and Human Services

Immigration- and Refugee-Related Matters. Despite the involvement of the Department of Health and Human Services in refugee resettlement and the health care of immigration detainees, no immigration- or refugee-related matters were discussed at last week's hearing. ☼

Senate Finance Committee Holds Hearing on Nomination of Kathleen Sebelius to be Secretary of Health and Human Services: The Senate Committee on Finance held a hearing last week on the nomination of Governor Kathleen Sebelius (D-KS) to be Secretary of Health and Human Services. Last week's hearing was held on Thursday, April 2, 2009.³⁵⁹

Witnesses. The following witnesses appeared before the Committee at last week's hearing:

- Former Senate Majority Leader Robert Dole (R-KS)³⁶⁰; and
- Governor Kathleen Sebelius (D-KS).³⁶¹

Immigration- and Refugee-Related Matters. Despite the involvement of the Department of Health and Human Services in refugee resettlement and the health care of immigration detainees, no immigration- or refugee-related matters were discussed at last week's hearing. ☼

Last Week's Markups

No Congressional committee took action last week on measures that either contained significant immigration- or refugee-related provisions, that were likely to become the vehicle for significant immigration- or refugee-related amendments, or that otherwise could have a significant impact on immigration- or refugee matters. ◇

Last Week's Floor Actions

The full House or Senate took action during the week of March 30, 2009, on three measures that either contained significant immigration- or refugee-related provisions or that to have significant immigration- or refugee-related consequences:

³⁵⁹ [Click Here](#) to see the video of the April 2, 2009, Senate Finance Committee hearing on the nomination of Governor Kathleen Sebelius to be Secretary of Health and Human Services

³⁶⁰ [Click Here](#) to see the text of the prepared statement of former Senate Majority Leader Robert Dole (R-KS) at the April 2, 2009, Senate Finance Committee hearing on the nomination of Governor Kathleen Sebelius to be Secretary of Health and Human Services

³⁶¹ [Click Here](#) to see the text of the prepared statement by Governor Kathleen Sebelius at the April 2, 2009, Senate Finance Committee hearing on her nomination to be Secretary of Health and Human Services

- Alien Smuggling. The full House passed H.R. 1029, a measure designed to combat alien smuggling; and
- Concurrent Resolution on the Budget.
 1. The full House passed its version of the fiscal year 2010 concurrent resolution on the budget.
 2. The full Senate passed its version of the fiscal year 2010 concurrent resolution on the budget.

House Passes Bill Increasing Penalties for Alien Smuggling: The full House of Representatives last week passed a measure increasing penalties for alien smuggling and making other changes in immigration law that the bill's proponents contend will help combat the crime of alien smuggling. Last week's House floor action occurred on Tuesday, March 31, 2009, in connection with [H.R. 1029](#), the "Alien Smuggling and Terrorism Prevention Act of 2009", which the House passed by a voice vote.

Legislative History. H.R. 1029 was introduced by Representative Baron Hill (D-IN) on February 12, 2009. It was referred to the House Committee on the Judiciary and, in addition, to the House Committee on Homeland Security, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

Neither the House Judiciary Committee nor the House Committee on Homeland Security took up H.R. 1029 before its consideration by the full House of Representatives. Instead, both committees were discharged from consideration of the measure so that it could be brought directly to the House floor.

Summary of Immigration- and Refugee-Related Provisions. As passed by the House, H.R. 1029 would –

- direct the Secretary of Homeland Security to check against all available terrorist watch lists those alien smugglers and smuggled individuals who are interdicted at U.S. land, air, and sea borders;
- revise alien smuggling and related criminal offense and penalty provisions and provide extraterritorial jurisdiction over such offenses;
- limit a defense of necessity for knowingly bringing an illegal alien into the United States from the high seas;
- retain provisions in current law that exempt from certain of such violations (transporting or harboring in the United States) a bona fide nonprofit, religious organization in the United States (or its agents or officers), unless the organization recruits, encourages, or induces an alien to come to or enter the United States,

that encourages, invites, or enables an alien who is present in the United States to serve as a volunteer minister or missionary for such organization in the United States, provided the minister or missionary has been a member of the denomination for at least one year; and

- direct the United States Sentencing Commission to review and amend as appropriate sentencing guidelines and policy statements applicable to persons convicted of alien smuggling offenses and criminal failure to heave to or obstruction of boarding.

Floor Debate. There was little debate on H.R. 1029 on the House floor. It was floor managed by Representative Shelia Jackson Lee (D-TX) for the majority and Representative Jason Chaffetz (R-UT) for the minority. Both Members supported the measure.³⁶²

No Members spoke on the House floor against H.R. 1029. Members who spoke on the House floor in favor of H.R. 1029 were:

- Representative Shelia Jackson Lee (D-TX)
- Representative Jason Chaffetz (R-UT)
- Representative Baron Hill (D-TX)

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

Next Steps. Now that the House of Representatives has passed H.R. 1029, the next step in the legislative process is its consideration in the Senate. The measure has been referred to the Senate Committee on the Judiciary. The Senate Committee on Commerce, Science, and Transportation may also address the issues in this bill as it takes up legislation to reauthorize the Coast Guard. ☼

House Passes Fiscal Year 2010 Budget Resolution: The full House of Representatives last week passed its version of the fiscal year 2010 budget resolution. Last week's House action occurred in connection with [H. Con. Res. 85](#),³⁶³ the Concurrent Resolution on the Budget for

³⁶² [Click Here](#) to see a video of the March 30, 2009, House floor debate on H.R. 1029

³⁶³ [H. Rept. 111-60](#), March 27, 2009

Fiscal Year 2010. The House passed the measure on Thursday, April 2, 2009, by a vote of 233-196.³⁶⁴

Legislative History. The House Committee on the Budget ordered that H. Con. Res. 85 be reported to the full House of Representatives on Wednesday, March 25, 2009, as an original measure. The Committee reported the measure on Friday, March 27, 2009.³⁶⁵

Summary of Immigration- and Refugee-Related Provisions. As passed by the House, H. Con. Res. 85 does contain any provisions that would enable analysts to project how much would be spent in the coming fiscal year for particular immigration- or refugee-related departments, agencies, functions, programs or activities should Congress adopt the resolution. Indeed, the House-passed measure and the report that accompanies it only contains three direct references to immigration- or refugee-related matters:

- Sense of the House on Homeland Security Funding. Section 602 of the House-passed version of H. Con. Res. 85 would express the sense of House “that because making the country safer and more secure is such a critical priority, the resolution therefore provides robust resources in the four budget functions--Function 400 (Transportation), Function 450 (Community and Regional Development), Function 550 (Health), and Function 750 (Administration of Justice)--that fund most nondefense homeland security activities that can be used to address our key security priorities ...” The section went on to list seven key security priorities, including “strengthening border security”.
- State Criminal Alien Assistance Program. The committee report accompanying H. Con. Res. 85 noted that the budget resolution supports the Department of Justice’s programs and initiatives “that provide ... important services to our communities” and included in its listing of such programs the State Criminal Alien Assistance Program (SCAAP), which reimburses states and localities for their incarceration costs.³⁶⁶
- Assistance to Refugees. The Committee report accompanying H. Con. Res. 85 notes that Function 150 covers funding for assisting refugees.³⁶⁷

In addition to containing the three direct references to homeland security, refugee, and border security funding, the House-passed version of H. Con. Res. 85 would establish recommended levels of new budget authority for the three

budgetary functions of government that fund most federal immigration services-, refugee-, border security-, and immigration enforcement-related agencies, programs and activities of the federal government.

The following summarizes funding recommended in the budget resolution for those three functions:

- Function 150 – International Affairs. Among the many agencies and activities that are encompassed in Function 150 is the Department of State’s Migration and Refugee Assistance (MRA) and Emergency Refugee Migration Assistance (ERMA) accounts, administered by the Department of State’s Bureau of Population, Refugees, and Migration (MRA).

For fiscal year 2010, H. Con. Res. 85 would provide \$10.2 billion (26.8 percent) more discretionary budget authority than the fiscal year 2009 level, excluding fiscal year 2009 supplemental funding, and \$5.8 billion (13.6 percent) more funding than the total amount that has been enacted for 2009 so far. The resolution would provide \$5.4 billion (9.9 percent) less than President Obama’s fiscal year 2010 budget, which includes his proposal to provide in the regular budget request funding that has in recent years been requested and appropriated as supplemental funding. Pursuant to the resolution, funding designated as an emergency or for overseas deployments and related activities does not count against the Appropriations Committee’s allocation provided in this resolution.

The fiscal year 2009 level of discretionary budget authority for function 150 includes \$4.5 BILLION in enacted supplemental appropriations. It does not include an additional \$7.1 billion in supplemental appropriations for 2009 that the President has said he plans to request for international affairs, which is included under Function 970 (Overseas Deployments and Related Activities).

- Function 500 – Education, Training, Employment, and Social Services. Among the many agencies and activities that are encompassed in Function 500 is the Department of Health and Human Services’ funding for refugee resettlement, assistance to trafficking victims and torture victims, and care for unaccompanied alien children, all of which is administered by the Department’s Office of Refugee Resettlement (ORR).

The House-passed version of the fiscal year 2010 budget resolution recommends the precise amount of funding that President Obama has requested for the Education, Training, Employment, and Social Services function of the federal budget, which is \$93.689 BILLION.

- Function 750 – Administration of Justice. Among the many agencies and activities that are encompassed in

³⁶⁴ [House Roll Call No. 192](#), April 2, 2009

³⁶⁵ [H. Rept. 111-60](#), March 27, 2009

³⁶⁶ [H. Rept. 111-60](#), March 27, 2009, Page 39

³⁶⁷ [H. Rept. 111-60](#), March 27, 2009, Page 11

Function 750 is the immigration court system, administered by the Department of Justice’s (DOJ) Executive Office for Immigration Review (EOIR). Also included in this function is interior immigration enforcement, administered by the Department of Homeland Security’s (DHS) Immigration and Customs Enforcement (ICE) bureau; border enforcement, administered by DHS’ Customs and Border Protection (CBP) bureau; and immigration service adjudication, administered by DHS’ U.S. Citizenship and Immigration Services (USCIS) bureau.

The committee report accompanying the House-passed version of the budget resolution notes that the resolution would provide “significant resources for our federal and local law enforcement programs, matching the level in the President’s budget.”

Floor Debate. House floor debate on H. Con. Res. 85 stretched across two days. The debate began on Wednesday, April 1, 2009.³⁶⁸ The House completed action on the bill on Thursday, April 2, 2009.³⁶⁹

Immigration- or Refugee-Related Floor Amendments. There were no immigration- or refugee-related amendments that were offered to the measure during House floor consideration.

Chart. The chart that follows compares the amount recommended in the House-passed version of the fiscal year 2010 budget resolution for the three functions that contain immigration-related funding with the amounts provided in fiscal year 2009 and in the Senate-passed version of the budget resolution.

FY '10 Functional Breakdown of Immigration and Refugee Spending in Budget Resolutions

Function	Office	'09 Actual	'10 Obama	'10 House	'10 Senate
(150) Intern'l Affairs	PRM ³⁷⁰	\$40.885	\$50.520	\$45.320	\$50,520

³⁶⁸ [Click Here](#) to see a video of the first day of debate on H.Con .Res. 85, which took place on Wednesday, April 1, 2009

³⁶⁹ [Click Here](#) to see a video of the second day of debate on H.Con .Res. 85, which took place on Thursday, April 2, 2009

³⁷⁰ Department of State’s Bureau of Population, Refugees, and Migration, which oversees the Department of State’s refugee admissions and overseas refugee assistance programs

Function	Office	'09 Actual	'10 Obama	'10 House	'10 Senate
(500) Education, Training, Emplmnt, and Social Services	ORR ³⁷¹	\$164.276	\$93.689	\$93.689	\$94,430
(750) Admin' of Justice	USCIS ³⁷² ICE ³⁷³ CBP ³⁷⁴ EOIR ³⁷⁵	\$55.783	\$52.857	\$52.857	\$52,857

Next Steps. Now that the House and Senate have passed their respective versions of the fiscal year 2010 budget resolution, the next step in the legislative process is the convening of a conference committee of the two chambers to reconcile differences between the two bills. Informal consultations between the House and Senate are expected to begin this week. ☼

Senate

Senate Passes Fiscal Year 2010 Budget

Resolution: The full Senate last week approved its version of the fiscal year 2010 budget resolution. Last week’s Senate floor action occurred in connection with [S. Con. Res. 13](#),³⁷⁶ an original concurrent resolution setting forth the congressional budget for the United States Government for fiscal year 2010, revising the appropriate budgetary levels for fiscal year 2009, and setting forth the appropriate budgetary levels for fiscal years 2011 through 2014. The Senate began consideration of the measure on Monday, March 30, 2009, and approved it on Thursday, April 2, 2009, by a vote of 55-43.³⁷⁷

³⁷¹ 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

³⁷² Department of Homeland Security’s U.S. Citizenship and Immigration Services bureau, which administers immigration and refugee benefit adjudication and service activities

³⁷³ Department of Homeland Security’s Bureau of Immigration and Customs Enforcement, which administers federal government’s interior immigration and customs enforcement activities

³⁷⁴ Department of Homeland Security’s Bureau of Customs and Border Protection, which administers the federal government’s border enforcement activities

³⁷⁵ Department of Justice’s Executive Office for Immigration Review, which administers the federal government’s immigration court system

³⁷⁶ [S. Rept. 111-16](#), March 27, 2009

³⁷⁷ [Senate Roll Call No. 154](#), April 2, 2009

Legislative History. The Senate Committee on the Budget ordered that S. Con. Res. 13 be reported to the full Senate on Thursday, March 26, 2009, as an original measure. The Committee reported the measure on Friday, March 27.

Summary of Immigration- and Refugee-Related Provisions. As passed by the Senate, S. Con. Res. 13 does not contain any provisions that would enable analysts to project how much would be spent in the coming fiscal year for particular immigration- or refugee-related departments, agencies, functions, programs or activities should Congress adopt it. Indeed, the Senate-passed version of S. Con. Res. 13 does not contain any direct references to immigration- or refugee-related matters.

The Senate-passed version of S. Con. Res. 13 would establish recommended levels of new budget authority for the three budgetary functions of government that fund most federal immigration services-, refugee-, border security-, and immigration enforcement-related agencies, programs and activities of the federal government.

The following summarizes funding recommended for those three functions in the Senate-passed version of the budget resolution:

- **Function 150 – International Affairs.** Among the many agencies and activities that are encompassed in Function 150 is the Department of State’s Migration and Refugee Assistance (MRA) and Emergency Refugee Migration Assistance (ERMA) accounts, administered by the Department of State’s Bureau of Population, Refugees, and Migration (MRA).

As amended by the Senate, S. Con. Res. 13 would provide \$50.520 BILLION in fiscal year 2010 for Function 150. This would be same amount that the Obama Administration requested for fiscal year 2010. It is \$3.85 BILLION more than the amount that was included in the Senate Budget Committee-approved version of the budget resolution. And it is \$5.2 BILLION more than was provided for in the House-passed version of the fiscal year 2010 budget resolution.

- **Function 500 – Education, Training, Employment, and Social Services.** Among the many agencies and activities that are encompassed in Function 500 is the Department of Health and Human Services’ funding for refugee resettlement, assistance to trafficking victims and torture victims, and care for unaccompanied alien children, all of which is administered by the Department’s Office of Refugee Resettlement (ORR).

S. Con. Res. 13 would provide \$94.430 BILLION in fiscal year 2010 for function 500. This would be \$.741 BILLION less than both the Obama Administration requested in its fiscal year 2010 budget overview and the

amount that is contained in the House-passed version of the fiscal year 2010 budget resolution.

- **Function 750 – Administration of Justice.** Among the many agencies and activities that are encompassed in Function 750 is the immigration court system, administered by the Department of Justice’s (DOJ) Executive Office for Immigration Review (EOIR). Also included in this function is interior immigration enforcement, administered by the Department of Homeland Security’s (DHS) Immigration and Customs Enforcement (ICE) bureau; border enforcement, administered by DHS’ Customs and Border Protection (CBP) bureau; and immigration service adjudication, administered by DHS’ U.S. Citizenship and Immigration Services (USCIS) bureau.

S. Con. Res. 13 would provide \$52.857 BILLION in fiscal year 2010 for function 750. This is the same amount that both the Obama Administration requested in its fiscal year 2010 budget overview and that is contained in the House-passed version of the fiscal year 2010 budget resolution.

The chart on page 385 of this week’s edition of the Weekly Legislative Update compares the amount recommended in the Senate-passed version of the fiscal year 2010 budget resolution for the three functions that contain immigration-related funding with the amounts provided in fiscal year 2009 and in the House-passed version of the budget resolution.

Floor Debate and Amendments. Immigration and refugee matters were not heavily debated during the Senate floor debate on S. Con. Res. 13. Senators submitted more than 250 amendments to the budget resolution during the Senate’s consideration of the measure and conducted votes on a fraction of them. Of those amendments, only three amendments had either a direct or indirect impact on immigration.

- **SESSIONS BORDER FENCE AMENDMENT.**—Senator Jeff Sessions (R-AL) offered Senate Amendment 969, which would have provided for a point of order against any appropriations bill that fails to fully fund the construction of the Southwest border fence.

The presiding officer of the Senate ruled that Senate Amendment 969 was nongermane.

- **KERRY INTERNATIONAL AFFAIRS AMENDMENT.**—Senate Foreign Relations Committee Chairman John Kerry (D-MA) offered Senate Amendment 732, which sought to restore full funding of the Obama Administration’s request for the international affairs function of the budget.

The Senate agreed to Senate Amendment 732 by unanimous consent.

- LIEBERMAN BORDER VIOLENCE AMENDMENT.—Senate Homeland Security and Governmental Affairs Committee Chairman Joseph Lieberman (I-CT) offered Senate Amendment 763, which sought to provide \$550 MILLION in additional funding for the Department of Homeland Security and Department of Justice for border-related funding.

The Senate agreed to Senate Amendment 763 by unanimous consent.

Next Steps. Now that the House and Senate have passed their respective versions of the fiscal year 2010 budget resolution, the next step in the legislative process is the convening of a conference committee of the two chambers to reconcile differences between the two bills. No formal conference deliberations will begin until Congress returns from its two week-long Spring recess. However, staff members are expected to work during the recess to settle as many differences between the two versions of the measure as they can. ☼

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

Administration Submits FY '09 War Supplemental to Congress: The President Obama has submitted an \$83.4 BILLION request for supplemental fiscal year 2009 funding for the wars in Iraq and Afghanistan. Included in the submission is a request for \$293 MILLION in funding for the Department of State's Migration and Refugee Assistance (MRA) account, additional assistance to internally displaced persons, as well as a proposal that the Department of Defense be permitted to transfer up to \$100 MILLION to other federal agencies for border-related activities. The President submitted the request on April 9, 2009.³⁷⁸

Summary of Immigration and Refugee Provisions. The following summarizes the specific immigration- and refugee-related spending found in the request:

- Overseas Refugee Assistance. The Administration has requested \$293 MILLION in supplemental funds for the

Department of State's Migration and Refugee Assistance account, which the Administration has requested Congress make available until expended.

According to the Administration request, the funds it is requesting "would provide \$293 million for Migration and Refugee Assistance. The request includes: \$108 million for basic social services to Iraqi refugees, internally displaced persons and conflict victims; \$25 million for assistance to Palestinian refugees in Lebanon and \$125 million to support emergency humanitarian needs in Gaza and the West Bank; \$7 million to address humanitarian needs in South Asia, including Afghanistan and Pakistan; \$15 million to address displacement and humanitarian needs related to violence in the Democratic Republic of Congo; \$10 million to respond to food pipeline breaks in Africa; and \$3 million to assist Burmese refugees."³⁷⁹

- ESF Funds for Internally-Displaced Persons in Pakistan. The Administration has requested \$2.875 BILLION in Economic Support Funds (ESF), \$429.5 MILLION of which it intends to give to the government of Pakistan. Of that amount, the Administration has identified "\$8 MILLION for humanitarian assistance for internally displaced populations (IDPs) escaping violence particularly in the Federally Administered Tribal Areas and the North-West Frontier Province of Pakistan."³⁸⁰
- Funds for Internally-Displaced Persons in Georgia. The Administration has requested \$242.5 MILLION for "Assistance for Europe, Eurasia and Central Asia", to remain available until September 30, 2010. Of that amount, the Administration has identified "\$68.5 million for meeting the critical needs of internally displaced persons."³⁸¹
- International Disaster Assistance. The Administration has requested \$200 MILLION for International Disaster Assistance "to address needs arising in Africa and elsewhere." The Administration has requested that these funds remain available until expended. The Administration explains in its request that it expects that a portion of these funds would be used to "help to address increases in internally displaced persons in Pakistan."³⁸²
- Other Immigration- or Refugee-Related Funding. The Administration has requested \$350 MILLION for the

³⁷⁸ [Click Here](#) to see a summary of the President's April 9, 2009, fiscal year 2009 supplemental appropriations request. [Click Here](#) to see the complete text of the President's fiscal year 2009 supplemental appropriations request, along with the letter of submission

³⁷⁹ Page 81 of the Supplemental appropriations request

³⁸⁰ Page 84 of the Supplemental appropriations request

³⁸¹ Page 90 of the Supplemental appropriations request

³⁸² Page 91 of the Supplemental appropriations request

Department of Defense, to remain available through September 30, 2010, “for counternarcotics and other activities including assistance to other Federal agencies, on the United States’ border with Mexico.”

This particular request seeks authorization for the Department of Defense to transfer up to \$100 MILLION of these funds to “any other Federal appropriations accounts, with the concurrence of the head of the relevant Federal department or agency for border-related activities.” It provides, further, that any such funds that are transferred are to be “merged with and be available for the same purposes and the same time period, as the appropriation to which transferred.” Finally, this request provides that “upon a determination that all or part of the funds so transferred from this appropriation are not necessary for the purposes provided herein, such amounts may be transferred back to this appropriation, to be merged with and made available for the same purposes and for the time period provided under this heading.”³⁸³

Congress begins holding hearings on the Administration’s fiscal year 2009 supplemental request this week. A markup in the House Committee on Appropriations could occur as soon as next week. ☀

Confusion Reins on Administration’s Comprehensive Immigration Reform Plans: A number of news stories and conflicting Administration statements that appeared in the press during the just-completed Spring recess has caused enormous confusion about what the Obama Administration’s plans are with regard to comprehensive immigration reform.

The confusion began when an April 8, 2009, New York Times article declared that President Obama “plans to begin addressing the country’s immigration system this year, including looking for a path for illegal immigrants to become legal.” Citing Cecilia Muñoz, Deputy Assistant to the President and Director of Intergovernmental Affairs as its source, the article said that the President “plans to speak publicly about the issue in May, administration officials said, and over the summer he will convene working groups, including lawmakers from both parties and a range of immigration groups, to begin discussing possible legislation for as early as this fall.”

Both in the New York Times articles and in subsequent statements made by President Obama and other Administration officials, the Administration has stressed the point that the Administration hopes to “start a debate” this year on immigration reform. But no Administration officials will be more specific than that.

Reaction in the various advocacy communities and on Capitol Hill to the flurry of news and statements broke down along predictable lines. Pro-immigrant advocates have sought to present the statements as evidence that the President supports congressional consideration of comprehensive immigration reform legislation this year. Immigration restrictionists have intensified their drumbeat that “an amnesty” is coming and needs to be fought.

On Capitol Hill, while those who will speak for attribution have been encouraging about the possibility of congressional action this year on comprehensive immigration, Capitol Hill veterans who are in the know speak with much more caution in private conversations, citing the economy, the heavy Obama agenda, and the difficulty of rounding up the votes necessary to pass a comprehensive immigration reform bill this year. ☀

Administration Delays E-Verify Contractor Rule Until End of June: The Obama Administration has announced a third delay in the implementation of a Bush-era rule that would require federal contractors to make use of the E-Verify program. The Administration announced the delay on Thursday, April 16, 2009, indicating that implementation of the controversial requirement was being delayed until June 30, 2009.³⁸⁴ ☀

Administration Announces Intent to Provide Emergency House Assistance to Refugees in the United States: The Department of State has established a grant program to provide emergency housing assistance to refugees who have been resettled in the United States.

The program will be administered by the Department of State’s Bureau of Population, Refugees, and Migration (PRM). It is intended to provide refugee emergency housing assistance (REHA) to assist the most vulnerable refugees that have not yet found employment and have extreme unmet housing needs in paying rent and other associated housing costs during their first 90 days in the U.S.

According to the Department, “[t]he purpose of REHA is to provide approximately \$5 million in emergency housing assistance to refugees (defined as persons admitted to the United States under section 207(c) of the Immigration and Nationality Act, as amended, or persons to whom eligibility for the resettlement assistance available to individuals admitted under section 207(c) has been extended by statute (hereinafter collectively referred to as “refugees”)), which were admitted to the U.S. in fiscal year (FY) 2009.”

The Department of State has indicated that any grants “will be provided through a one-time assistance award to public or private non-profit agencies (hereinafter referred to as

³⁸³ Page 17 of the Supplemental appropriations request

³⁸⁴ [Click Here](#) to see the April 16, 2009, E-Verify announcement made by the Department of Homeland Security

“Recipients”) currently participating in the Reception and Placement Program (R&P) managed by the Bureau of Population, Refugees, and Migration of the Department of State (hereinafter referred to as the “Bureau”).” It has said that funding under these grants will “complement the U.S. Reception and Placement Program, the purpose of which is to promote the effective resettlement of all persons who are admitted to the United States under the U.S. Refugee Admissions Program, including assisting refugees to achieve economic self-sufficiency through employment as quickly as possible.”³⁸⁵ ✪ ◇

Recently Introduced Legislation

The following bills containing significant immigration- or refugee-related provisions were introduced during the week of March 30, 2009:

House

Citizenship & Naturalization

- **Birthright Citizenship Act of 2009:** Representative Nathan Deal (R-GA) has introduced [H.R. 1868](#), a bill to amend section 301 of the Immigration and Nationality Act to clarify those classes of individuals born in the United States who are nationals and citizens of the United States at birth.

As introduced, H.R. 1868 would deny birthright citizenship to a child born in the United States unless at least one of the child's parents is a United States citizen or national of the United States, an alien lawfully admitted for permanent residence whose residence is in the United States, or an alien performing active service in the armed forces.

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

Control of Illegal Immigration

- **Border Violence Prevention Act of 2009:** Representative Ann Kirkpatrick (D-AZ) has introduced [H.R. 1867](#), a bill to authorize additional resources for the Department of Homeland Security to enhance security activities along the international border with Mexico.

As introduced, H.R. 1867 would authorize additional resources for the Department of Homeland Security to enhance security activities along the international border with Mexico.

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

Criminal Aliens

- **Removal of Criminal Aliens Charged with State Aggravated Felonies:** Representative Rodney Frelinghuysen (R-NJ) has introduced [H.R. 1823](#), a bill to amend the Immigration and Nationality Act to improve communication between the Secretary of Homeland Security and State and local law enforcement officials regarding the treatment of aliens who have been ordered removed and also charged with an aggravated felony under State law.

As introduced, H.R. 1823 would allow a state's chief executive, or another appropriate official to request that the DHS stay the removal of an alien charged with an aggravated felony.

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

Employment-Based Immigration System

- **Stopping Trained in America Ph.D.s From Leaving the Economy Act of 2009' or the STAPLE Act:** Representative Jeff Flake (R-AZ) has introduced [H.R. 1791](#), a bill to amend the Immigration and Nationality Act to authorize certain aliens who have earned a Ph.D. degree from a United States institution of higher education in a field of science, technology, engineering, or mathematics to be admitted for permanent residence and to be exempted from the numerical limitations on H-1B nonimmigrants.

As introduced, H.R. 1791 would exempt aliens who have earned a Ph.D. degree from a United States institution of higher education in a field of science, technology, engineering, or mathematics from the numerical limitations on H-1B nonimmigrants.

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

- **Arts Require Timely Service (ARTS) Act:** Representative Howard L. Berman (D-CA) has introduced [H.R. 1785](#), a bill to expedite adjudication of employer petitions for aliens of extraordinary artistic ability.

As introduced, H.R. 1785 would require the Department of homeland security to adjudicate petitions for the admission of aliens of extraordinary artistic ability within 30 days.

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

³⁸⁵ [Click Here](#) to see more information about the Refugee Emergency Housing Assistance grant program

Family-Based Immigration System

- **Immigration Relief for Immediate Relatives of Deceased United States Citizens:** Representative James P. McGovern (D-MA) has introduced [H.R. 1870](#), a bill to amend the Immigration and Nationality Act to provide for the relief to surviving spouses and children.

As introduced, H.R. 1870 would provide relief to the surviving spouses and children of a U.S. citizen who dies while immediate relative petitions are pending for his family members.

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

Senate

Family-Based Immigration System

- **Relief for Surviving Alien Spouses of Deceased United States Citizens:** Senator Bill Nelson (D-FL) has introduced [S. 815](#), a bill to amend the Immigration and Nationality Act to exempt surviving spouses of United States citizens from the numerical limitations described in section 201 of such Act.

As introduced, S. 815 would exempt surviving spouses of United States citizens from the numerical limitations described in section 201 of such Act.

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

Bills in Development

Next week's and future Weekly Immigration and refugee Legislative Updates will include a brief listing of several immigration- or refugee-related bills that are currently under development and that could soon be introduced in the Senate or House of Representatives. In each week's listing, items that were added 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 Appropriations Committee Could Markup Fiscal Year 2009 Iraq/Afghanistan Supplemental As Soon As Next Week:** Committee sources indicate that the House Committee on Appropriations could markup the fiscal year 2009 Iraq/Afghanistan supplemental appropriations bill as soon as next week. The Administration submitted an \$83.4 BILLION fiscal year 2009 supplemental request to Congress on Thursday, April 9, 2009. The measure contains a request for \$293 MILLION in supplemental fiscal year 2009 funds for the Department of State's Migration and Refugee Assistance (MRA) account, as well as hundreds of millions of dollars in other refugee- and immigration-related purposes.

****House Judiciary Committee Plans Hearing on Border Violence:** The House Judiciary Committee is planning to add its name to the list of committees that have held hearings this year on U.S.-Mexico border violence. No date for the propose hearing was publicly available at the time of this writing. However, there are indications that the hearing could occur sometime in the next two weeks.

Senate

****Senate Judiciary Committee to Hold Hearings on Comprehensive Immigration Reform:** The Senate Committee on the Judiciary is expected to hold hearings beginning in the next several weeks on aspects of comprehensive immigration reform. Senator Charles Schumer (D-NY), the new chairman of the Senate Judiciary Subcommittee on Immigration, was quoted on April 9, 2009, as saying, "[w]e must solve the immigration issue, and we can, even in these difficult economic times. I believe there is a real chance of passing comprehensive reform this year, and the Senate panel on immigration will begin a series of meetings and hearings later this month with an eye towards meeting that goal."

At the time of this writing, no further information on potential Senate Judiciary Committee hearings on immigration was available.

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. ◇

Next Week's Edition ...

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

- Obama Foreign Policy Priorities. Next week's Weekly Legislative Update will provide an analysis of Secretary of State Hillary Rodham Clinton's first appearance before a House committee as she discusses the Administration's foreign policy priorities with the House Committee on Foreign Affairs.
- 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 the conference report accompanying the fiscal year 2010 budget resolution should conferees reach an agreement on the measure this week.
- Fiscal Year 2009 War Supplemental. Next Week's Weekly Legislative Update will report on hearings expected to take place this week on President Barack Obama's Fiscal Year 2009 war supplemental request as well as preview House action on the supplemental should the House Appropriations Committee, as anticipated, markup the resolution next week.
- Preview of the Likely Immigration and Refugee Legislative Agenda for the 111th Congress. Next week's Weekly Legislative Update will preview the likely immigration and refugee legislative agenda that Congress will face during the 111th Congress. ◇

Appendix

No items this week.

