



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

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This Week's Hearings

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

- Implementation of the Western Hemisphere Travel Initiative. A House Homeland Security Committee panel has scheduled a hearing on implementation of the Western Hemisphere Travel Initiative;
- Border Violence and the Drug Trade. A House Judiciary Committee panel has scheduled a hearing on violence along the U.S. border with Mexico;
- Oversight of the Department of Homeland Security. The Senate Judiciary Committee has scheduled an oversight hearing on the operations of the Department of Homeland Security at which Secretary Janet Napolitano is expected to testify;

- Fraud in the Issuance of Passports. A Senate Judiciary Subcommittee has scheduled a hearing on fraud in the issuance of passports; and

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This Week's Hearings (continued)

- FY '10 Appropriations for the Department of Justice. A Senate Appropriations Committee panel has scheduled a hearing on fiscal year 2010 appropriations for the Department of Justice.

House

House Judiciary Committee Panel to Hold Hearing on Violence along the U.S. Border with Mexico:

The House Judiciary Subcommittee on Crime, Terrorism and Homeland Security has scheduled a hearing for this week titled "Escalating Violence in Mexico and the Southwest Border as a Result of the Illicit Drug Trade?" This week's hearing is scheduled for 2:00 pm on Wednesday, May 6, 2009, in Room 2141 of the Rayburn House Office Building.

Anticipated Witnesses. At the time of this writing, the witness list for this week's hearing was not yet known. ☼

House Homeland Security Committee Panel to Hold Hearing on Western Hemisphere Travel Initiative:

The House Homeland Security Subcommittee on Border, Maritime and Global Counterterrorism has scheduled a hearing for this week on implementation of the Western Hemisphere Travel Initiative. This week's hearing is scheduled for 10:00 am on Thursday, May 7, 2009, in Room 311 of the Cannon House Office Building.

Anticipated Witnesses. At the time of this writing, the witness list for this week's hearing included the following:

- Richard Barth, Acting Principal Deputy Assistant Secretary of Homeland Security, Office of Policy Development;
- Thomas Winkowski, Assistant Commissioner, Office of Field Operations, Customs and Border Protection, Department of Homeland Security; and
- John Brennan, Senior Policy Advisor, Bureau of Consular Affairs, Department of State. ☼

Senate

Senate Judiciary Committee to Hold Oversight Hearing on DHS Operations:

The Senate Committee on the Judiciary has scheduled an oversight hearing for this week on the operations of the Department of Homeland Security. This week's hearing is scheduled for 10:00 am on Wednesday, May 6, 2009, in Room SD-106 of the Dirksen Senate Office Building.

Anticipated Witnesses. At the time of this writing, the sole witness for this week's hearing is expected to Secretary of Homeland Security Janet Napolitano. ☼

Senate Judiciary Panel to Hold Hearing on

Passport Fraud: The Senate Judiciary Subcommittee on Terrorism and Homeland Security has scheduled a hearing for this week titled "The Passport Issuance Process: Closing the Door to Fraud." This week's hearing is scheduled for 2:30 pm on Tuesday, May 5, 2009, in Room SD-226 of the Dirksen Senate Office Building.

Anticipated Witnesses. At the time of this writing, the witness list for this week's hearing included the following:

- Brenda Sprague, Deputy Assistant Secretary of State for passport services, Bureau of Consular Affairs; and
- Jess T. Ford, Director, International Affairs and Trade Team, Government Accountability Office. ☼

Senate Appropriations Committee Panel to Hold Hearing on FY '10 Appropriations for the

Department of Justice: The Senate Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies has scheduled a hearing for this week on proposed fiscal year 2010 appropriations for the Department of Justice. This week's hearing is scheduled for 10:00 am on Thursday, May 7, 2009, in Room SD-192 of the Dirksen Senate Office Building.

Anticipated Witnesses. At the time of this writing, the sole witness that is expected to testify at this week's hearing is Attorney General Eric Holder. ☼ ◇

This Week's Markups

Only two measures having implications for immigration- or refugee-related matters are scheduled for markup this week:

- Fiscal Year 2009 War Supplemental. The House and Senate Committees on Appropriations could markup the Administration's fiscal year 2009 war supplemental request; and

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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)

- Vote on Trafficking Nomination. The Senate Committee on Foreign Relations has scheduled a business meeting at which it could vote on the nomination of Luis de Baca to be Ambassador-at-Large to Monitor and Combat Trafficking in Persons at the State Department.

Bicameral

Appropriations Committees to Markup Fiscal Year 2009 War Supplemental: It is anticipated that the House and Senate Committees on Appropriations this week will markup the Administration's fiscal year 2009 war supplemental request. The House markup is scheduled for 10:00 am on Thursday, May 7, 2009, in Room 2359 of the Rayburn House Office Building. The Senate Appropriations Committee has not yet announced its markup schedule.

President's Submission. President Obama submitted an \$83.4 BILLION request for supplemental fiscal year 2009 funding for the wars in Iraq and Afghanistan on April 9, 2009. Included in the submission is a request for \$293 MILLION in funding for the Department of State's Migration and Refugee Assistance (MRA) account and additional assistance to internally displaced persons. The President's proposal, as well, contains a request that the Department of Defense be permitted to transfer up to \$100 MILLION to other federal agencies for border-related activities. It is believed that this \$100 MILLION is intended to be transferred to the Department of Health and Human Services Office of Refugee Resettlement (ORR) to deal with expected increased costs for the care of unaccompanied alien children and trafficking victims.

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

- Overseas Refugee Assistance. The Administration 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."⁴⁰⁹

- ESF Funds for Internally-Displaced Persons in Pakistan. The Administration 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."⁴¹⁰
- Funds for Internally-Displaced Persons in Georgia. The Administration requested \$242.5 MILLION for "Assistance for Europe, Eurasia and Central Asia", to remain available through fiscal year 2010. It proposes to set aside "\$68.5 million of the request for meeting the critical needs of internally displaced persons."⁴¹¹
- International Disaster Assistance. The Administration 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 explained in its request that it expects a portion of these funds would be used to "help to address increases in internally displaced persons in Pakistan."⁴¹²
- Other Immigration- or Refugee-Related Funding. The Administration requested \$350 MILLION for the 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

⁴⁰⁹ Page 81 of the Supplemental appropriations request

⁴¹⁰ Page 84 of the Supplemental appropriations request

⁴¹¹ Page 90 of the Supplemental appropriations request

⁴¹² Page 91 of the Supplemental appropriations request

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.”⁴¹³

Outlook. No Chairman’s mark had been distributed at the time of this writing. Accordingly, it is not possible to predict what refugee- or immigration-related provisions will be contained in the measure that is brought before the two committees for markup. ☼

Senate

Senate Foreign Relations Committee Could Act This Week on de Baca Trafficking Nomination:

The Senate Committee on Foreign Relations could act as soon as this week on the nomination of Luis de Baca to be Ambassador-at-Large to Monitor and Combat Trafficking in Persons at the State Department. While Committee action on the de Baca nomination had not been officially noticed at the time of this writing, the Committee has scheduled a business meeting for 2:15 pm on Tuesday, May 5, 2009, in Room S-116 of the Capitol Building. The Senate Foreign Relations Subcommittee on African Affairs held a hearing on Wednesday, April 29, 2009, on the de Baca nomination.⁴¹⁴

Outlook. At the time of this writing, there does not appear to be any opposition in the Senate to the de Baca nomination. ◇

This Week’s Floor Activity

At the time of this writing, no legislative measures containing significant immigration- or refugee-related provisions are expected to be considered this week by the full House of Representatives or Senate. However, one nomination that has significant immigration- or refugee-related implications has been approved by a Senate committee and could come before the full Senate at any time:

- Nomination of John T. Morton to Head Immigration and Customs Enforcement Bureau. The full Senate could at any time take up the nomination of John T. Morton to head ICE.

⁴¹³ Page 17 of the Supplemental appropriations request

⁴¹⁴ See Pages 420-424 of this week’s Weekly Legislative Update for detail on the Senate Foreign Relations Committee hearing on the nomination of Luis de Baca to be Ambassador-at-Large to Monitor and Combat Trafficking in Persons at the State Department. See pages 394-395 of the April 27, 2009, edition of the Weekly Legislative Update for a detailed analysis of Mr. de Baca’s record on trafficking. [Click Here](#) to see the White House press release announcing the President’s nomination of Luis de Baca to be Ambassador-at-Large to Monitor and Combat Trafficking in Persons.

Full Senate Could Act This Week on Morton ICE

Nomination: While no action on the nomination had been officially scheduled as of this writing, the Senate could at any time take up the nomination of John T. Morton to head the Department of Homeland Security’s Immigration and Customs Enforcement (ICE) bureau. The Senate Committee on Homeland Security and Governmental Affairs approved Mr. Morton’s nomination by a voice vote on Monday, April 27, 2009.⁴¹⁵

Outlook. At the time of this writing, there does not appear to be any opposition in the Senate to the Morton nomination. ◇

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

President Expected to Submit Detailed Budget to Congress This Week:

President Barack Obama is expected this week to submit his detailed fiscal year 2010 budget to Congress. The President will submit much of the detailed budget on Thursday, May 7, 2009, and the remainder of it next week. It also is expected that at the same time that he submits his detailed budget, the President will submit a compilation of at least 100 federal programs that he will seek to cut or terminate.

President Obama took the first step toward producing his first federal budget on February 26, 2009, when he submitted a 142-page fiscal year 2010 “Budget Overview” to Congress. While the document, which was titled, [“A New Era of Responsibility: Renewing America’s Promise”](#), sent a few encouraging smoke signals to the pro-immigrant and pro-refugee advocacy communities about where their priorities might fit within the new Administration’s budget plans, it did not contain sufficient detail to provide any meaningful guidance on that question. This week’s budget submission is expected to provide that detail.

⁴¹⁵ See Pages 441 of this week’s Weekly Legislative Update for detail on the Senate Committee on Homeland Security and Governmental Affairs Committee markup during which it approved the nomination of John T. Morton to head the Immigration and Customs Enforcement bureau. See Pages 400-404 of the April 27, 2009, edition of the Weekly Legislative Update for a detailed write-up of the April 22, 2009, Senate Homeland Security and Governmental Affairs confirmation hearing on the nomination of John T. Morton to head ICE.

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

As previously eluded to, the President's Budget Overview contained virtually no detail with regard to proposed fiscal year 2010 spending for immigration- and refugee-related functions, departments, agencies, and activities. And so it was impossible at that time to discern with any accuracy how much the Administration was proposing to spend on those functions. It is anticipated that this week's budget submission will reveal those details

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

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

Despite the lack of specificity, there is reason for refugee advocates to be encouraged by the President's Budget Overview. The Administration indicated it will ask for a 9.5 percent increase in spending for the Department of State and Other International programs in fiscal year 2010; it stated that the fiscal year 2010 budget would [put] "the United States on a path to double foreign assistance," and it stated in the Overview that the budget would ensure "that the United States continues to be the world's leader in providing food aid and life sustaining support for refugees and other conflict and disaster victims."⁴¹⁶

Materials released in conjunction with the Budget Overview went a bit further, promising that the fiscal year 2010 budget would "strengthens assistance to help

Iraqis who have been displaced because of the war." Encouragingly, these materials also assert that "[t]o increase transparency, the Budget reduces reliance on emergency supplemental appropriations by funding expenses that are predicable and recurring." On this last point, the materials get more specific, saying that, "[t]he Budget reduces reliance on emergency supplemental appropriations by increasing key accounts and programs with predictable and recurring funding requirements that have previously been funded in supplementals. While emergency supplementals may be required in the future, they should focus on truly unanticipated events and not be used to fund regular programs."⁴¹⁷

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

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

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

While the budget spoke with specificity about spending that the Administration is seeking for some immigration enforcement programs, the only thing it said about immigration services is that it "supports strengthening the delivery of immigration services by streamlining and modernizing immigration application processes."⁴¹⁸ It made no mention of how much funding will be devoted

⁴¹⁷ [Click Here](#) to see a Fact Sheet on Department of State and Other International Programs, prepared by the White House Office of Management and Budget

⁴¹⁶ "A New Era of Responsibility: Renewing America's Promise", Page 87-89

⁴¹⁸ "A New Era of Responsibility: Renewing America's Promise", Page 72

to the effort or whether the funding will be totally from fee revenue or whether the Administration will ask Congress to directly appropriate non-fee generated funds to enhance fee-generated money.

Materials released in conjunction with the Budget Overview went a bit further, but not much further. In those materials, the Office of Management and Budget declared that “[t]he Budget strengthens ... efforts to improve the delivery of immigration enforcement by streamlining and modernizing immigration application processes.”⁴¹⁹

- **Immigration Enforcement.** The Budget Overview spoke with some specificity about increases the Obama Administration is seeking for immigration enforcement. More specifically, the Budget Overview indicates that, the Administration is seeking—
 1. \$45 million for the expansion of an exit pilot at key land ports of entry and other border security priorities;
 2. funding of \$368 million within existing Customs and Border Protection funds support 20,000 Border Patrol agents protecting nearly 6,000 miles of U.S. borders.
 3. over \$1.4 billion for Immigration and Customs Enforcement programs to ensure that illegal aliens who commit crimes are expeditiously identified and removed from the United States; and
 4. funding of \$110 million is provided to continue expansion of E-Verify, an electronic employment eligibility verification system.⁴²⁰

In addition to the above funding increases in the Department of Homeland Security’s budget, the Budget Overview eluded to funding increases in the Department of Justice’s budget relating to immigration. More specifically, the Budget Overview says that the Budget “includes additional funding for a comprehensive approach to enforcement along the Nation’s borders that combines law enforcement and prosecutorial component efforts to investigate, arrest, detain, and prosecute illegal immigrants and other criminals.”⁴²¹ ☀ ◇

⁴¹⁹ [Click Here](#) to see a Fact Sheet on Department of Homeland Security Programs, prepared by the White House Office of Management and Budget

⁴²⁰ “A New Era of Responsibility: Renewing America’s Promise”, Page 72

⁴²¹ “A New Era of Responsibility: Renewing America’s Promise”, Page 82

Last Week’s Legislative Activity

Last Week’s Hearings

Four Congressional panels held hearings last week, at which significant immigration- or refugee-related matters were discussed:

- **Comprehensive Immigration Reform.** A Senate Judiciary Committee panel held a hearing on comprehensive immigration reform;
- **Director of State Department Trafficking Office.** A Senate Foreign Relations Committee panel held a hearing on the nomination of Luis de Baca to head the State Department’s Office on Trafficking;
- **Swine Flu and Homeland Security.** The Senate Homeland Security and Governmental Affairs Committee held a hearing on the federal response to the Swine Flu pandemic; and
- **Fiscal Year 2009 Iraq/Afghan War Supplemental.** The Senate Appropriations Committee held a hearing on the President’s fiscal year 2009 Iraq/Afghanistan war supplemental appropriations submission at which Secretary of State Hillary Rodham Clinton and Secretary of Defense Bob Gates testified.

Senate Foreign Relations Panel Holds Hearing on Nomination of Luis de Baca to Head Trafficking Office:

The Senate Foreign Relations Subcommittee on African Affairs last week held a hearing on the nomination of Luis C. de Baca to be Director of the State Department’s [Office to Monitor and Combat Trafficking in Persons](#). Last week’s hearing occurred on Wednesday, April 29, 2009.

Witnesses. The following witness testified at last week’s hearing on the de Baca nomination:

- Senator Tom Harkin (D-IA);
- Representative John Conyers, Chairman, House Committee on the Judiciary; and
- the nominee, Luis C. de Baca.

Opening Statements. The following is a summary of the immigration-related comments made by senators in their opening statements at last week’s hearing:

- **Chairman Feingold.** In his opening statement, Senate Foreign Relations Subcommittee on African Affairs Chairman Russell Feingold (D-WI) noted that, if confirmed, Luis de Baca will face great challenges. But, he said, “[f]ortunately, Mr. de Baca has direct experience working for over a decade on trafficking cases at the Justice Department and understands the legal

complexities of law relating to human trafficking, forced labor and slavery.” Chairman Feingold noted that the Director of the GTIP Office must focus attention and resources on the severe problem of human trafficking, working in close consultation with other governments as well as with other agencies here at home. He said that the international community has taken notable strides to address this problem, but countless women, men and children are still trafficked every year, subject to sexual exploitation, forced labor and abuse. Mr. Feingold asserted that “the U.S. government estimates that approximately 800,000 people are trafficked across borders each year, 80 percent of whom are women and girls, and up to 50 percent of whom are minors.” Citing a 2006 GAO study that he said found that the United States lacked a fully coordinated interagency strategy to address this problem, he said that he was “eager to hear today from Mr. de Baca how he intends to maximize the resources of the GTIP Office and strengthen his coordination with other government bureaus in the State Department and, of course, other U.S. agencies.”

- Ranking Republican Isakson. In his opening statement, Ranking Republican Johnny Isakson (R-GA) noted that while he had not met Mr. de Baca before, that “if you read his resume and you look at the job description for what he's been nominated, it's what they call a perfect fit or a perfect match.” He also said that “it should not go unnoticed to any of us that the trouble that's going on on the Mexican border right now is, in part, human trafficking. We have serious issues, obviously, from Southeast Asia in human trafficking, and in Africa we have a problem with not only human trafficking but narcotrafficking, which is a growing danger.” He concluded by saying that “from every appearance that I read from his resume, which I'm sure is totally accurate, is absolutely qualified for the job, and I welcome him here today...”

Prepared Testimony. The following is a summary of the testimony presented by witnesses at last week's hearing:

- Senator Harkin. In his testimony, Senator Tom Harkin (D-IA) noted that he had known Mr. de Baca most of Mr. de Baca's life, owing to a close relationship that he has had with Mr. de Baca's parents and family.

Senator Harkin noted that Mr. de Baca's family was involved in Angus cattle breeding in Huxley, Iowa for many years. He said that as a child, Mr. de Baca became a 4H student and was very active in 4H, and that as a freshman at Iowa State University he came to Washington as an intern in his office. Senator Harkin said that after Mr. de Baca graduated from Iowa State, he then went to Michigan to go to Michigan Law School, where he was editor of the Law Review.

Senator Harkin noted that Mr. de Baca's first job after law school was an attorney in the Criminal Division of the Department of Justice's Civil Rights Division, where he prosecuted involuntary servitude cases, among others, a job which the Senator said was where he developed this great interest and passion for involuntary servitude and trafficking in persons and child labor.

Senator Harkin told the Subcommittee that Mr. de Baca rose to the position of chief counsel of the Civil Rights Division's human trafficking prosecution unit and that during the Clinton administration, he was the department's involuntary servitude and slavery coordinator.

Senator Harkin noted that more recently, Mr. de Baca has been detailed to serve as counsel to the House Committee on Judiciary.

Senator Harkin concluded his remarks by saying that “I've known Lu from his earliest years. I've followed his career with great interest and -- and great pride. He is a person of the highest intelligence and character and integrity. That I would vouch for 24 hours a day, seven days a week. And I can tell you he brings a genuine passion to the cause of combating human trafficking and slavery.” He said that “Lu de Baca is extremely well qualified to serve in every way for this position. I thank the president, Obama, for nominating him, and I urge the committee to report his nomination with a positive recommendation.”

- Chairman Conyers. House Judiciary Committee Chairman John Conyers, Jr. noted that Mr. de Baca has served as a detailee with the Committee under his supervision. He noted the great experience and expertise that Mr. de Baca brought to the job and how that expertise helped the Committee in drafting provisions of the William Wilberforce Trafficking Reauthorization Act that Congress enacted last December.

- Luis de Baca. In his prepared testimony, Mr. de Baca spoke of both his deep involvement in “supporting the work of the Congress on the William Wilberforce Trafficking Victims Protection Reauthorization Act” and his experience as an official in the Department of Justice prosecuting slavery cases as factors that make him well-suited for the Ambassador-at-Large position.⁴²²

Mr. de Baca commended the United States government for using the “3P approach” to dealing with trafficking, which he described as Prevention, prosecution, and

⁴²² [Click Here](#) to see the complete prepared testimony of Luis C. de Baca at the April 29, 2009, Senate Foreign Relations Subcommittee on African Affairs confirmation hearing on his nomination to be Ambassador-at-large in charge of the State Department's Office to Monitor and Combat Trafficking in Persons.

Protection. He said that this approach “has informed the broad international consensus on human trafficking, as reflected in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime (“Palermo Protocol”).”

Mr. de Baca noted he was able to contribute his own field experience to help in the formulation of the “3P” paradigm during the Clinton Administration. He also noted that while the 3P approach does not sound like a radical idea now, “many in law enforcement were initially very worried that partnering with civil society or focusing on victims’ rights would mean a loss of control, not an opportunity.”

In addition to speaking of the “3P” approach to dealing with trafficking, Mr. de Baca also said that the United States government should be proud of the “Victim Centered Approach” that it employs, which he described as being based on the notion that “a nation’s responsibility for the promotion and protection of human rights and fundamental freedoms is as important as the nation’s interest in its sovereignty or general criminal laws.” He went on to assert that “[v]iewed in this light, governments have a responsibility to protect the victim and assist with the victim’s recovery, rather than prosecuting that person for a violation of immigration or prostitution laws. This approach acknowledges that attention should be paid to rehabilitation and restoration of the survivors at the same time as the government works to bring traffickers to justice.”

Mr. de Baca spoke of what he saw as the way forward in dealing with trafficking. He said that, if confirmed, he would “work intensively with foreign governments to ensure that traffickers are brought to justice, strengthen standards of victim protection, and continue to raise awareness of modern-day forms of slavery.” He said that, “[a]s a career prosecutor, I am very aware of the limitations of an enforcement-only approach.” He continued, saying that “[w]e cannot “prosecute ourselves out” of this problem, no more than we can do so in other crimes involving violations of human or civil rights such as racial violence or police brutality. Rather, a cultural shift needs to accompany enforcement efforts, both in the United States and around the world, so that society does not write off the people most vulnerable to trafficking as somehow disposable “others.” We must look more closely, and go beyond the superficial or the semantic. Rather than seeing a woman as “just a prostitute,” or an abused migrant as “just an illegal alien,” we need to see through to each individual’s humanity and recognize how traffickers exploit their victims’ vulnerabilities to hold them in bondage. Likewise, we must see through the movement and migration that characterize so many human trafficking situations and focus on the compelled service that the Palermo Protocol and other international

instruments place at the core of this phenomenon. If confirmed, I would use the resources of my office to engage governments and civil society to that end.”

Mr. de Baca said that there were a number of things that must be done to combat trafficking—

1. We must confront the root causes of trafficking, which he listed as “poverty, lack of opportunity, the status of women, displacement, and destabilization due to war or disaster;
2. we must address the markets where traffickers flourish, such as dehumanizing prostitution and migratory labor – not just through laws, but through a new understanding and attitudes. On this point, Mr. de Baca suggested that a cultural shift was needed that rejects the glamorization of what he called “pimp culture,” respects the rights of immigrant crime victims, and undercuts the demand that drives trafficking whether for sexual or labor exploitation.”

With regard to the work of the Office to Monitor and Combat Trafficking in Persons (TIP Office), which he would direct if confirmed, Mr. de Baca said “much of the work of the office is statutorily mandated, and if confirmed I would look forward to continuing and building upon the work of my predecessors.” He said he would “strive to monitor and accurately report on human trafficking in all of its forms in a rigorous TIP Report that serves as the basis for our engagement with foreign governments.” He further pledged that he would “assist Secretary Clinton with her efforts to ensure that human trafficking is prioritized as an important foreign policy concern, and is fully integrated into our diplomatic relations throughout the year, not just when the Report is launched.” He said that the TIP Office “has a strong external component, and if confirmed I will place a high priority on interagency cooperation, bilateral and multilateral relations, and engagement with civil society. Working in coordination with the wide range of organizations that are engaged on this issue, I would hope to draw upon the power and experience of civil society, including innovative public/private partnerships.”

Mr. de Baca concluded his prepared testimony by saying “Secretary Clinton has long been personally committed to combating human trafficking, dating back to her time as First Lady and continuing when she was a member of this Committee. With the unanimous passage of the Wilberforce Act last year, Congress has given us a roadmap for those efforts, and new tools to fight this ancient evil. If confirmed, I look forward to taking America’s message of freedom globally and joining my colleagues to shape our counter-trafficking efforts at home. We are called to act by our Constitution, our laws,

and international agreements, but even more so by the needs of those who suffer in bondage.”

Q&A Session. The following is a summary of the immigration- and refugee-related questions that were posed to the secretary during last week’s hearing:

- [Coordination between Departments of Justice and State](#)
- [Human Trafficking and Border Violence](#)
- [New Frontiers in Trafficking](#)
- [Usefulness of Domestic Experience for New Position](#)
- [Coordination between Departments of Justice and State.](#) Senator Ted Kaufman (D-DE) asked Mr. de Baca about his plans to coordinate the anti-trafficking efforts of the Departments of State and Justice.

Mr. de Baca responded, saying that “as a creature of the Justice Department, my first priority will actually be, if confirmed, to start doing some in-reach with the State Department, in no small part so that we can create those linkages and strengthen those linkages between the Department of Justice and the Department of State.” He asserted that “[w]hether it's the Civil Rights Division which prosecutes the cases here, whether it's the child exploitation and obscenity section of the Criminal Division, which has shown such great leadership on issues like child sexual exploitation in the PROTECT Act, et cetera, there are a number of offices that work every day with their State Department counterparts, both on the individual level and then through the Senior Policy Operating Group, which is the formal interagency process.” He said that he would look to strengthen and build on those relationships.

Mr. de Baca went on to note that the Senate Judiciary Committee currently had before it the nomination of Tom Perez, who he said is an experienced former prosecutor in the criminal section of Civil Rights Division, who assigned him his first slavery case. He said that “Mr. Perez was one of the key founders of the interagency working group during the Clinton administration on the operations side, the National Trafficking Worker Exploitation Task Force. And if confirmed, the two of us will work very closely together so that we can have a seamless relationship between the departments.”

- [Human Trafficking and Border Violence.](#) Ranking Republican Isakson asked Mr. de Baca to whether some of the violence that is being experienced along the U.S. border with Mexico is due to human smuggling rather than narcotrafficking.

Mr. de Baca responded that “human trafficking and alien smuggling are inexorably intertwined.” He said that “[m]any of the Mexican citizens who are victimized in

the United States, exploited and enslaved, whether in prostitution, or field work or as servants have been victimized by the alien smuggling rings.” Mr. de Baca went on to note that “[t]here's not always a one-to-one correlation between the alien smugglers and those who bring the folks up in order to enslave them or in order to hold them in involuntary servitude, but they use the same routes. They're often the same people. And often, what happens is migrants who are coming north for personal reasons fall into the trap that the human traffickers lay for them.” To support that assertion, he told the Subcommittee that he once prosecuted a case in south Texas where two women were held as concubines by an alien smuggling ring. He said that “[a]s they would bring people through, they'd basically cherry-pick the women who were the most vulnerable, who they felt that they could get away with holding there in the safe house, not just until they could move them north, not just until they could extort money from the families.” He said that by day they would use these women as cooks, maids but at night use them for sexual servitude.

Mr. de Baca said that “one of the things that I would do if confirmed is to work closely with the Mexican government so that we can strengthen their ability to protect their citizens, to investigate the trafficking rings, to investigate the smuggling rings, and to start dismantling the northern flow of people for exploitation. But sadly, we've also seen a problem with people being brought up from across the southern border of Mexico from Guatemala, from Honduras, El Salvador, and never making it to the United States, ending up in factories or brothels in southern Mexico and exploited there.” He said that “if confirmed, I would want to work closely with the Mexico federal police, with the Mexican authorities, so that we could actually harness the power of some of the non-governmental organizations that are standing ready to try to help those immigrants who are actually being harmed in Mexico, not just in the United States.”

- [New Frontiers in Trafficking.](#) Chairman Russell Feingold (D-WI) asked Mr. de Baca what he saw as the new frontiers for trafficking problems and if there are potential regions where we might be able to prevent at an early stage a human trafficking industry from becoming entrenched.

Mr. de Baca responded that “it's perhaps less a matter of trafficking popping up in places as it is, sadly, a matter of us turning our attention to them.” He asserted that “wherever you have a vulnerable population and greedy and abusive employers or greedy and abusive pimps, you will see human trafficking manifest itself.” He went on to say that, “much of the resources and much of the energy on this issue has been in Southeast Asia or in Eastern Europe in the wake of the fall of the Soviet Union. I think that there is much work to be done in

Africa and in Latin America, where this certainly seems to be a growing phenomenon. Again, whether that's because the problem is itself growing or because people are turning their attention to it, the data can't tell us."

- Usefulness of Domestic Experience for New Position. Chairman Feingold asked Mr. de Baca how his experience prosecuting domestic trafficking cases would help him in a job that is focused on international trafficking issues.

In response to Chairman Feingold's question, Mr. de said that "the commonality between these cases, whether they take place in another country or in the United States, is the compelled service and the suffering that the victims go through." He went on to assert that "a lot of what the United States has brought to the table and what I've been able to work with over the last 15 years is what we in the United States law enforcement community have learned about victimization, have learned about imbalance of power, through the domestic violence and sexual assault efforts since the 1970s, that understanding of the imbalance of power, the information differential that the traffickers often take advantage of, but then also how the most effective traffickers are ones who create a dependence upon the victim so the victim themselves starts feeling like they can't leave their abuser, something that's very similar to the domestic violence understanding that we have."

He said, "that, plus working with the non-governmental organizations hand in hand, which we first started doing when we were working in the migrant communities, largely as a way to be able to just find the victims who, once they escaped, would flow out into -- into the migrant community as a whole -- those linkages between law enforcement and the non-governmental community are one of the reasons why the Civil Rights Division has such a strong track record of doing both labor and sex trafficking cases here in the United States. And so, if confirmed, one of the things that I would like to take to the international community is that notion that for a government to give up a little bit of power in the relationship with the NGOs, so that they can work together on cases, actually empowers the entire effort. And for NGOs to be able to forge these alliances and trust some -- some police and detectives, hopefully in elite units, will actually put a dent in this problem." ☀

Senate Judiciary Committee Panel Holds Hearing on Comprehensive Immigration Reform:

The Senate Judiciary Subcommittee on Immigration, Refugees, and Border Security held a hearing last week on comprehensive immigration reform. Last week's hearing, which was titled, "Comprehensive Immigration Reform in

2009: Can We Do It and How?" was held on Thursday, April 30, 2009.⁴²³

During the course of the hearing, Senate Judiciary Subcommittee on Immigration, Refugees, and Border Security Chairman Charles Schumer (D-NY) asserted his belief that that the American people would accept a fair, reasonable path to citizenship for the illegal immigrants who are here; would accept more family- and employment-based immigration; and would accept the admission of temporary workers into the country if they could be convinced that there was not going to be another wave of illegal immigration.

Chairman Schumer expressed optimism "that we might be able to get something done that really stands by the basic view that Americans support like legal immigration and don't like illegal immigration and implement something that makes that happen."

Republican Senators John Cornyn (R-TX) and Jon Kyl (R-AZ) were not so welcoming of and optimistic about the prospects for enactment of comprehensive immigration reform, however. Senate Judiciary Subcommittee on Immigration, Refugees, and Border Security Ranking Republican Cornyn derided the process and President Obama by saying "[f]or immigration reform to pass this Senate this year, we need much more than hearings and photo ops and press releases and talking points. We will need actual legislation, and leadership on both ends of Pennsylvania Avenue." He went on to ridicule President Obama's press conference statement on comprehensive immigration reform, saying "I don't think forming a 'working group' is showing real leadership."

Senator Kyl was pessimistic, as well, saying that we are going backward; not forward on these essential elements of comprehensive immigration reform.

Witnesses. The following witnesses testified at last week's hearing:

Panel I

- Alan Greenspan, Economist and Former Chairman, the Federal Reserve of the United States;
- Dr. Joel Hunter, Senior Pastor, Northland Church and Member, President Obama's Advisory Council on Faith-Based and Neighborhood Partnerships;
- J. Thomas Manger, Montgomery County, Maryland Police Chief and Director, Major Cities Chief Association; and

⁴²³ [Click Here](#) to see a video of the April 30, 2009, Senate Judiciary Subcommittee on Immigration, Refugees, and Border Security hearing on comprehensive immigration reform.

- Jeff Moseley, President and CEO, Greater Houston Partnership Houston, TX.

Panel II

- Doris Meissner, Senior Fellow, Migration Policy Institute and Former Commissioner, Immigration and Naturalization Service;
- Eliseo Medina, Executive Vice President, Service Employees International Union;
- Wade Henderson, President and CEO, Leadership Conference on Civil Rights; and
- Kris Kobach, Professor of Law, University of Missouri.

Opening Statements. The following is a summary of the comments made by senators in their opening statements:

- Chairman Schumer. In his opening statement, Senate Judiciary Subcommittee on Immigration, Refugees and Border Security Chairman Charles Schumer (D-NY) since he became Chairman of the Subcommittee, he often has been asked if we can achieve significant immigration reform this year and what such a reform would look like. He noted that popular wisdom is that it is bad politics to discuss immigration reform during the current economic crisis. However, he said that there is widespread recognition that immigration reform should be a high priority for this Congress. He said that “[t]he politics may be hard, but reality is obvious: it is everyone’s best interests to change and fix our current immigration system.” He asserted his belief that “we can and must try to find a way to enact significant improvements to our immigration system now.”⁴²⁴

Chairman Schumer told the Subcommittee that “it is time to tone down the rhetoric, focus on the facts, and carefully weigh what is in the best interests of our taxpayers, our economy, our security, and our future.”

Chairman Schumer asserted his belief that the American people are pro-legal immigration and anti-illegal immigration, that the American people are not afraid of an immigration system that is both tough and fair, that the American people want an immigration system that both faces up to reality and respects the rule of law, and that they want an immigration system that will stop the flow of illegal immigrants and respect legal immigrants who want to work, pay taxes, remain in this country and become citizens.

Chairman Schumer told the Subcommittee that “[t]he founding fathers never intended for America to close the door to new Americans, and in each generation since the birth of our country we have accepted the most determined and idealistic people from everywhere in the world. And we have always been stronger for it.” Mr. Schumer said that “[b]ecause of immigration, Google, Yahoo, Intel, and Ebay are American success stories. In New York, one-quarter of all businesses are immigrant-owned.” He said that “[a]ccording to the U.S. Census Bureau, these immigrant-owned New York businesses have combined sales of \$42.7 billion, and employ over 230,000 workers.” Chairman Schumer said that, nationally, “40% of patents in the U.S. are awarded to immigrants. And a recent study found that immigrants are 50% likelier to start businesses than native-born citizens. New inventions and start-up businesses are critical to improving our economy and, as the numbers tell us, immigrants play a vital role in both of these areas.”

Chairman Schumer concluded his remarks by saying, “[a]s we go forward with this hearing today and with this debate throughout the year, I hope that my colleagues will agree to work together to capitalize on areas of consensus rather than exploit areas of disagreement.”

- Ranking Republican Cornyn. In his prepared opening statement, Senate Judiciary Subcommittee on Immigration, Refugees, and Border Security Ranking Republican John Cornyn (R-TX), asserted that “legal immigration makes America a better country.” He said that legal immigration strengthens our economy, forges bonds of kinship between the United States and our neighbors, and renews our national identity as the ‘promised land’ for families in every generation. He said that “[t]he people of Texas see the benefits of legal immigration. We see more jobs. We see more cultural diversity. As Texas welcomes legal immigrants from other nations, we also attract newcomers from other states. More and more Americans understand that a state that welcomes legal immigrants is a state that is creating opportunity for all.” At the same time, however, he said that “Texans also see clearly the problems with our current immigration laws. We see a border that is not secure. We see employment verification laws that are not enforced. And we see millions of men, women, and children who are here in violation of our immigration laws – and who therefore have no protections from all our other laws.”⁴²⁵

⁴²⁴ [Click Here](#) to see the complete text of the prepared opening statement of Senate Judiciary Subcommittee on Immigration, Refugees, and Border Security Chairman Charles Schumer (D-NY) at the April 30, 2009, Subcommittee hearing on comprehensive immigration reform

⁴²⁵ [Click Here](#) to see the complete text of the prepared opening statement of Senate Judiciary Subcommittee on Immigration, Refugees, and Border Security Ranking Republican John Cornyn (R-TX) at the April 30, 2009, Subcommittee hearing on comprehensive immigration reform

Senator Cornyn was critical of the Obama Administration, saying that the President in his April 29, 2009, prime time press conference “backed away from his promise to show leadership on immigration reform in his first 100 days.” Senator Cornyn asserted, “I don’t think forming a ‘working group’ is showing real leadership.”

Senator Cornyn said that after failed attempts at immigration reform in 2006 and 2007, he was ready to roll up his sleeves and work again. But he implied that Democrats were not and that this week’s hearing was merely for show.

Senator Cornyn told the Subcommittee that in 2005, he and Senator Jon Kyl (R-AZ) introduced the Comprehensive Enforcement and Immigration Reform Act, which he said was premised on principles that could guide the Subcommittee today. Those principles, he said, were—

1. I believe we must strengthen border security first.
2. I believe we must strengthen interior security so that we can remove from our country violent criminals, potential terrorists, and repeat immigration violators.
3. I believe we must create tamper-proof identification – and deliver an employer verification system that is reliable ... works in real time ... and does not place the burdens of law enforcement on small businesses.
4. I believe that we must streamline our temporary worker programs – and offer visas to more highly-skilled workers.
5. And I believe we must deliver a fair but firm solution to the millions of men, women, and children who are here in violation of our laws.

On the last point, Senator Cornyn said that fairness means “we must show compassion to those who came to this country for the same reason millions of others have: to build a better life for their families.” And he said that firmness means “we must ensure respect for the rule of law ... honor those who have played by the rules ... and welcome those in other nations who are waiting patiently for their turn to enter this country legally.”

Senator Cornyn concluded his remarks by asserting, “[f]or immigration reform to pass this Senate this year, we need much more than hearings and photo ops and press releases and talking points. We will need actual legislation, and leadership on both ends of Pennsylvania Avenue.”

- Chairman Leahy. In an opening statement that he submitted for the record, Senate Judiciary Committee

Chairman Patrick Leahy (D-VT) commended President Barack Obama and Secretary of Homeland Security Janet Napolitano, who he said “are making a good start and doing what they can administratively” on immigration.⁴²⁶

Chairman Leahy asserted in his opening statement that “[w]e need tough, fair, and realistic improvements that secure our borders, respect American workers, help our economy, and recognize the importance and value of strong families. With an administration that recognizes the need for reform in this area, I am hopeful that Congress can finally enact legislation to modernize our immigration laws consistent with our values and our history as a Nation of immigrants.”

Chairman Leahy told the Subcommittee that “[t]wo weeks ago during a visit to Mexico City, President Obama spoke of his continued commitment to repairing our country's broken immigration system.” The Chairman said he was encouraged by President Obama’s words in Mexico City and asserted his agreement “that we need solutions to the real issues with immigration that are facing this country.” He said that “[b]umper sticker slogans and mean-spirited, harshly divisive policies that appeal to fear and prejudice will solve nothing.”

Chairman Leahy asserted that “[i]n approaching immigration reform for the 21st century, Congress and the administration must devise legislation that is durable, and which will modernize our system to accommodate the evolving needs of the American worker, the business community, the value of family, and is consistent with our traditions of providing asylum to those who seek it.” He went on to say that “when we consider the importance of family in our immigration system, we must respect all families. For example, it would be inequitable to move toward the legalization of millions of undocumented immigrants without also providing immigration benefits to the thousands of American citizens in same-sex relationships with foreign nationals who now feel abandoned by our laws. We cannot leave out hardworking American families simply because the partnership consists of people of the same gender. Our society is moving beyond these prejudices, and Federal policy must reflect this reality. America should join 19 of our closest allies around the world who provide these benefits. Immigration reform that leaves such inequality in place is in no way comprehensive. I hope that important legislation, like the Uniting American Families Act, which addresses this issue, is part of this critical immigration reform debate.”

⁴²⁶ [Click Here](#) to see the complete text of the prepared opening statement of Senate Judiciary Committee Chairman Patrick Leahy (D-VT) at the April 30, 2009, Senate Judiciary Subcommittee on Immigration, Refugees, and Border Security hearing on comprehensive immigration reform

Chairman Leahy declared that immigration reform also must address what he called “the terrible consequences that have resulted from the overly-broad current laws concerning terrorism and material support as bars to asylum. We cannot continue to deny asylum seekers because they have been forced at the point of a gun to provide assistance to those engaged in terrorist acts. We cannot continue to label as terrorist organizations those who have stood by the United States in armed conflict.”

Chairman Leahy told the Subcommittee that existing immigration programs set to expire need the Congress’ attention, as well. He pointed, specifically, to three programs: the special immigrant religious worker visa program, the Conrad 30 foreign doctors program, and the EB-5 regional center program.

Chairman Leahy was critical in his prepared opening statement of DHS immigration enforcement efforts. He noted an April 22, 2009, New York Times article that reported that “efforts to crack down on illegal immigration through workplace raids has left thousands of children with uncertain futures, as their parents are deported or detained.” Senator Leahy told the Subcommittee that “[w]e need to address these problems, not with sweeping expulsion of undocumented parents, but by recognizing those who are currently living in the shadows of our society, and providing opportunities to become lawful residents. Detaining or deporting undocumented workers who have been abused by American employers does nothing to change an environment that remains ripe for these abuses. We need real, sensible solutions to repair our broken system, and policies that target unscrupulous employers who exploit the most vulnerable among us.” He declared that “[i]mmigration enforcement must be more competent and consistent with American values. We cannot continue to tolerate the tragic and needless death [of] persons in U.S. custody for lack of basic medical care. In the conduct of immigration enforcement we must ensure that children are not needlessly separated from their parents. Immigration enforcement should focus on removing the most dangerous and destructive individuals from the United States. Secretary Napolitano understands the imperative of smart enforcement, and I commend her for it.”

Chairman Leahy concluded his remarks by asserting that “[t]he American people will look to us to forge a consensus for immigration reform that rejects the extreme ideology that has attended this issue and prevented real progress.” He said that “[n]ext week we will hear from Secretary Napolitano when the Judiciary Committee holds an oversight hearing of the Department of Homeland Security. I look forward to the discussion of immigration reform and I am hopeful that we can work together to find a sound, comprehensive solution.”

- Senator Feinstein. In her opening statement, Senator Dianne Feinstein (D-CA) asserted that she learned has from previous legislative debates on comprehensive immigration reform that “there is, indeed, a dark side in this country.” She said that “that dark side really prefers to distort the issue. That dark side really caters to the fear in people that if we repair a broken system, that if we develop a comprehensive immigration plan that is fair to people, that moves people out of the shadows, which uses them in their most constructive and productive way that it is harmful to this nation.” She said great harm is being done to this nation by not moving.

Senator Feinstein spoke, specifically, about her AgJOBS legislation. She said that more than 1.56 million acres of farmland was shutdown in the United States between a 2007 and 2008 because of a shortage of labor. She said that agricultural production is being moved to Mexico, along with tens of thousands of United States jobs. She said that U.S. farmers are decreasing the size of their farms and switching to crops that are less labor intensive and less profitable. She said that the United States will lose \$5 BILLION to \$9 BILLION in the next one-to-two years in agricultural sales to foreign competition if Congress does not act. She said that the U.S. also is becoming more reliant on foreign-produced fresh fruit and vegetables, which she implied were less safe.

Senator Feinstein gave examples of what she said were labor shortage-related problems that were being caused in agriculture in the states of various senators who are on the Subcommittee.

Senator Feinstein told the Subcommittee that the California agricultural industry will lose as much as \$3.3 BILLION in the coming year without a steady supply of labor. Mrs. Feinstein said that there are no Americans who are willing to do the work. She said that farm work was highly skilled and arduous. But that the people who do the work are largely illegal aliens and they are now being prevented from working. She said the agricultural industry is collapsing. Land is being taken out of production. Farmers are in bread lines.

Senator Feinstein promoted her AgJOBS bill, which she said she will be introducing as soon as she can broker a deal between workers and growers on differences they have over the H-2A portion of the bill.

- Senator Kyl. In his opening statement, Senator Jon Kyl (R-AZ) told the Subcommittee that we are not going to solve our nation’s immigration problems on a piecemeal basis and that, therein, is the first lesson those in the room need to learn. He expressed pessimism, however, about the ability of Congress to deal with immigration comprehensively.

Senator Kyl spoke of the comprehensive immigration reform bill that failed in the Senate during the 110th Congress, warning that support either is not there or is eroding for three of its four most important compromises. More specifically, he said that—

1. a recent announcement by the AFL-CIO and Change to Win labor federations that they would not support temporary worker programs is evidence that support for that “critical component” of any successful comprehensive immigration reform bill is eroding;
2. support was never adequately present for “the path to citizenship” in the comprehensive immigration reform bill from the 110th Congress. He said that that provision “became amnesty” and was the most specific reason why the comprehensive immigration reform bill went down in the 110th Congress;
3. opposition has intensified among some groups to restructuring legal immigration so that it is more employment- and skill-driven than family or “chain-migration” driven; and
4. Congress is unable to enact even a full year authorization of the e-verify program.

Senator Kyl said we are going backward; not forward on these essential elements of comprehensive immigration reform. He said that we have to either put the 110th Congress deal back together or find a new, totally different path, an eventuality that he cannot conceive of.

Senator Kyl commented, as well, on border violence, illegal immigration across the U.S. southern border, and criminal aliens. He said that half of the illegal immigration in the United States comes through Arizona and that it is causing enormous increases in crime and violence there. He said most of the crime in Arizona is illegal-immigrant-on-illegal-immigrant and includes kidnappings, rapes, drug crimes, and murder. He said that people want us to control the border and enforce the law before they will have an open mind about comprehensive reform. Sadly, he said, we don’t have the border under control.

Prepared Testimony. The following is a summary of the prepared testimony presented by witnesses at last week’s hearing:

Panel I

- Alan Greenspan. In his prepared testimony, former Federal Reserve Chairman Alan Greenspan told the Subcommittee that immigration to the U.S. slowed markedly with the onset of the current economic crisis. But as this crisis fades, there is little doubt that the attraction of the United States to foreign workers and their families will revive. He expressed his hope that “by

then a badly needed set of reforms to our nation’s immigration laws will have been put in place.”⁴²⁷

Chairman Greenspan told the Committee that there are two distinctly different policy issues that confront the Congress. The first is illegal immigration. And the second is what he termed as the compelling need to facilitate the inflow of skilled foreign workers.

With regard to illegal immigration, Chairman Greenspan said that “[t]he notion of rewarding with permanent resident status those who have broken our immigration laws does not sit well with the American people. In a recent poll, two-thirds would like to see the number of illegals decreased.” He said, however, that there is little doubt that illegal immigration “has made a significant contribution to the growth of our economy.” He supported that statement by noting that between 2000 and 2007, illegal immigration “accounted for more than a sixth of the increase in our total civilian labor force.” He said that “[t]he illegal part of the civilian labor force diminished last year as the economy slowed, though illegals still comprised an estimated 5% of our total civilian labor force.” Chairman Greenspan said that “[u]nauthorized immigrants serve as a flexible component of our workforce, often a safety valve when demand is pressing and among the first to be discharged when the economy falters.”

Chairman Greenspan noted that “[s]ome evidence suggests that unskilled illegal immigrants (almost all from Latin America) marginally suppress wage levels of native-born Americans without a high school diploma, and impose significant costs on some state and local governments.” However, he said, “the estimated wage suppression and fiscal costs are relatively small, and economists generally view the overall economic benefits of this workforce as significantly outweighing the costs. Accordingly, I hope some temporary worker program can be crafted.”

With regard to his assertion of a need for more skilled immigration to the United States, Chairman Greenspan told the Committee that “[o]ur primary and secondary school systems are increasingly failing to produce the skilled workers needed to utilize fully our ever more sophisticated and complex stock of intellectual and physical capital. This capital stock has been the critical input for our rising productivity and standards of living and can be expected to continue to be essential for our future prosperity. The consequence of our educational shortfall is that a highly disproportionate number of our exceptionally skilled workers are foreign-born—two-fifths of the science PhDs in our workforce, for example,

⁴²⁷ [Click Here](#) to see the complete text of former Federal Reserve Chairman Alan Greenspan’s prepared testimony at the April 30, 2009, Senate Judiciary Subcommittee on Immigration, Refugees, and Border Security hearing on comprehensive immigration reform

are foreign-born. Silicon Valley has a remarkably large number of foreign-born workers.

He said that “[t]he quantity of temporary H-1B visas issued each year is far too small to meet the need, especially in the near future as the economy copes with the forthcoming retirement wave of skilled baby boomers. As Bill Gates, the chairman of Microsoft, succinctly testified before Congress in March 2007, ‘America will find it infinitely more difficult to maintain its technological leadership if it shuts out the very people who are most able to help us compete.’” He added that we are ‘driving away the world’s best and brightest precisely when we need them most.’”

Chairman Greenspan told the Committee that “[o]ur skill shortage, I trust, will ultimately be resolved through reform of our primary and secondary education systems. But, at best, that will take many years.”

Chairman Greenspan concluded his prepared statement by asserting that “[i]mmigration policy, of course, is influenced by far more than economics. Policy must confront the very difficult issue of the desire of a population to maintain the cultural roots that help tie a society together. Clearly a line must be drawn between, on the one hand, allowing the nation to be flooded with immigrants that could destabilize the necessary comity of a society and, on the other hand, allowing the nation to become static and bereft of competition, and as a consequence to lose its economic vitality. The United States has always been able eventually to absorb waves of immigration and maintain its fundamental character as a nation, particularly the individual rights and freedoms bestowed by our Founding Fathers. But it must be conceded that the transitions were always more difficult than hindsight might now make them appear.” He said that he “would like to concur with President Bill Clinton’s view of our immigration history as expressed in remarks of more than a decade ago: ‘America has constantly drawn strength and spirit from wave after wave of immigrants. . . They have proved to be the most restless, the most adventurous, the most innovative, the most industrious of people.’” Chairman Greenspan said that “[w]e, as a nation, must continue to draw on this source of strength and spirit. To do so, in the context of a rapidly changing global economy, our immigration laws must be reformed and brought up to date.”

- **Dr. Joel Hunter.** In his prepared testimony, Dr. Joel C. Hunter, who is Senior Pastor at the Northland Church, told the Subcommittee that in his faith tradition, we all start as strangers and aliens, outsiders to the commonwealth of God. But because we have a God who was willing to do what it took to include us (at great personal cost), we ‘are no longer strangers and aliens, but [we] are fellow citizens?’” He said that “[t]he hope of any religion is that those who have been on the wrong

path can be set upon the right path. The need for Comprehensive Immigration Reform is to create a path that will help people do the right thing.”⁴²⁸

Dr. Hunter went on to talk about some of the negative ramifications from what he termed was our broken immigration system—

1. “A broken system produces a dysfunctional society, fractured families, and it increases the vulnerability of both legal and illegal residents. It helps criminals who thrive in the shadows and it harms decent people, consigning them to a life of insecurity, hiding, and minimal contribution to the general welfare.”
2. “A broken system produces both broken and crooked people. The cost to our nation in terms of productivity, national unity, and national security is depressing. But it does not compare to the damage being done to individuals and families.
3. “A broken system tempts many to predatory practices. I cannot count the stories I have heard about attorneys taking the entire life savings of undocumented workers, producing no results, then abandoning those workers when the money was gone. Is that typical of the profession? We would not believe so.” He said that “[i]t is a mighty temptation to de-prioritize those who are desperate and too intimidated to raise their voices to complain. And what about employers that take advantage of the powerless because there is no system of accountability?”

Dr. Hunter criticized “the bureaucrats that have no incentive to produce results (or even to keep track of the paperwork) because, who will know?” He spoke of “the talk show hosts that increase their fame and fortune by picturing those without the proper papers only as conniving and dangerous parasites instead of persons made in the image of God, deserving both respect and help to do the right thing?” He said that “[w]e are producing cottage industries of exploitation. We are also hearing millions of stories that are the opposite of the American dream.”

Dr. Hunter told the Subcommittee of a number of examples that he is personally aware of people who have been caught up in the net of illegal immigration. He concluded his prepared testimony by saying, “[i]mmigration reform is a morally complex as well as a politically explosive challenge. But many of us are

⁴²⁸ [Click Here](#) to see the complete text of Dr. Joel C. Hunter’s prepared testimony at the April 30, 2009, Senate Judiciary Subcommittee on Immigration, Refugees, and Border Security hearing on comprehensive immigration reform

praying earnestly for you and for God's wisdom in this matter. Including the stranger is not just a matter of compassion but a necessity for greatness. Loving your neighbor as you love yourself is not only a moral commandment but a path to national nobility, if we can build a nation of families and support networks that not only help the marginalized to be successful, but help the successful to be helpful, then we can better live up to our potential as a people. In the end, I believe our nation will be not be judged by the productivity of our budgets, or the genius of our laws, or even the earnestness of our faith communities. We will be judged, both by history and by God, by the way we treated people, especially those who needed our help.”

- J. Thomas Manger. In his prepared testimony, Montgomery County Maryland Police Chief. J. Thomas Granger told the Subcommittee that “our failure to secure our borders has resulted in significant consequences for local governments.” He said that while he was appearing before the Subcommittee in order to focus on the impacts to local law enforcement, “it is important to keep in mind the overwhelming impact it has had on local school systems as well as health & human services agencies.” He said that education, social services and health care are all impacted as much if not more than public safety.⁴²⁹

Chief Manger said that “[t]he first thing that any police chief would want you to know is that all individuals--regardless of citizenship--are entitled to basic rights and privileges set forth in common law, state and federal law, and the Constitution of the United States. In addition, all foreign nationals, whether here documented or not, are protected by the Vienna Convention and other international laws.” Indeed, Chief Manger said, “every police chief in this nation would, I hope, tell you that all persons--regardless of citizenship--have a right to expect police service and protection whenever they need it. And herein lies one of the compelling reasons for comprehensive immigration reform: It is tremendously challenging to deliver police service to a community of people who are afraid to have any contact with the police. The results are an increase in unreported crime, reluctant victims and witnesses, and the targeting of immigrants by criminals because the bad guys know that many immigrants will not call the police. It is imperative that we find a way to bring these people out of the shadows so that they get the service they need and deserve.” He went on to assert that “[i]n addition to the over-representation of our immigrant population as crime victims, the presence of large numbers of undocumented

residents adds significantly to local government budgets and increases the workload for public safety.”

Chief Manger listed examples of how the presence of large numbers of illegal immigrants have posed problems to law enforcement, including instances of identity theft, gang activity, human trafficking, hate crimes, and cases of unscrupulous employers refusing to pay day laborers. The Chief said that all of these types of crimes would be alleviated by immigration reform.

Chief Manger said that “the most significant reason to enact comprehensive immigration reform is to allow police departments all over this nation to get out from being placed squarely in the middle of a huge problem that with which we have little to no control over the solution.”

Chief Manger said that “[p]olice find themselves trying to respond to pressures from the community and elected officials who have extremely diverse viewpoints on the police department's role in enforcing immigration law.” He said that “[n]owhere is this challenge more acute than in this country's largest urban settings. This issue has polarized our communities.” He said the responses from cities ranges from some that have become sanctuary cities to others seeking to become involved in enforcing federal immigration law through 287(g) programs.

He was critical of 287(g) programs, saying that 95 percent of police and sheriff departments in the U.S. do not to participate in them for a variety of reasons, including that it undermines the trust and cooperation with immigrant communities that are essential elements of community policing, most local law enforcement agencies don't have the resources to enforce immigration law as well as their local law, and that immigration laws are very complex and the training required to understand them would significantly detract from the core mission of the local police to create safe communities.

- Jeff Moseley. In his prepared testimony, Jeff Moseley, President and CEO of the Greater Houston Partnership, told the Subcommittee that “America's immigration system is broken and any solution will require bipartisan action by the Congress to reform our nation's immigration laws. America will be strengthened with a rational and sensible approach toward this issue. Finding resolution in a strict “enforcement only” approach will not settle the issue wisely and adherence to a fractured, existing “rule of law” will not allow us to confront reality. Those approaches, which do not recognize market realities and labor demands, are doomed to failure. We must move beyond the rhetoric on

⁴²⁹ [Click Here](#) to see the complete text of Montgomery County, Maryland Police Chief J. Thomas Manger's prepared testimony at the April 30, 2009, Senate Judiciary Subcommittee on Immigration, Refugees, and Border Security hearing on comprehensive immigration reform

immigration and most importantly, we have an obligation to know the facts.”⁴³⁰

Mr. Moseley noted that “[w]hen you consider our economy, undocumented workers contribute an estimated \$27.3 billion to our Gross Regional Product. That's more than 8 percent of total GRP.” He went on to note that “[u]ndocumented workers contribute significantly to 16 different sectors of the Houston area's economy - including high-growth areas like construction, professional services, accommodation and food services and health care. Statewide, the Comptroller's office estimates that without these workers, the Texas labor force would shrink by 6.1 percent.”

Mr. Moseley told the Subcommittee that there was a need for more employment-based immigrants in the Houston area, in both high-skilled and low-skilled jobs. He said, “[w]hether we are talking about unskilled or highly skilled workers, the fact is that Houston depends on immigrants, and so does this country as a whole. If we get this issue wrong, we are going to pay a steep price for our mistake. We must strike a balance between securing our borders and safeguarding our prosperity.”

Mr. Moseley said that “[t]he Greater Houston Partnership recognizes the need to secure our borders. We also support immigration reform that will allow employers, through an efficient temporary worker program, to recruit skilled and unskilled immigrant workers when there is a shortage of domestic workers. We also need a process to provide legal status for qualified, screened undocumented migrant workers now in the country.”

Mr. Moseley asserted that “[t]he Partnership believes that employers should be responsible for verifying the legal status of those they hire. Toward this end, we support the creation of a fast, reliable employment verification system. However, we oppose laws that would increase civil and criminal penalties on employers without providing viable legal options for hiring skilled and semi- skilled workers.”

Mr. Moseley told the Subcommittee that “[b]ecause Houston's economy relies so heavily on immigrants, the Greater Houston Partnership saw the need for immigration reform - particularly following the collapse of legislative proposals in past years. The Partnership's task force on this issue led to the creation of a non-profit organization called Americans for Immigration Reform - or AIR.”

Mr. Moseley said to the Subcommittee, “[I]et's be clear: While border states - Texas, California, New Mexico and Arizona - immediately feel the ramifications of our nation's slow response on immigration reform, this is not a regional issue. Americans for Immigration Reform advocates much the same package of solutions advocated by the Greater Houston Partnership: securing our borders; creating an efficient and effective program for temporary workers; establishing a fast, reliable employment verification system; holding employers accountable for hiring employees with legal status; and developing a realistic policy for illegal immigrants already here.” He said that “[w]e seek an end to illegal immigration and a balance to our system of legal immigration which on one hand says ‘keep out’ along our borders, yet a few miles inward our businesses have ‘help wanted’ signs posted in their doorways.” He told the Subcommittee that “we encourage you to reform America's immigration laws.” Saying that they are political realists and “know that a careful balanced bill cannot pass Congress unless it has strong support from both political parties and the American public. No political party will want to pass this legislation to get all of the credit, or for that matter all of the blame, by itself. Getting this right is in the national interest. It is in our economic interest and it is the right thing to do.”

Mr. Moseley declared that “[o]ur present immigration system is unjust. Because we don't have the means to deport all undocumented workers, it means that immigration officials cannot help but enforce the law arbitrarily, through sporadic raids and sweeps that catch some undocumented workers in the net and miss others. This is more than unfair. Often it causes real hardship, such as when the children of undocumented workers come home from school to discover that their parents have been deported.”

Mr. Moseley concluded his prepared testimony by asserting that “[i]mmigrants have always been drawn to this country by the promise of freedom and the opportunity to work hard and build a better life for themselves and their children. America is a nation today because of the enthusiasm with which our newcomers have embraced our creed. In effect, they have added their own signatures to the Declaration of Independence as they arrived.” He said that this has been so from the beginning and that “if good sense and good will prevail in our handling of the immigration issue today, it will remain so for the future as well.” Mr. Moseley declared that “[w]hat the business community requires, what the religious community wants, what Americans for Immigration Reform needs is less rhetoric and a common sense solution that both parties can support. We all want leaders that are willing to share that truth rather than having the primary source of information be the entertainment industry that inflames, rather than

⁴³⁰ [Click Here](#) to see the complete text of Jeff Moseley's prepared testimony at the April 30, 2009, Senate Judiciary Subcommittee on Immigration, Refugees, and Border Security hearing on comprehensive immigration reform

explains, the reality and complexity of the immigration issue.”

Panel II

- Doris Meissner. In her extensive prepared testimony, former INS Commissioner Doris Meissner told the Subcommittee that “comprehensive immigration reform is urgent. Because increases in immigration overall have slowed, and rising levels of illegal immigration have abated, the recession offers an historic opportunity to craft reform legislation that would make it possible to manage the nation’s immigration system effectively during both the economic recovery and the longer-term future. Immigration is the oldest and newest story of the American experience.”⁴³¹

Ms. Meissner shared a number of findings and made a number of recommendations to the Subcommittee on immigration policy, including recommendations on calibrating employment-based immigration, legalizing undocumented aliens, and strengthening immigration enforcement.

With respect to employment-based immigration, Ms. Meissner recommended to the Subcommittee that the United States establish a Standing Commission on Immigration and Labor Markets as a key element of any comprehensive immigration reform. She said that the mandate of such a commission “should be to analyze the labor market impacts of immigration and propose adjustments in immigration levels that promote America’s economic growth and competitiveness while maintaining low unemployment and preventing wage depression. Judgments can be made about immigrants’ overall contributions, their progress in the labor market and the impacts on native workers.”

Ms. Meissner defended her recommendation by saying that “[m]any people seek admission to the United States, and demand for visas exceeds supply in each of the four streams for selecting immigrants: refugee, family reunification, labor market and diversity. As a result, how Congress allocates visas among and within these four streams fundamentally defines future American economic and demographic circumstances.” She said that the Commission’s focus would be on one of these streams -- labor market immigration (both immigrant and non-immigrant labor market visas) -- and on the effects of immigration on U.S. labor markets, bringing the immigration system into better sync with the U.S. economy.

Ms. Meissner told the Subcommittee that “[i]t has become a cliché in the immigration policy debate to state

that the ‘system is broken.’ Cliche or not, analysts on all sides agree that the current system fails to align labor market immigration with actual U.S. economic needs.” She went on to say that “the most dramatic manifestation of the misalignment is the large population -- more than 11 million -- of unauthorized immigrants.” Ms. Meissner noted that, “[a]long with illegal immigration, non-immigrant (temporary) visa programs constitute the primary ways immigration has adapted to meet new conditions and labor market demands. She said that “[s]o-called temporary visa programs, such as the H-1B program, have increasingly been used as a step to permanent immigration. Taken together, illegal immigration has been meeting the nation’s low-skill demands, and temporary visa programs in the legal immigration system have been the vehicle for high-skilled immigration.” She concluded that, “[a]s a result, perhaps the most broken element of the nation’s immigration system is its inability to anticipate, adjust to or meet future labor market needs so that the United States can continue to harness the comparative advantage immigration has historically represented for our economic and social well-being. This deficiency has many explanations, but among the most salient for today’s debates was the failure of the Immigration Reform and Control Act of 1986 (IRCA) to understand and address the need for future flows as an inherent piece of the solution to the problem of illegal immigration.” She warned the Subcommittee that “[w]e must remember and heed that lesson to avert history repeating itself.”

Ms. Meissner told the Subcommittee that today’s misalignment of our immigration system should not be surprising “since the broad parameters of the current immigration system were defined over 40 years ago, and most of the detailed provisions that guide today’s selection of immigrants date back almost 20 years to the Immigration Act of 1990. Despite dramatic changes in the economy, Congress historically has only infrequently modified the visa admissions system because the issues are complex and politically charged. Yet, the questions of whom and how many immigrants we should welcome define our national identity and demographic future.”

Ms. Meissner defended both high-skilled and low-skilled employment-based immigration as having played important roles in the U.S. culture and economy. But at the same time, she said, “immigration is not unambiguously beneficial. At a minimum, labor inflows have distributive consequences. While economists remain divided about the details, most agree that for at least some Americans, their relative wages fall as a result of immigration. In particular, low-skilled native-born workers (those without a high school degree), recent immigrants and workers with poor language skills are most likely to suffer wage losses from immigration. And even college-educated immigrants may depress U.S.

⁴³¹ [Click Here](#) to see the complete text of former INS Commissioner Doris Meissner’s prepared testimony at the April 30, 2009, Senate Judiciary Subcommittee on Immigration, Refugees, and Border Security hearing on comprehensive immigration reform

wages if employers use high-skilled immigration as an explicit strategy to reduce their payroll costs.”

Ms. Meissner told the Subcommittee that “[a]n immigration system that is unable to consider specific economic needs also risks admitting immigrants who will not fare well in the U.S. labor market, suffering long periods of unemployment and poor economic -- and hence social -- integration. As a rule, immigrants who fare best in the U.S. labor market work in areas of high labor demand or have the entrepreneurial skills to create successful businesses. Such immigrants are also likely to make the greatest economic contribution without creating negative impacts on native workers. U.S. labor market immigration policies are poorly designed to resolve these tensions. Labor market immigration should be viewed as a strategic resource which supports economic growth and competitiveness and which must be carefully managed.”

Ms. Meissner said that U.S. immigration policies “should maximize opportunities to admit workers with needed or valued skills -- those that best complement native workers -- and should support growing and competitive sectors of the U.S. economy across the skills spectrum. At the same time, labor inflows must not come at the expense of native workers or allow employers to avoid wage increases they would otherwise provide.”

With regard to immigration enforcement and security, Ms. Meissner told the Subcommittee that “[t]he imperatives of a post 9/11 world and the need for an immigration regime that serves the nation’s longer-term economic interests demand immigration enforcement and administrative capabilities that cannot be properly established absent comprehensive new immigration legislation. The failure of reform legislation in 2006 and 2007 has ushered in a period of federal enforcement-only policies and unprecedented state and local measures that illustrate the limitations of current laws and administrative actions to adequately address the problems in the immigration system.” She said that “[a]lthough no one has the right to break the law, in our global economy, the mismatch between 21st century immigration dynamics and the outdated laws that purport to govern them cannot be reconciled by more walls, prosecutions, removals and lengthy backlogs alone. The central goal must be to restore the rule of law by creating a system that serves the nation’s economic, security and humanitarian interests and values.”

With regard to capacity to adjudicate applications, Ms. Meissner said that “[m]any qualified immigrants must wait years or even decades for a green card -- a clear sign of a deeply troubled system and a disservice to families and employers who play by the rules. There are broad, pressing policy reasons that make it imperative that Congress take steps that would enable U.S. Immigration

and Citizenship Services (USCIS) in DHS to be better able to administer its legal immigration mandates.”

Ms. Meissner concluded her prepared testimony by saying that “only with true reform of the nation’s immigration laws and system will we be able to harness the considerable advantages immigration provides for the nation’s economic and social well-being.”

- Eliseo Medina. In his prepared testimony, Eliseo Medina of the Service Employees International Union (SEIU) told the Subcommittee that “[t]he status quo is simply unacceptable and works only to the benefit of those who break the rules.”⁴³²

Mr. Medina said that this is why “the two largest workers organizations in the country - the Change to Win federation and the AFL-CIO - have come together around a unified proposal for comprehensive immigration reform that consists of five components, each of which depends on the others for success:

1. Rational control of the border;
2. A secure and effective worker authorization mechanism;
3. Adjustment of status of the current undocumented population;
4. Improvement, not expansion of temporary worker programs; and
5. An independent commission to assess and manage future flows, based on labor market shortages that are determined on the basis of actual need.”

Mr. Medina contended in his prepared statement that the AFL-CIO/Change to Win proposal “will allow millions of undocumented workers to come out of the shadows, relieving them of the fear of arrest and deportation and of leaving behind their families and dreams.” He said that it “will stop unscrupulous employers from taking advantage of their lack of legal status to exploit them and violate existing wage and hour and health and safety laws.” He said that “[g]uest workers fare no better because they are tied to their sponsoring employer, with no effective redress because to complain is to lose your visa and be deported.”

Mr. Medina said that he “saw this system firsthand with my father and brother and later as an adult working with sugar cane cutters in Florida under the H2A program.

⁴³² [Click Here](#) to see the complete text of Eliseo Medina’s prepared testimony at the April 30, 2009, Senate Judiciary Subcommittee on Immigration, Refugees, and Border Security hearing on comprehensive immigration reform

These workers are not treated as ‘guests’ in our country but more like indentured servants.” He said that “[t]he current broken system has given rise to a three-tier caste worker system in America - citizens, guest workers and undocumented workers.” He went on to say that “[t]his onerous system depresses wages for all workers because, unfortunately, too many employers seek out the cheapest, most vulnerable workers in order to gain a competitive advantage.” This, he said, “helps no one, not American workers, not immigrants, not businesses that play by the rules and certainly not taxpayers who wind up paying for an ineffective enforcement system focused on arresting nannies, farm workers and gardeners instead of stopping drug smugglers, gang members or other larger threats to our national security.”

Mr. Medina said that “[r]eal reform will allow us to focus our resources on our priorities instead of our prejudices. It will solve many problems at one time instead of the current band-aid approach.”

Mr. Medina noted that since the AFL-CIO and Change to Win unveiled their proposal, the portion that has received the most attention--and been the most misunderstood--has been the independent Commission. He said that “[t]he men and women of the labor movement have long believed that our current system for bringing in permanent and temporary workers simply does not work effectively. He went on to say that “[t]he key to designing a sustainable workplace immigration system is that the flow of future workers must be rationally based on the always-evolving labor market needs of the United States.” He said that the Commission would act in two phases. “First, it would examine the impact of immigration on the economy, wages, the workforce and business to recommend to Congress a new flexible system for meeting our labor needs and set the number of employment visas. Next, the Commission would set and continuously adjust future numbers based on a congressionally approved method.”

Mr. Medina concluded, saying, “[w]e believe our proposal will give all stakeholders a seat at the table to build a system that works for the long term that is based on sound public policy not politics, and will have lasting political support.”

- Wade Henderson. In his prepared testimony, Wade Henderson of the Leadership Conference on Civil Rights (LCCR) told the Committee that comprehensive immigration reform was a matter of civil and human rights. He said that he hoped that all could agree on a few general points. The first of these is that the current immigration system in the United States is badly broken. The second is that there should be more effective, realistic, and human enforcement of immigration laws. Third is that undocumented aliens must be given a realistic way to come out of the shadows and legalize their status in the United States. Fourth, Mr. Henderson

said that the nation should look at the reasons why illegal aliens broke U.S. law by remaining or coming to the U.S. illegally, which he said was to escape poverty or persecution, and not simply judge them as lawbreakers. And finally, Mr. Henderson said that family unity ought to be the key foundation of our immigration laws.⁴³³

Mr. Henderson noted a number of challenges confronting the immigration reform movement currently, including the weakened economy and several high priority “big ticket” legislative matters that must be addressed in the coming months. However, Mr. Henderson said that despite these challenges, he believed comprehensive immigration reform can be accomplished.

Mr. Henderson said that the biggest obstacle to immigration reform is the need to address concerns about how immigrants affect the existing labor market in the United States. He spent considerable time talking about low wage workers and African American workers.

With regard to low wage workers, in general, Mr. Henderson noted an agreement that recently was reached between two labor federations -- the AFL-CIO and Change to Win -- on five principles that they believe should guide comprehensive immigration reform. He said that these principles, which also are shared by the African American community, include:

1. establishment of a commission to determine the number of foreign workers to be admitted annually, based in part on the impact of the flow of workers on the economy and wages;
2. a mechanism to verify worker eligibility, which protects privacy and prevents discrimination, but also works more effectively to prevent unlawful employment;
3. a rational system of border control, which respects the rights of visitors to the United States and border residents;
4. adjustment of status of current undocumented workers, in recognition that deportation is both inhumane and unrealistic, and that denying these workers legal status only enables employers to exploit them; and
5. improvement, not expansion, of current temporary worker programs, to ensure there is no broad class of workers in our democracy who are denied civil and employment rights.

⁴³³ [Click Here](#) to see the complete text of Wade Henderson’s prepared testimony at the April 30, 2009, Senate Judiciary Subcommittee on Immigration, Refugees, and Border Security hearing on comprehensive immigration reform

• Kris Kobach. In his prepared testimony, Professor Kris Kobach, who formerly worked as a top immigration advisor to the Department of Justice during the administration of President George W. Bush, told the Committee of his opposition to legalization of undocumented aliens. He called legalization “amnesty” and gave two reasons for opposing it. First, he said that the Department of Homeland Security’s U.S. Citizenship and Immigration Services bureau does not have the ability to implement such a program. And second, he said that providing “amnesty” for illegal aliens would pose a national security risk.⁴³⁴

With regard to the that USCIS would be unable to implement a legalization program, he cited statistics about the number of people who might apply for legalization and the number of adjudicators currently working for USCIS. Using those statistics and the 2007 immigration reform bill as a guide, he predicted that two negative consequences would ensue from a legalization program. First, he said that the legalization applications would receive only a cursory review as adjudicators face pressure (if not legal deadlines) to quickly adjudicate legalization applications. And second, he said that applicants and petitioners who are playing by the rules would have their applications for immigration benefits placed at the back of the line for processing.

With regard to his contention that a legalization program would present national security problems for the United States, Professor Kobach asserted that a comprehensive immigration reform bill that the Senate took up in 2007 would have required the federal government to complete background checks and provide probationary status to illegal aliens within 24 hours after they apply. Enactment of that provision, he said, would likely have lead to many terrorists being wrongfully given probationary status because of the cursory review that their applications would have received. He, thus, concluded that should such a provision be included in a new comprehensive immigration reform bill, it would open the country to the legalization of terrorists. Professor Kobach went on to say that even if the provision from the 2007 bill was not included in a new comprehensive immigration reform bill, it was likely that terrorists would make use of “clean” identities to gain access to legalization. He cited the cases of several people who he said had been legalized in 1986 and who turned out to be terrorists to support his assertion.

Q&A Session. The following is a summary of the questions that were posed to the witnesses during last week’s hearing:

⁴³⁴ [Click Here](#) to see the complete text of Kris Kobach’s prepared testimony at the April 30, 2009, Senate Judiciary Subcommittee on Immigration, Refugees, and Border Security hearing on comprehensive immigration reform

- [Biggest Stumbling Block to Immigration Reform](#)
- [Capacity of Bureaucracy to Handle Legalization](#)
- [Commission on Immigration Levels](#)
- [Competition with American Workers for Jobs](#)
- [Contributions of Undocumented Aliens](#)
- [Formulation for Immigration Reform](#)
- [Number of Clergy Who Support Immigration Reform](#)
- [Number of Illegal Immigrants in the United States](#)
- [State and Local Enforcement of Immigration Law](#)
- [Temporary Workers](#)
- [Biggest Stumbling Block to Legalization.](#) Chairman Schumer asked Panel II what they thought the biggest obstacle was to comprehensive immigration reform.

Mrs. Meissner, Mr. Medina, and Mr. Kobach all responded that they thought the biggest stumbling block to comprehensive immigration reform would likely be overcoming the notion that legalizing aliens constitutes rewarding lawbreakers.

Mr. Medina said he thought that the American people could be convinced to support legalization if they can be made to understand that the program is an “earned legalization” that requires applicants to pay a fine, undergo a background check, learn English, be gainfully employed, integrate into society, and go to the back of the line.

Mr. Kobach responded that legalization would be an amnesty. He said he could support going so far as waiving the ten-year bar for illegal immigrants who return to their country of nationality.

Mr. Henderson responded to the Schumer question by saying that the biggest challenge to comprehensive immigration reform is likely to be to convince the public that the legalization process won’t have to be repeated every decade in order to accommodate a new flow of illegal aliens. He also said he thought that coming up with a secure and viable form of identification will be challenging.

- [Capacity of Bureaucracy to Handle Legalization.](#) Chairman Schumer asked Mrs. Meissner about her view of Mr. Kobach’s assertion that the USCIS and DHS bureaucracy was incapable of handling a legalization program.

Mrs. Meissner responded that the USCIS bureaucracy would certainly be incapable of dealing with legalization for such a large number of people right now. But she said that Congress would have to include planning and resources for the implementing agencies at the same time as they created the legalization program.

Mrs. Meissner said that the worst thing that could be done would be to design a program that retrospectively asks people to provide documentation proving they were in the country prior to the bill's enactment. She said that any legalization program that Congress enacts should require people to come forward and earn the legalization prospectively, not retrospectively as was the case in 1986.

Mrs. Meissner said that the 1986 IRCA legalization program was actually successfully implemented. She said that the then-Immigration and Naturalization Service (INS) created an entirely parallel structure to deal solely with legalization applicants, funded by the fees that applicants paid. She said that a bureaucracy can staff up to deal with a legalization program.

Professor Kobach responded to Chairman Schumer's question, as well, saying that he didn't think it would be impossible, in theory, for USCIS to efficiently process legalization applicants. However, he said that USCIS would require a massive increase in staff, going from about 3,600 employees today to more than 10,000. He said that staff would have to be found, hired and trained, three things that would take time.

- Commission to Set Immigration Levels. Chairman Schumer asked witnesses on Panel II their thoughts on the wisdom of establishing a commission that would set immigration levels.

Mrs. Meissner replied that her idea for a commission would require Congress to write a default level of immigration into the statute and require the commission to make recommendations to Congress every two years on whether the level of immigration should be adjusted up or down.

Mr. Medina said that he recognizes that there are labor market needs and is not against all temporary worker programs. He said that he envisions a commission that would be much more nimble than the current system. He said his vision is that the commission would develop data on the level and nature of immigration that is needed in the economy. It would then have the authority to adjust immigration levels with Congress' approval or disapproval through a fast track process.

Mr. Kobach responded to the question by noting that the Barbara Jordan Commission in the 1990s asserted that legal immigration to the United States is good but that there needs to be reasonable limits on the level of legal immigration. He said he agreed with this view. He said limits had to be set so as to not displace American workers and to not overload our ability to assimilate immigrants into American society.

- Competition with American Workers for Jobs. Chairman Schumer expressed his view that the labor movement has made a dramatic change in its views on immigration over the last five years, led by SEIU. He asked why Mr. Medina thinks that immigration reform done in the right way would not hurt his workers.

Mr. Medina responded that he thought the problem right now is that there are millions of workers (both illegal immigrants and legal guest workers) with no rights, who cannot defend themselves, and who are being taken advantage of by employers. He indicated his belief that that everyone is suffering as a result.

Mr. Medina said the best way to deal with the situation is to have a level playing field for all employers and to ensure that employees are protected by labor laws, a position shared by SEIU, AFL-CIO and all of the unions in the Change to Win federation. He said that the one issue that the labor community had been grappling with was how to address future flows but that the proposed commission deals with that question.

- Contributions of Illegal Aliens to the Economy. Chairman Schumer noted that Alan Greenspan spoke in his testimony of the positive contributions that illegal aliens have made to the U.S. economy and asked if he thought their contributions to the economy would be greater if they were legal aliens rather than illegal aliens.

Mr. Greenspan said that it would most certainly be better if illegal aliens were brought out of the shadows. He said that the fear of deportation that illegal aliens have has a chilling effect on their flexibility and ability to take certain types of jobs. He said that a very substantial portion of illegal immigrants have critical jobs in our economy, as is also the case with legal immigrants. He said that if they were removed from the economy, the economy would be in very serious trouble. He said that their participation in the economy tends to increase the productivity of all of us. He said that those who argue that immigration suppresses the wage levels of native born Americans are mistaken. He said that it raises wage levels, with the possible exception of a small number of Americans who don't have high school education.

- Formulation for Immigration Reform. Chairman Schumer asked the panel if they agreed with his formulation for immigration reform, which was that the American people would accept future flows of immigrants and legalization of undocumented aliens if we can cut off the flow of illegal immigrants.

All of the panelists except Kris Kobach agreed with Chairman Schumer's formulation. Mr. Kobach didn't respond to the question.

- Number of Clergy Who Support Immigration Reform. Chairman Schumer asked Dr. Hunter how many members of the clergy support comprehensive immigration reform.

Dr. Hunter replied that he thought that there were many ministers who agreed with him and that he thought they would speak out more vociferously. He gave two reasons for his response. First, he said that most local religious leaders care deeply about people and the more they become familiar with people who are caught in a bad system, the more sympathy they have and the more they are aware of people's hurts and family breakups. Second, he said that we have been systematically desensitized and that pundits who become more and more extreme are having less of an impact.

- Number of Illegal Immigrants in the United States. Chairman Schumer asked Professor Kobach and Mrs. Meissner if the number of illegal immigrants in the United States is growing.

Mr. Kobach, citing the Center for Immigration Studies, replied that the number of illegal immigrants in the United States has increased in fiscal year 2008 there was a net decrease of 1.3 million illegal aliens, which he attributed to increased enforcement and resulting self-deportation by illegal aliens who are finding life in the U.S. increasingly difficult. Mrs. Meissner disagreed, saying the number has remained constant.

- State and Local Enforcement of Immigration Law. Chairman Schumer asked Chief Manger about the resources that would have to be diverted in order for local governments to enforce immigration law.

Chief Manger replied that the resources that would be necessary for local police departments to participate in 287(g) programs are more than local police departments can afford. He said that a department would take officers out of service for over a month as they undergo federal immigration law training. He also said that for those local police departments that choose to initiate investigations of persons' immigration status if they are pulled over and thought to be illegal immigrants, such investigations take days. He said he didn't know of a police department in this country that has the resources to take on such investigations with no impact on their budget and resources.

Chief Manger said that, speaking for his police department, there are many more serious crimes that threaten public safety that he would prefer to investigate rather than going after someone who may have overstayed a visa.

Senator John Cornyn asked Chief Manger about the value of separating illegal aliens in local jails who have

committed serious crimes so they can be dealt with in a special way.

Chief Manger responded that ICE has responded well in recent times to notifications by local police that they have a suspected illegal immigrant in custody who has committed a serious crime. He said he thinks such persons should be removed and that ICE should focus on the worst offenders.

- Temporary Worker Programs. Senator John Cornyn (R-TX) asked Mr. Moseley how important he thought temporary worker programs were for the country.

Mr. Moseley responded that we are a global economy that has workforce needs. He said that it is impossible to put together workforce caps and quotas now and expect that it will still be valid three or five years from today. He said that the demands for workers will either need to be met or that U.S. companies will have to export jobs.

Mr. Moseley said that in the Houston economy, there is a great need for engineers and energy workers. He said highly trained workers will either need to be brought into the U.S. or the jobs will have to be exported. He also spoke of the need for skilled workers from abroad in the hospital industry, saying that in Houston, alone, they have 4,000 vacancies. He said he saw great value in temporary guest worker programs.

Senator Cornyn asked Alan Greenspan whether he thought temporary worker programs might be beneficial because such programs can be ramped up or ramped down depending on a particular time's economic need.

Mr. Greenspan said yes. However, he said that the marketplace ought to be able to handle the situation rather than having to calibrate it on the fly.

Mr. Medina said that organized labor is not opposed to temporary worker programs. Instead, he said they are concerned about how many will come to the U.S., what their rights would be, and how they would get here.

Mr. Medina said that workers should come to the United States with rights that enable them to move from employer-to-employer.

Mrs. Meissner threw out what she called a new idea that workers could be given a provisional employment-related temporary visa that could be adjusted under some circumstances to a permanent visa. ☀

Senate Appropriations Committee Holds Hearing on President's FY '09 War Supplemental Request: The Senate Appropriations Committee held a hearing last week on the Administration's proposed fiscal

2009 war supplemental appropriations request. Last week's hearing was held on Thursday, April 30, 2009.⁴³⁵

Witnesses. The witnesses at last week's hearing were Hillary Rodham Clinton, Secretary of State; and Robert M. Gates, Secretary of Defense.

Opening Statements. The following is a summary of the immigration-related comments made by senators in their opening statements at last week's hearing:

- Chairman Inouye. Senate Appropriations Committee Chairman Daniel Inouye (D-HI) did not make any reference to refugees in his prepared opening statement for last week's hearing. He did express pleasure, however, at the Administration's assertion that this will be the last time it asks for war funding in the form of supplemental appropriations and that future funding will be folded into the regular appropriations process.⁴³⁶
- Ranking Republican Cochran. Senate Appropriations Committee Ranking Republican Thad Cochran (R-MS) did not make any reference to refugees in his prepared opening statement for last week's hearing.

Prepared Testimony. The following is a summary of the testimony presented by witnesses at last week's hearing:

- Secretary Clinton. In the only reference to refugee matters during her statement, Secretary of State Hillary Rodham Clinton noted that the Administration has "requested \$482 million in the supplemental for our civilian efforts to help Iraq move forward -- we want to create a future of stability, sovereignty and self-reliance - - and another \$108 million to assist Iraqi refugees."

In her only reference to internally displaced persons in her prepared testimony, Secretary Clinton noted that the Administration is seeking "funding of \$497 million in assistance for our work in Pakistan, which will support the government's efforts to stabilize the economy, strengthen law enforcement, alleviate poverty, and help displaced citizens find safe shelter."⁴³⁷

⁴³⁵ [Click Here](#) to see a video of the April 30, 2009, Senate Appropriations Committee hearing on President Obama's fiscal year 2009 war supplemental request

⁴³⁶ [Click Here](#) to see the complete text of the prepared opening statement of Senate Appropriations Committee Chairman Daniel Inouye (D-HI) at the April 30, 2009, Senate Appropriations Committee hearing on the Administration's fiscal year 2009 war supplemental request

⁴³⁷ [Click Here](#) to see the complete text of the prepared testimony of Secretary of State Hillary Rodham Clinton before the Senate Appropriations Committee hearing on the Administration's fiscal year 2009 war supplemental request

- Secretary Gates. Secretary of Defense Robert Gates made no reference to refugees in his prepared testimony.⁴³⁸

Q&A Session. There were no immigration- or refugee-related questions asked of the witnesses at last week's hearing. ☼

Senate Panel Hears from Secretary Napolitano on the Federal Response to the Swine Flu: The Senate Homeland Security and Governmental Affairs Committee held a hearing last week on the federal response to the Swine Flu pandemic. Last week's hearing was held on Wednesday, April 29, 2009.⁴³⁹

Witnesses. The witnesses at last week's hearing were:

- Janet Napolitano, Secretary of Homeland Security; and
- Rear Admiral Anne Schuchat, M.D., Interim Deputy Director, Science and Public Health Program, Centers for Disease Control and Prevention.

Opening Statements. The following is a summary of the immigration-related comments made by senators in their opening statements at last week's hearing:

- Chairman Lieberman. The only reference to immigration during Senate Homeland Security and Governmental Affairs Committee Chairman Joseph Lieberman's (I-CT) opening statement, the Chairman noted that "[i]n the current attempt to limit the spread of swine flu, the presence within the Department of Homeland Security of not just the Federal Emergency Management Agency -- FEMA -- but also of agencies that concern and control immigration and access in and out and across our border, such as ICE -- Immigration Customs Enforcement -- Customs and Border Control, and the TSA has been very important to consolidate the response, as has been the ongoing relations that the secretary of homeland security has with state and local officials."
- Ranking Republican Collins. Senate Homeland Security and Governmental Affairs Committee Ranking Republican Susan Collins (R-ME) did not make any reference to immigration during her opening statement at last week's hearing.

⁴³⁸ [Click Here](#) to see the complete text of the prepared testimony of Secretary of Defense Robert Gates before the Senate Appropriations Committee hearing on the Administration's fiscal year 2009 war supplemental request

⁴³⁹ [Click Here](#) to see a video of the April 29, 2009, Senate Homeland Security and Governmental Affairs hearing on the federal response to the swine flu

Prepared Testimony. The following is a summary of the prepared testimony presented by witnesses at last week's hearing:

Secretary Napolitano. In her prepared testimony, Secretary of Homeland Security Janet Napolitano told the Committee that DHS has responded on numerous levels to the threat and outbreak of the swine flu. She said that "Customs and Border Protection (CBP) is monitoring incoming travelers to identify individuals experiencing symptoms entering the U.S. and is providing information about the 2009 H1N1 flu virus to people who do decide to travel." With regard to calls that the United States border with Mexico be closed, Secretary Napolitano said in her prepared testimony that "[t]he strain of this virus that was first detected in Mexico is already present throughout the United States, and there is no realistic opportunity to contain the virus through border closures, so our focus must now be on mitigating the virus."⁴⁴⁰

Secretary Napolitano told the Committee that "[a]s infected travelers can lead to the spread of this virus, DHS is taking a number of precautions in light of the scope and nature of the threat. At our land ports of entry and in our airports, CBP is continuing to implement protocols to direct incoming travelers who appear sick to separate rooms where they can be evaluated by local public health professionals. This is similar to the kind of monitoring that CBP conducts consistently, though obviously CBP is now in a heightened state of alert regarding 2009 H1N1 flu. Furthermore, DHS is keeping travelers informed of the steps they should take to ensure their own health and the health of others in light of this outbreak. The Department is working with CDC to distribute 'traveler's health alert notices' (THANs) issued by CDC to educate travelers. The notices explain 2009 H1N1 flu and its symptoms to the traveler and inform travelers of steps they should take in case they feel symptoms. CBP is issuing notices to those entering the country at land ports of entry, to aircraft passengers coming into the United States, and to passengers on cruise ships with destinations stops in Mexico. The Transportation Security Administration (TSA) is posting these notices at screening checkpoints and other airport locations."

Secretary Napolitano noted, as well, that "Immigrations and Customs Enforcement (ICE) is ... being vigilant and reviewing recent intakes in its detainee population to identify any detainees who might have contracted this flu."

- Rear Admiral Schuchat. In the only reference to travelers across international boundaries in her testimony, Rear Admiral Anne Schuchat said, "[i]n terms of travel advisories, CDC continues to evaluate incoming information from the World Health Organization, the Pan American Health Organization, and other governments to determine the potential impact of the outbreak on international travel. On Monday, April 27th, CDC issued a travel health warning for Mexico. With this warning, we recommend travelers to postpone non-essential travel to Mexico for the time being. CDC is also evaluating information from other countries and will update travel notices for other affected countries as necessary. As always, persons with flu or flu-like symptoms should stay at home and should not attempt to travel."⁴⁴¹

Q&A Session. The following is a summary of the immigration- and refugee-related questions that were posed to the secretary during last week's hearing:

- Advisability of Closing the U.S. Border with Mexico
- Enhanced Screening at the U.S.-Mexico Border.
- Health Checks for Employment-Based Aliens.
- Advisability of Closing the U.S. Border with Mexico. Senate Homeland Security and Governmental Affairs Committee Chairman Joseph Lieberman (I-CT) asked Secretary Napolitano why the United States doesn't close the border with Mexico in wake of the fact that the Swine flu originated in and is being carried into the United States from Mexico.

Secretary Napolitano deferred to Admiral Schuchat on the question. Dr. Schuchat said in response that "[w]e want to make sure we get clear information out. There has been a formal policy analysis of this issue, including analysis with infectious disease modeling. And the estimates are that if there were cases in Canada or Mexico, within days the ability to stop that introduction into the United States would be gone. So given what we have been doing is really looking at the epidemiologic patterns, the spread of disease where it's occurring, and the scientific assessment is the most effective strategy right now is to focus on where we have illness, those families and the communities around them, and that it's really not an effective approach to try to block things at the border." She went on to assert that, "[o]f course, we have our efforts to suggest to travelers from the U.S. to defer nonessential trips to Mexico, and we have a strong partnership with the Customs and Border Protection staff to recognize ill passengers and -- or travelers -- and deal with them." She said that "[t]here's a personal

⁴⁴⁰ [Click Here](#) to see the complete text of Secretary Janet Napolitano's prepared testimony before the April 29, 2009, Senate Homeland Security and Governmental Affairs Committee hearing on the federal response to the swine flu

⁴⁴¹ [Click Here](#) to see the complete text of Rear Admiral Anne Schuchat's prepared testimony before the April 29, 2009, Senate Homeland Security and Governmental Affairs Committee hearing on the federal response to the swine flu

responsibility element in all of this in terms of when each of us is ill, not getting on an airplane or crossing a border, but we really think, and in fact the director general of the World Health Organization has said, at this point the most effective assets really need to be focused elsewhere.”

In response to Chairman Lieberman’s follow-up question in which he asked whether more infected people coming across the U.S. border with Mexico would spread the Swine Flu virus faster, Dr. Schuchat said, “from a medical point of view I think that’s not the case. I think it’s reasonable for people to be asking that question, but that’s where that infectious disease modeling goes on, that you know we have infectious cases were confirmed cases in many communities in the United States, so the probability of exposure from someone who has no contact with Mexico is also an important issue right now. So I think it’s reasonable that they’re asking, but we don’t think that’s a good strategy.”

Senator John McCain (R-AZ) followed up by asking what conditions would warrant closing the U.S. border with Mexico.

Secretary Napolitano responded that “if the CDC told us that closing the border would have a significant impact on the prevention of disease within our country, I think that would be a highly relevant factor. But the analysis has been that closing the border would not have that kind of preventive impact at this stage.”

When pressed, Secretary Napolitano told the Committee that she doesn’t think there are any conditions that would warrant closing the U.S. border with Mexico. She went on to say that “the decision to actually close the entire border, which is what has been raised, and since we have flu in Canada, I would anticipate that the same argument would be made there. So closing both borders with all of the huge impacts that that would have, in light of the fact that the scientists and the epidemiologists say would have virtually no impact on the amount of disease in our country. When you back those things, particularly in light, as you say, of the difficulty of knowing whether any individual has this disease, and we make that whole package of decisions, you understand why closing the border is not an adequate answer to this epidemic.”

- Enhanced Screening at the U.S.-Mexico Border. Senate Homeland Security and Governmental Affairs Committee Ranking Republican Susan Collins (R-ME) noted that Thailand, Japan, Indonesia, South Korea and the Philippines are all using thermal scanners to detect whether or not travelers into their countries have a fever. She complained that the United States, instead, was using “passive screening” in which officers note visually whether travelers are exhibiting symptoms of the Swine

flu. She asked why the United States wasn’t using thermal scanners.

Secretary Napolitano responded that “the term ‘passive surveillance’ is really not an accurate depiction of what is going on. What our CBP officers are doing is actively monitoring travelers that are attempting to cross the border, asking, for those who appear ill, asking, you know, questions about whether they are ill, their travel history and the like.” She said that “there’s a protocol that is in place for how that is done. We take our guidance, as I’ve said before, from the public health officials as to what steps really would work and would be effective.” With respect to the thermal scanners, Secretary Napolitano said “they are not always accurate. I mean they are not as always as precise as one would wish, but in addition you have travelers who actually have the flu, we don’t have a temperature. So they don’t really help you sift out travelers who are ill from those who are not. And so the recommendation to us has been that that would not be a particularly useful technology.” Admiral Schuchat expressed her agreement with that analysis.

Senator Jon Tester (D-MT) followed up on Senator Collins’ question, asking about screenings of people in cars and trucks who exhibit symptoms.

Secretary Napolitano responded that people are pulled aside, put into isolation rooms, and are seen by public health officials. She said that the longest wait for them to see a health official has been two hours.

Chairman Lieberman pressed Secretary Napolitano on why the government is not considering enhanced screening, involving temperature checks or other means.

Secretary Napolitano reasserted her sense that that is unnecessary, saying that if we go to an enhanced closing the ports in which every individual gets screened, “we’re going to have to be able to explain, because that will cause delays in lines and processing.” She asked, “what is the advantage we’re getting from that, other than symbolism, in terms of actually preventing disease in our country?” She said that “right now what the scientists are telling me is beyond symbolism, we really don’t get an advantage in terms of spread of disease.”

- Health Checks for Employment-Based Aliens. Senator Lindsey Graham (R-SC) asked Secretary Napolitano what was being done to ensure that H-2A and H-2B workers coming to the United States from Mexico are not carrying the Swine flu virus.

Secretary Napolitano replied that “we really are handling the H-2A population the way we’re handling travelers in general. That is to say they are monitored to see if they have any signs of disease, asked if they have any signs of

disease and handled in that fashion. But otherwise, they are legal travelers because they are visa'd so they would come in." The Secretary went on to say that nothing different was currently being done with such workers than is being done with other travelers but that it would be wise to look at doing something new with them. ☼

Last Week's Markups

Only one Congressional panel held a markup last week having implications for immigration- or refugee-related matters or policy:

- Nomination of John T. Morton to Head Immigration and Customs Enforcement Bureau. The Senate Committee on Homeland Security and Governmental Affairs approved the nomination of John T. Morton to head ICE.

Senate Panel Approves Morton Nomination to Head Immigration and Customs Enforcement:

The Senate Committee on Homeland Security and Governmental Affairs last week approved the nomination of John T. Morton to be Assistant Secretary of Homeland Security for Immigration and Customs Enforcement (ICE). Last week's action occurred during a Monday, April 27, 2009, committee markup. The Committee approved the nomination by a voice vote.

ICE Jurisdiction Over Immigration-Related Matters. The Department of Homeland Security's Immigration and Customs Enforcement (ICE) bureau is the Department of Homeland Security's largest investigative agency. Among its many duties is its responsibility for interior immigration enforcement, including detention, removals, and worksite enforcement.

During the latter years of the Bush Administration, ICE stepped up its enforcement efforts, conducting numerous immigration raids and sweeps in factories, meatpacking plants, janitorial services, temp agencies, restaurants, and other workplaces, as well as carrying out other interior immigration enforcement actions aimed at detecting, arresting, detaining, and eventually deporting illegal immigrants. ICE also is the agency within the Department of Homeland Security that works with state and local governments in reaching and monitoring 287(g) agreements.

The increased raid and other enforcement activity was lauded by the Department of Homeland Security and immigration restrictionists. However, it angered the pro-immigration advocacy community, which pointed to a number of high profile incidents that either showed ICE insensitivity, endangered children, or even deported United States citizens.

Immigration Background on John T. Morton. John T. Morton is a career employee of the U.S. Department of Justice who was serving as chief of the criminal division's

domestic security section at the time President Obama nominated him to head ICE. He has overseen several complex and high profile immigration and terrorism cases during his career at the Department of Justice.

Mr. Morton's nomination was the subject of a confirmation hearing in the Committee last week. During that hearing, as well as in response to written questions that he was given prior to the hearing, Mr. Morton asserted concern about ICE's detention practices, indicated his support for the mandatory use of the e-verify system, and pledged to review the 287(g) program.

Next Steps. Now that the Senate Committee on Homeland Security and Governmental Affairs has approved the nomination of John T. Morton to head ICE, the next step in the legislative process is the full Senate's consideration of the nomination. That consideration could come at any time. No controversy is expected. ☼⁴⁴²

Last Week's Floor Actions

House or Senate floor action occurred last week on two items having implications for immigration- or refugee-related matters or policy:

- Sebelius Nomination to be Secretary of HHS. The full Senate confirmed the nomination of Governor Kathleen Sebelius (D-KS) to be Secretary of Health and Human Services;
- Vietnamese Refugee Day. The full House of Representatives approved a resolution declaring May 2, 2009, as Vietnamese Refugee Day; and
- Fiscal Year 2010 Budget Resolution. The House and Senate agreed to the conference report accompanying the fiscal year 2010 budget resolution.

Senate Confirms Nomination of Kathleen Sebelius to be Secretary of Health and Human Services:

The full Senate last week confirmed the nomination of Governor Kathleen Sebelius (D-KS) to be Secretary of Health and Human Services. The Senate approved the nomination on Tuesday, April 28, 2009, by a vote of 65-31.⁴⁴³

President Obama nominated Governor Sebelius to be Secretary of Health and Human Services on March 2, 2009, following the withdrawal of former Senate Majority Leader

⁴⁴² See Pages 400-404 of the April 27, 2009, edition of the *Weekly Legislative Update* for a detailed write-up of the April 22, 2009, Senate Homeland Security and Governmental Affairs confirmation hearing on the nomination of John T. Morton to head ICE

⁴⁴³ [Senate Roll Call No. 172](#), April 28, 2009

Tom Daschle's nomination. The Senate Committee on Finance approved Secretary-Designate Sebelius' nomination on Thursday, April 21, 2009, by a vote of 15-8.⁴⁴⁴

HHS Jurisdiction Over Immigration- and Refugee-Matters. 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.

Floor Debate. The Senate considered the nomination over an eight-hour period beginning at 10:00 am on Tuesday, April 28, 2009. None of the debate that occurred focused on refugee matters. ☼

House and Senate Agree to Fiscal Year 2010 Budget Resolution Conference Report: The full House and Senate last week agreed to the conference report accompanying [S. Con. Res. 13](#), the Fiscal Year 2010 budget resolution.⁴⁴⁵ House and Senate floor action on the conference agreement occurred on Wednesday, April 29, 2009. The House agreed to it by a vote 233-193.⁴⁴⁶ The Senate agreed to it by a vote of 53-43.⁴⁴⁷

Summary of Immigration- and Refugee-Related Provisions. The conference agreement accompanying S.

Con. Res. 13 contains the following immigration- or refugee-related provisions:

- Funding for Immigration Enforcement and Services. The Administration of Justice function of the federal budget (Function 750) includes funding for much of the federal law enforcement activities of the federal government. Included in this function is funding for border enforcement by the Department of Homeland Security (DHS), interior immigration funding for the DHS, and the adjudication and processing of immigration services by DHS.

The conference agreement provides for \$53.4 BILLION in budget authority for the Administration of Justice function in fiscal year 2010. This compares with \$52.9 BILLION that was provided for in the House-passed and \$53.5 BILLION that was provided for in the Senate-passed version of the budget resolution

The text of the conference agreement specifies that the agreement "provides additional funding to support the President's initiative to combat violence along the U.S.-Mexico border." It also lists the State Criminal Alien Assistance Program (SCAAP) as one of several examples of Department of Justice "programs and initiatives that hire and equip police officers and that provide other important services to our communities" that the conference agreement supports.

- Funding for Refugee Admissions and Assistance. The International Affairs function of the federal budget (Function 150) covers funding for U.S. international activities, including assisting refugees in countries of asylum, processing refugees for admission to the United States, and providing for the initial resettlement needs of refugees who have been admitted to the United States. 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).

The conference agreement provides for \$51.0 BILLION in budget authority for the international affairs function in fiscal year 2010. This is \$12.8 BILLION above the non-emergency fiscal year 2009 level of funding for this function. It is \$8.7 BILLION above the fiscal year 2009 level of funding if one includes the emergency funding that this function received in fiscal year 2009.

The text of the conference agreement contends that the Congressional Budget Office's re-estimate of the Administration's fiscal year 2010 budget request for the international affairs function of the budget is \$53.8 BILLION. The conference agreement asserts that this would be an increase of \$15.6 BILLION above the non-

⁴⁴⁴ See Pages 365-367 of the March 20, 2009, edition of the *Weekly Legislative Update* for a detailed analysis of Secretary-Designate Sebelius' record on immigration and refugee issues during her time as governor of Kansas

⁴⁴⁵ [H. Rept. 111-89](#), April 27, 2009

⁴⁴⁶ [House Roll Call No. 216](#), April 29, 2009

⁴⁴⁷ [Senate Roll Call No. 173](#), April 29, 2009

emergency fiscal year 2009 level. It says that when fiscal year 2009 emergency funding is included in the comparison, the Administration's request would represent an \$11.5 BILLION increase over fiscal year 2009 funding.

- **Funding for Refugee Resettlement.** The Education, Training, Employment, and Social Services function of the federal budget (Function 500) covers funding for a broad range funding for education, 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 conference agreement provides for \$94.4 BILLION in budget authority for the Education, Training, Employment, and Social Services function in fiscal year 2010. This is the precise amount that was included in the Senate-passed version of the budget resolution and \$.7 BILLION more than was provided for in the House-passed version of the measure.

There was no reference to refugee resettlement in the text of the conference report.

- **Sense of Congress on Homeland Security Funding.** Section 602 of the conference agreement expresses the sense of Congress "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".

This provision is nearly identical to section 602 of the House-passed version of H. Con. Res. 85.

Legislative History. The full House of Representatives passed [H. Con. Res. 85](#),⁴⁴⁸ its version of the fiscal year 2010 Concurrent Resolution on the Budget, on Thursday, April 2, 2009, by a vote of 233-196.⁴⁴⁹ The House Committee on the Budget had 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, by a vote of 24-15.⁴⁵⁰

The full Senate approved [S. Con. Res. 13](#), its version of the fiscal year 2010 budget resolution, on Thursday, April 2, 2009, by a vote of 55-43.⁴⁵¹ The Senate Committee on the Budget had 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, 2009, by a vote of 13-10.⁴⁵²

Next Steps. Now that Congress has cleared the fiscal year 2010 budget resolution, the next step in the budget process is for the House and Senate Appropriations Committees is free to allocate discretionary among their respective subcommittees and proceed to marking up their appropriations bills. Markups of the fiscal year 2010 appropriations bills will not likely occur, however, until the President has submitted his detailed budget to Congress, an act that is rumored to be likely to occur next this week. ☼

House Passes Resolution Declaring Vietnamese

Refugee Day: The House of Representatives last week passed a resolution declaring May 2, 2009, as Vietnamese Refugee Day. House action occurred on Tuesday, April 28, 2009, in connection with [H. Res. 342](#). The House passed the measure by a voice vote.⁴⁵³

Legislative History. H. Res. 342 was introduced in the House of Representatives on April 21, 2009, by Representative Anh "Joseph" Cao (R-LA). It was referred to the House Committee on Oversight and Government Reform, which held a markup session on April 23, 2009, at which time it ordered the measure reported to the full House of Representatives.

Summary of Refugee-Related Provisions. As agreed to by the House of Representatives, H. Res. 342 expresses the support of the House of Representatives for the designation of 'Vietnamese Refugees Day' in order to commemorate the arrival of Vietnamese refugees in the United States, to document their harrowing experiences, and subsequent achievements in their new homeland, to honor the host countries that welcomed the boat people, and to recognize the voluntary agencies and nongovernmental organizations that facilitated their resettlement, adjustment, and assimilation into mainstream society in the United States.

⁴⁴⁸ [H. Rept. 111-60](#), March 27, 2009

⁴⁴⁹ [House Roll Call No. 192](#), April 2, 2009

⁴⁵⁰ [H. Rept. 111-60](#), March 27, 2009

⁴⁵¹ [Senate Roll Call No. 154](#), April 2, 2009

⁴⁵² [S. Rept. 111-16](#), March 27, 2009

⁴⁵³ [Click Here](#) to see a video of the April 28, 2009, House floor debate on H. Res. 342.

Floor Debate. The House of Representatives considered H. Res. 342 under a process known as “suspension of the rules”, which limits debate to 40 minutes, equally divided by the majority and minority, precludes floor amendments, and requires the affirmative votes of two-thirds of the Members present and voting in order for a measure to be passed or agreed to.

The House debated H. Res. 342 for less than ten minutes. It was floor managed by House Oversight and Government Reform Subcommittee on the Federal Workforce, Postal Service, and the District of Columbia Chairman Stephen F. Lynch (D-MA) for the majority and by Representative Lynn Westmoreland (R-GA) for the minority. Both Members supported the measure.

Members who spoke on the House floor in favor of H. Res. 342 were:

- Representative Stephen F. Lynch (D-MA)
- Representative Lynn Westmoreland (R-GA)
- Representative Anh “Joseph” Cao (R-LA)
- Representative Jeff Fortenberry (R-NE)
- Representative Christopher Smith (R-NJ)

No Members spoke against the measure.

Last Week’s Conference Activity

Conference committee deliberations took place on only one measure having implications for immigration- or refugee-related matters or policy:

- Fiscal Year 2010 Budget Resolution: House and Senate Conferees agreed to the conference report accompanying the fiscal year 2010 budget resolution. ◇

Last Week’s Executive Activity

Obama Discusses Comprehensive Immigration Reform in Prime Time Press Conference:

President Barack Obama last week made the most extensive public comments that he has made to date about his plans on comprehensive immigration reform. The most concrete thing that the President said about the process is that he wanted to put together a working group to start looking at a framework of how immigration reform legislation might be shaped. However, despite the verbiage, the President’s plans still remain ambiguous.

The President’s comments were made on Wednesday, April 29, 2009, in response to a question posed to him during a prime time press conference. The questioner at the press conference asked the President what his strategy was to try to accomplish immigration reform, if he was still on a timetable to have it accomplished in the first year of his presidency, and

if he planned to reach out to Senator John McCain (R-AZ) in crafting legislation.

President Obama responded that his administration has reached out to Senator McCain on a number of issues. He said that Senator McCain has been a leader on immigration reform and that the President thought that the Senator “has had the right position on immigration reform.” He said he would love to partner with Senator McCain and others on “what is going to be a critical issue.”

The President said that “[w]hat I told the Congressional Hispanic Caucus is exactly what I said the very next day in a town hall meeting and what I will continue to say publicly, and that is we want to move this process.” He said that “[w]e can’t continue with a broken immigration system. It’s not good for anybody. It’s not good for American workers. It’s dangerous for Mexican would-be workers who are trying to cross a dangerous border.”

The President went on to assert that the current situation “is putting a strain on border communities, who oftentimes have to deal with a host of undocumented workers. And it keeps those undocumented workers in the shadows, which means they can be exploited at the same time as they’re depressing U.S. wages.” He said that “what I hope to happen is that we’re able to convene a working group, working with key legislators like Luis Gutierrez and Nydia Velazquez and others to start looking at a framework of how this legislation might be shaped.”

President Obama said at the press conference that “[i]n the meantime, what we’re trying to do is take some core -- some key administrative steps to move the process along to lay the groundwork for legislation. Because the American people need some confidence that if we actually put a package together, we can execute.” Along those lines, the President said that Secretary of Homeland Security Janet Napolitano, who he said “has great knowledge of this because of having been a border governor,” is in the process of reviewing and figuring out how can we strengthen our border security in a much more significant way than we’re doing.”

President Obama told the reporters who were assembled in the East Room of the White House and a nationally televised audience that “[i]f the American people don’t feel like you can secure the borders, then it’s hard to strike a deal that would get people out of the shadows and on a pathway to citizenship who are already here, because the attitude of the average American is going to be, well, you’re just going to have hundreds of thousands of more coming in each year.” He said, though, that “showing that there is a more thoughtful approach than just raids of a handful of workers as opposed to, for example, taking seriously the violation of companies that sometimes are actively recruiting these workers to come in. That’s again something we can start doing administratively.” The President declared, “what we want to do is to show that we are competent and getting results

around immigration, even on the structures that we already have in place, the laws that we already have in place, so that we're building confidence among the American people that we can actually follow through on whatever legislative approach emerges.”

When pressed on the timing of when he would expect action in Congress on immigration legislation to occur, the President responded, “I see the process moving this first year. And I'm going to be moving it as quickly as I can. I've been accused of doing too much. We are moving full steam ahead on all fronts. Ultimately, I don't have control of the legislative calendar, and so we're going to work with legislative leaders to see what we can do.” ☀ ◇

Recently Introduced Legislation

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

House

Refugee Resettlement

- **Lao-Hmong Recognition Day:** Representative Gwen Moore (D-WI) has introduced [H. Con. Res. 112](#), a concurrent resolution expressing support for designation of a “National Lao-Hmong Recognition Day”.

As introduced, H. Con. Res. 112 would express support for the designation of a “National Lao-Hmong Recognition Day”.

It has been referred to the House Committee on Oversight and Government Reform.

Senate

Citizenship & Naturalization

- **Posthumous Citizenship for Binghamton Victims Act:** Senator Charles E. Schumer (D-NY) has introduced [S. 905](#), a bill to provide for the granting of posthumous citizenship to certain aliens lawfully admitted for permanent residence who died as a result of the shootings at the American Civic Association Community Center in Binghamton, New York on April 3, 2009.

As introduced, S. 905 would provide for the granting of posthumous citizenship to certain aliens lawfully admitted for permanent residence who died as a result of the shootings at the American Civic Association Community Center in Binghamton, New York on April 3, 2009.

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

Bills in Development

The following is a listing of immigration- or refugee-related bills that are currently under development and that could soon be introduced in the Senate or House of Representatives. Items that were added or that have substantially changed since the previous edition of the Weekly Legislative Update was issued are marked with a double asterisk (**).

House

Foreign Assistance Reform: House Foreign Affairs Committee Chairman Howard L. Berman (D-CA) is reportedly working on a much slimmed down version of a foreign assistance reform bill that he may introduce in the House of Representatives as early as this week. According to Congressional Quarterly (CQ), Chairman Berman has set aside for the moment plans to introduce a comprehensive re-write of the Foreign Assistance Act of 1961, as it has been amended over the years. CQ reports that, Instead, he will introduce legislation as early as this week that would direct the Obama administration to create a global development strategy. The CQ report says that the Chairman will introduce a more complete re-write of the Foreign Assistance Act later this year.

State Department Authorization Bill: House Foreign Affairs Committee Chairman Howard L. Berman (D-CA) is reportedly working on a State Department Authorization Bill that could be introduced soon. Traditionally, the State Department Authorization bill contains among its many provisions sections that authorize funding for the Department of State's Bureau of Population, Refugees, and Migration (PRM), which administers the United States refugee admissions and overseas refugee assistance programs.

Secure American through Verification and Enforcement Act: Representative Heath Shuler (D-NC) is planning to introduce a new version of [H.R. 4088](#), the “Secure America Through Verification and Enforcement Act of 2007” or “SAVE Act”, which he introduced in the 110th Congress. The measure was strongly supported during the 110th Congress by the immigration restrictionist advocacy community and vociferously opposed by the pro-immigrant advocacy community. It generated 157 House cosponsors and was the object of a discharge petition that secured 190 signatures.

As introduced in the 110th Congress, H.R. 4088 would have would enacted into law a number of immigration enforcement provisions, including—

- Employment Verification System. a requirement that all employers use a computerized employment verification system run administered jointly by the Social Security Administration and the Department of Homeland Security;
- Social Security No-Match Letters. a requirement that the Administration send no-match letters to all employers whenever an employee's Social Security number does not match the record in the Social Security Administration and require that employees so-flagged be terminated within ten days if the dispute cannot be resolved;
- Electronic Birth and Death Registry. establishment of electronic birth and death registries;
- Increased Detention Beds and Judgeships. increases in detention beds and federal judgeships;
- Increased Border Resources. increased resources on the U.S. border.
- Media Campaign. begin a targeted media campaign to inform illegal aliens of new laws and penalties, while also informing employers of penalties for hiring illegal immigrants.

Proponents of H.R. 4088 contended it would greatly increase the ability of the United States to detect, deter, and deport aliens who are illegally in the United States. They countered criticisms that called the bill a "deportation only" bill by contending that it would promote an "attrition through enforcement" policy.

The pro-immigrant advocacy community, civil rights organizations, religious organizations, employer groups, and a number of labor unions strongly opposed the measure, calling it a draconian immigration enforcement-only measure that would have resulted in many people, including many U.S. citizens and legal permanent residents, erroneously losing their jobs and many communities being terrorized by ill-advised enforcement actions.

In addition to concerns expressed by employers and the pro-immigrant advocacy community, the Bush Administration and the leaders on the House Committee on Ways and Means expressed grave concerns about the impact that the bill would have had on the ability of the Social Security Administration to perform its mission.

Family-Based Immigration Backlogs:

Representative Mike Honda (D-CA) is working on legislation that would re-order the family preference immigration system and eliminate backlogs in family preference visas. The bill is reportedly in the final stages of production and could be introduced as soon as this week.

Senate

****AgJOBS Legislation:** Senator Dianne Feinstein (D-CA) is working on a new version [S. 340](#), of the Agricultural Job Opportunities, Benefits, and Security Act of 2007", also known as the "AgJOBS Act of 2007." As introduced during the 110th Congress, the measure would have provided for the legalization of undocumented seasonal agricultural workers, eased the process of admitting H-2A nonimmigrant agricultural workers, and relaxed some of the labor protections and benefits H-2A workers enjoy. Speaking at April 30, 2009, Senate Judiciary Committee hearing, Senator Feinstein noted that there were some differences between growers and farm worker union officials on some aspects of the legislation, that she was seeking to broker a deal, and that she would introduce the bill once a deal has been reached.

Secure and Safe Detention and Asylum Act: Senate Homeland Security and Governmental Affairs Committee Chairman Joseph Lieberman (I-CT) is planning to introduce a new version of [S. 3114](#), the "Secure and Safe Detention and Asylum Act", which he introduced in the 110th Congress.

As introduced in the 110th Congress, S. 3114 would have set forth provisions regarding procedures and standards applicable to aliens detained in Department of Homeland Security (DHS) custody and the conditions of such custody.

The measure addressed—

- fair and humane treatment
- solitary confinement limitations
- investigation of grievances
- access to telephones and legal assistance
- detainee transfers
- translation capabilities
- medical care
- vulnerable populations
- standards for non-criminal detainees
- personnel training
- reporting of detainee deaths.

The measure also would have established within the Department of Homeland Security an Office of Detention Oversight and a detention alternatives program under which detainees could be released under enhanced supervision.

Finally, the measure would have provided for legal orientation for immigration and asylum detainees; construction or use of less restrictive detention facilities, including facilities for families with children; and quality assurance procedures regarding expedited removal interviews.

Family-Based Immigration Backlogs: Senator Bob Menendez (D-NJ) is working on legislation that would re-order the family preference immigration system and eliminate backlogs in family preference visas. The bill is reportedly

nearing the final stages of production and could be introduced as soon as this week. ◇

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 Likely to Markup Fiscal Year 2009 War Supplemental in Early May: Committee sources indicate, despite earlier indications that the House Appropriations Committee could markup the fiscal year 2009 Iraq/Afghanistan supplemental appropriations bill as soon as this week, it is beginning to look more like action on the supplemental appropriations request will not occur in the Committee until at least the first week of May.

The Administration submitted an \$83.4 BILLION fiscal year 2009 supplemental request to Congress on Thursday, April 9, 2009. The submission asked for \$75.5 billion in defense funding and \$7.1 billion for the State Department and foreign operations. With respect to refugee funding, 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.⁴⁵⁴

Senate

****Senator Specter's Party Switch Could Have Ramifications for Immigration and Refugee Legislation:** Senator Arlen Specter (D-PA) shocked the political world last week by announcing he had become a Democrat and had left the Republican party, which he had been a member of during the entirety of his almost 30 years in the Senate. Senator Specter's party switch will have ramifications on the partisan ratio in the Senate, putting the Democrats on track to amassing the 60 senators necessary to block a GOP filibuster. But it also could have a significant and counter-intuitive impact on the Senate's consideration of immigration- and refugee-related legislative and

appropriations matters. That is because Senator Specter's decision to abandon the Republican party leaves two Ranking Republican positions open on panels that have jurisdiction over significant immigration- and refugee-related matters. Moreover, his departure from the Republican party has even left in question whether he will continue to serve on those two panels.

Senator Specter's Immigration Record. Senator Specter was first elected to the United States Senate as a Republican in 1980, the year President Ronald Reagan won the Presidency and swept Democrats out of power in both the House and Senate. He has won reelection as a Republican ever since, sometimes by razor-thin margins. He was last elected in 2004 with 52.8 percent of the vote. On April 28, 2009, he announced that he was leaving the Republican party and joining the Democratic party. He is a candidate for reelection in 2010 as a Democrat.

A moderate, Senator Specter was often the target of both Republicans and Democrats when running for reelection. He has faced primary challenges within the Republican party from the right. And he faced general election challenges by Democrats from the left. His switch to the Democratic party may have cleared a path for him to be nominated in 2010 by the Democratic party.

Senator Specter's reputation for moderation extends to the issue of immigration. He has supported the positions of the pro-immigrant and pro-refugee communities in 65 percent of the key contested immigration- or refugee-related votes that he has cast during his Senate career. His support in recent years has extended to such issues as comprehensive immigration reform, an issue on which he drafted legislation during the 109th Congress, when he served as Chairman of the Senate Committee on the Judiciary. Many of the provisions in the bill that then-Chairman Specter drafted during the 109th Congress were opposed by the pro-immigrant advocacy community. However, the bill served as the vehicle for numerous amendments in the Senate Committee on the Judiciary and was eventually supported by the two communities.

Senator Specter is the son of a Russian immigrant father who immigrated to the United States in 1911. He often speaks of his immigrant background.

Committee Assignments. At the start of the 111th Congress, Senator Specter was the Ranking Republican of the Senate Committee on the Judiciary, the Senate committee that has jurisdiction over the bulk of the nation's immigration- and refugee-related functions, programs, and agencies. He served in that same role during the 110th Congress and was the Committee's chairman in the 109th Congress. His switch to the Democratic has required him to relinquish his post as Ranking Republican on the Committee. If, as is expected, he is assigned by Democrats to sit on the Senate Committee on

⁴⁵⁴ See Pages 387-388 of the April 20, 2009, edition of the *Weekly Legislative Update for an analysis of the immigration- and refugee-related provisions contained in the Administration's fiscal year 2009 Iraq/Afghanistan War Supplemental request*

the Judiciary, he will be the second ranking Democrat on the Committee behind Chairman Patrick Leahy (D-VT).

Senator Specter's potential influence over immigration and refugee matters at the beginning of the 111th Congress went beyond his position as Ranking Republican of the Senate Judiciary Committee. He also began the 111th Congress as the Ranking Republican on the Senate Appropriations Subcommittee on Labor, Health and Human Services, Education, and Related Agencies, a subcommittee that has appropriating jurisdiction over the federal government's refugee resettlement, trafficking victim assistance, torture victim assistance, and unaccompanied alien child protection functions and activities. His party switch required that he relinquish that position. If, as expected, he is assigned to the Appropriations Committee by the Democrats, he will rank ahead of Chairman Tom Harkin (D-IA) among Democrats in seniority on the Subcommittee.

Judiciary Committee Uncertainty. Senator Specter's party switch means that a new senator will soon be named to the Ranking Republican position on the Senate Committee on the Judiciary. At the time of this writing, three possible replacements for that position were actively being discussed: Senators Orrin Hatch (R-UT), Jeff Sessions (R-AL), and Charles Grassley (R-IA). All three have voting records that are significantly less supportive of the pro-immigrant and pro-refugee advocacy communities' positions on immigration and refugee matters than is Senator Specter's.

The following briefly summarizes the immigration- and refugee-related records of the three senators who are most likely to become the Ranking Republican on Committee:

- Senator Orrin Hatch. Senator Orrin Hatch is a former chairman of the Senate Committee on the Judiciary. He is a longtime member of the Senate, having first been elected in 1976. In order for him to be named to the position of Ranking Republican on the Judiciary Committee, chairman, he would have to convince the Senate Republican Conference to waive its committee chair/ranking term limits so he could hold the position through the end of the 111th Congress.

Overall, Senator Hatch has supported the positions of the pro-immigrant and pro-refugee advocacy committee on about 20 percent of the key contested votes that have been cast in the Senate since 1986. However, that number is a bit deceiving. Senator Hatch's record on immigration- and refugee-related legislation has evolved over the course of his career in the Senate. Senator Hatch was significantly more supportive of the pro-immigrant and pro-refugee advocacy communities' positions prior to the September 11, 2001, terrorist attacks on the United States than he is now. Indeed, prior to the September 11, 2001, terrorist attacks, Senator Hatch had supported the positions of the pro-immigrant and pro-refugee advocacy communities on 32 percent of

the key contested immigration- or refugee-related votes that he had cast in his career. Since the terrorist attacks, however, he has only supported those two communities' positions ten percent of key contested votes.

To longtime observers of the immigration legislative scene, Senator Hatch is most known for three actions. First, he fought in 1990 against efforts by Senators Edward M. Kennedy (D-MA) and Alan Simpson (R-WY) to reduce legal immigration. Second, and third, he led a successful effort in 1996 to strip provisions from the bill that was eventually enacted into law as the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) that would have severely curtailed family-based legal immigration. And third, he was the first Senate sponsor of the DREAM Act, a bill now championed by Senate Majority Whip Dick Durbin (D-IL) that seeks to legalize undocumented aliens who came to the United States as children. Senator Hatch suffered politically for his earlier pro-immigrant stands. He has regularly been challenged within the Utah Republican party because of the perception that he is too pro-immigrant for Utah.

- Senator Jeff Sessions. Senator Jeff Sessions was first elected to the Senate in 1996. He is the first senator to serve on the Judiciary Committee after having been rejected by it for a judicial nomination.

Senator Sessions is an unabashed foe of the pro-immigrant and pro-refugee advocacy communities. Not only has he rarely voted in favor of the position of the two communities on a key contested immigration or refugee-related Senate floor vote (he has only supported the pro-immigrant advocacy community's position once out of nearly fifty key contested immigration- or refugee-related votes that he has cast during his Senate career), but he also has actively sponsored or cosponsored much of the marquee legislation and amendments over the last several years that the two communities have opposed.

- Senator Charles E. Grassley. Senator Charles Grassley has the seniority to take the position of Ranking Republican on the Judiciary Committee if he wants it. That is because he is the next person in line who would not have to be granted a waiver in order to win it. First elected to the Senate in 1980, Senator Grassley is currently the Ranking Republican on the Senate Committee on Finance, a position that term limits will force him to relinquish at the beginning of the 112th Congress in January of 2011. He has long said that he wishes to become the Ranking Republican on the Senate Judiciary Committee. However, he must decide whether he is willing to give up the Finance Committee slot now, at a time when health care reform is one of the most pressing issues in Congress. His decision is complicated by the fact that should he pass up the position now,

Senator Jeff Sessions (R-AL) could take it and hold onto it for the next six years.

Overall, Senator Grassley has supported the positions of the pro-immigrant and pro-refugee advocacy committee on only 11 percent of the key contested votes that have been cast in the Senate since 1986. Senator Grassley's record on immigration- and refugee-related legislation has evolved to some degree over the course of his career in the Senate. While he has never been a strong supporter of the two communities' positions, he was more supportive of their positions prior to the September 11, 2001, terrorist attacks on the United States than he is now. Indeed, prior to the September 11, 2001, terrorist attacks, Senator Grassley had supported the positions of the pro-immigrant and pro-refugee advocacy communities on more than 20 percent of the key contested immigration- or refugee-related votes that he had cast in his career. Since the terrorist attacks, however, he has only supported those two communities' positions in six percent of the key contested immigration- and refugee-related votes that he has cast on the Senate floor.

Despite the overall numbers, Senator Grassley has, on occasion, supported the positions of the pro-refugee advocacy community. This was particularly the case for Senator Grassley on issues relating to Soviet Jews who were seeking to leave the Soviet Union. He was a strong supporter in the 1980s and 1990s of their cause.

The highest profile immigration-related issues that Senator Grassley has worked on during the 110th and 111th Congresses are the issues of Children's Health Insurance Program, the E-Verify system, and the H-1B program.

During the 110th Congress, Senator Grassley offered an amendment to a comprehensive immigration reform bill that would have required implementation of a mandatory electronic employment eligibility verification system, and replaced it with a less rigorous system.⁴⁵⁵ The Senate rejected the amendment.

In January of 2009, Senator Grassley voiced vociferous opposition to an amendment by Senator Jay Rockefeller (D-WV) to [S. 275](#), children's health insurance legislation that was being marked up in the Senate Finance Committee. The Rockefeller amendment expanded immigrant children's access to Children's Health Insurance Program (CHIP) benefits. During debate in

the Senate Finance Committee, Senator Grassley said that he was "damned disgusted" by the bill and process. He said, as well, that, "since the welfare reform bill of 1996, immigrants coming to this country and their sponsors have been required to sign a contract that they will not seek public assistance for the first five years they are in this country. Today, the majority is determined to weaken that policy by lifting the five-year ban on Medicaid and SCHIP coverage for legal immigrants. One of the privileges of being the majority and being in charge is the ability and the responsibility to set the agenda. The agenda they have set for the immediate future includes an immigration fight, and a contentious, partisan markup over what had been a bipartisan bill. The agenda they have set puts a short-term political gain ahead of the greater agenda of health care reform."⁴⁵⁶

Senator Grassley was able to amend S. 275 on immigration matters in the Finance committee, winning the adoption of an amendment that requires states, when they re-check the income levels of SCHIP enrollees, to also review their citizenship or legal residency status. The Committee adopted the Grassley amendment by a voice vote. Senator Grassley also offered an immigration-related amendment in the Finance Committee that failed. That amendment would have stricken the citizenship documentation requirements in the draft CHIP bill and replaced them with more stringent identification requirements. The Committee rejected the amendment by a voice vote. Senator Grassley went on to vote against the position of the pro-immigrant advocacy community on both the Senate floor and in the Finance Committee on numerous other immigration-related votes in connection S. 275. Indeed, he offered an amendment on the Senate floor to strike the provision from the CHIP bill that expanded immigrant children's eligibility for the CHIP program. The Senate rejected that amendment by a voice vote.

During the 110th Congress, Senator Grassley introduced [S. 3093](#), legislation that would have permanently authorized the E-Verify program and made several other changes in law. In addition to reauthorizing the program, S. 3093 would have required all federal contractors to make use of the program; given employers the option to verify the status of all employees, not just new hires; allowed the Department of Homeland Security to require companies to use the E-Verify program if a pattern of illegal hiring is found; required USCIS to provide monthly reports to Immigration and Customs Enforcement listing the non-authorized checks E-Verify finds that should be investigated; required USCIS to

⁴⁵⁵ *S. Amdt. 1441, an amendment sponsored by Senator Charles Grassley (R-IA), to S. 1348, comprehensive immigration reform legislation that the Senate considered during the 110th Congress. The amendment would have required implementation of a mandatory electronic employment eligibility verification system.*

⁴⁵⁶ [Click Here](#) to see the text of the opening statement made by Senate Finance Committee Ranking Republican Charles Grassley (R-IA) at the beginning of the January 15, 2009, Senate Finance Committee markup of S. 275

create a pilot project providing opportunities for small businesses and other rural areas without internet access to use the E-Verify program; required employers to re-verify employees who are in the United States on temporary status; and formally changed the name of the program from the Basic Pilot program to the E-Verify Program.

During the 111th Congress, Senator Grassley cosponsored an amendment to H.R. 1 that was offered by Senator Bernie Sanders (I-VT) to the economic stimulus bill. That amendment sought to prohibit any bank or other financial institution that receives funding under the Troubled Asset Relief Act from hiring H-1B workers unless the bank or financial institution is in compliance with provisions of law applicable to an H-1B dependant employer. Senate agreed to the amendment by a voice vote and it is now law.

Given that the Senate Democratic Leadership is aggressively talking about the possibility of taking up immigration reform legislation during the 111th Congress, the question of which senator becomes the Ranking Republican on the Senate Committee on the Judiciary is no small matter. Any of three senators could well wind up with the position. The identity of that senator could have a significant influence on the course of immigration legislation during the remainder of the 111th Congress and beyond.

Appropriations Committee Uncertainty. As previously noted, Senator Specter must also relinquish his Ranking Republican position on the Senate Appropriations Subcommittee on Labor, Health and Human Services, Education, and Related Agencies. Senator Thad Cochran (R-MS), the Ranking Republican on the full Appropriations Committee, has announced that he will take over the position in the interim. However, there has been no announcement of when or if a senator will be named to take over the position for the remainder of the 111th Congress. The Labor, HHS, Education Subcommittee has jurisdiction over funding for the federal government's refugee resettlement, unaccompanied alien children, trafficking victim assistance, and torture victim assistance programs, functions, agencies, and activities. ☀

****Senate Appropriations to Hear from Secretary Clinton on Fiscal Year 2010 State Department Budget:** The Senate Appropriations Committee has tentatively scheduled a hearing for late May at which time it will hear from Secretary of State Hillary Rodham Clinton on

the Administration's fiscal year 2010 budget request for international affairs. The hearing has been tentatively scheduled for Wednesday, May 20, 2009. ◇

Next Week's Edition ...

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

- Obama's Detailed Fiscal Year 2010 Budget Submission. Next week's Weekly Legislative Update will provide a detailed analysis of the immigration- and refugee-related items in President Obama's detailed fiscal year 2010 budget submission should the Administration submit it to Congress this week.
- Fiscal Year 2009 War Supplemental. Next Week's Weekly Legislative Update will report on any actions that are taken this week in the House Appropriations or Senate Appropriations Committees relating to President Obama's Fiscal Year 2009 war supplemental request.
- Vote in Senate on the Morton ICE Nomination. Next Week's Weekly Legislative Update will provide coverage of this week's Senate floor action, should it occur, on the nomination of John T. Morton to be Assistant Secretary of Homeland Security for Immigration and Customs Enforcement.
- Vote in Senate on the de Baca Trafficking Nomination. Next Week's Weekly Legislative Update will provide coverage of this week's Senate Foreign Relations Committee business meeting, at which it could take up the nomination of Luis de Baca to be Ambassador-at-Large to Monitor and Combat Trafficking in Persons.
- Department of Homeland Security Oversight. Next week's Weekly Legislative Update will provide detailed coverage of this week's Senate Judiciary Committee oversight hearing on the operations of the Department of Homeland Security that are under the Committee's jurisdiction.
- Specter Fall Out. Next week's Weekly Legislative Update will provide further coverage of the consequences for immigration- or refugee-related legislation of Senator Arlen Specter (D-PA)'s party switch. ◇

Appendix

No items this week.

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