



# United States Conference of Catholic Bishops Government Relations

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

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

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*Congress begins the fiscal year 2010 immigration and refugee appropriations cycle this week as the House Appropriations Committee marks up the fiscal year 2010 Homeland Security appropriations bill.*

### *This Week's Hearings*

At the time of this writing, two hearings were scheduled for this week at which significant immigration- or refugee-related matters are expected to be discussed. One is taking place in the House and the other is occurring in the Senate:

- FY '10 Appropriations for Refugee Resettlement. The Senate Appropriations Subcommittee on Labor, Health and Human Services, Education has scheduled a hearing on the Administration's Fiscal Year 2010 budget request for the Department of Health and Human Services; and
- FY '10 Budget for ICE, CBP, and the Coast Guard. The House Homeland Security Subcommittee on Border, Maritime, and Global Counterterrorism has scheduled a hearing on the fiscal year 2010 budget for ICE, CBP, and the Coast Guard.

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

### House

#### **House Homeland Security Panel to Hold Hearing on FY '10 Budget for ICE, CBP, and the Coast Guard:**

The House Homeland Security Subcommittee on Border, Maritime and Global Counterterrorism has scheduled a hearing for this week to examine the fiscal year 2010 budget for the Department of Homeland Security's Immigration and Customs Enforcement (ICE), Customs and Border Protection (CBP), and the U.S. Coast Guard. This week's hearing is scheduled for 10:00 am on Thursday, June 11, 2009, in Room 311 of the Cannon House Office Building.

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

- John T. Morton, Assistant Secretary of Homeland Security, Immigration and Customs Enforcement;
- Jayson Ahern, Acting Commissioner, Customs and Border Protection; and
- Admiral Thad W. Allen, Commandant, U.S. Coast Guard.

**Background on ICE and CBP Budgets.** On May 7, 2009, President Barack Obama submitted detailed information to Congress about his Administration's proposed budget for fiscal year 2010. The proposed budget would fund the three major immigration enforcement agencies or functions at significantly lower levels than in fiscal year 2009. However, much of the lower level of funding can be attributed to emergency supplemental funding that the Department of Homeland Security received in fiscal year 2009. Excluding that supplemental funding, the Administration is requesting a slight increase in fiscal year 2010 over fiscal year 2009 funding for the major immigration enforcement agencies or functions of the federal government.<sup>651</sup>

On May 12, 2009 and May 13, 2009, Secretary of Homeland Security Janet Napolitano testified before four different House and Senate panels on the Administration's fiscal year 2010 budget request for the Department of Homeland Security.<sup>652</sup>

<sup>651</sup> See Pages 478-486 of the [May 11, 2009, edition of the Weekly Legislative Update](#) for a detailed analysis of the Administration's fiscal year 2010 budget request for immigration- and refugee-related budget programs and activities

<sup>652</sup> See Pages 502-511 of the [May 18, 2009, edition of the Weekly Legislative Update](#) for a detailed report on Secretary of Homeland Security Janet Napolitano's testimony at four mid-May, 2009 hearings on the Administration's fiscal year 2010 budget request for the Department of Homeland Security

The President's budget proposes a combined overall fiscal year 2010 appropriation of \$17.566 BILLION for Immigration and Customs Enforcement (ICE), Customs and Border Patrol (CBP), and US-VISIT. This is \$647.1 MILLION less than the \$18.2 BILLION appropriated for those three functions in fiscal year 2009. However, as alluded to above, Congress appropriated \$680 MILLION in emergency supplemental funding in fiscal year 2009 for those functions. Thus, the Administration's fiscal year 2010 budget submission actually requested an increase of \$33 MILLION over the amount provided through the regular appropriations process for ICE, CBP, and US-VISIT.

To be sure, totaling spending for ICE, CBP, and US-VISIT is an imprecise measurement of spending on immigration enforcement; while all spending by US-VISIT can reasonably be considered immigration-related spending, funds expended by both CBP and ICE are split between a number of immigration- and customs-related purposes. ☼

### Senate

#### **Senate Appropriations Panel to Hold Hearing on FY Obama '10 Appropriations Request for the Department of Health and Human Services:**

The Senate Appropriations Subcommittee on Labor, Health and Human Services, Education, and Related Agencies has scheduled a hearing for this week on the Administration's fiscal year 2010 budget request for the Department of Health and Human Services. This week's hearing is scheduled for 2:30 pm on Tuesday, June 9, 2009, in Room SD-124 of the Dirksen Senate Office Building.

**Anticipated Witnesses.** At the time of this writing, the sole witness for this week's hearing was expected to be Secretary of Health and Human Services Kathleen Sebelius.



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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](mailto:MHill@usccb.org)  
 Real-Time Updates: [www.twitter.com/MicEvHill](http://www.twitter.com/MicEvHill)

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

**HHS Jurisdiction over Refugees and Immigration.** While the Department of Health and Human Services has jurisdiction over the nation's refugee resettlement program, the bulk of its programmatic jurisdiction is over a broad range of health and human services programs and activities that have nothing to do with refugees. Discussion about those other areas are expected to dominate this week's hearing.

With regard to refugees, working through its [Office of Refugee Resettlement](#) (ORR), which is an office within the Department's [Administration for Children and Families](#) (ACF), the Department of Health and Human Services operates several specific programs that assist refugees and other vulnerable populations of noncitizens:

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

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

**Administration's Fiscal Year 2010 Budget Request.** On May 7, 2009, President Barack Obama last submitted detailed information to Congress about his proposed fiscal year 2010 budget for refugee protection. The proposal would make significant increases in spending on refugee resettlement compared to the amount appropriated in fiscal year 2009 for that purpose.

More specifically, the Administration's budget submission proposes a fiscal year 2010 appropriation of \$740.7 MILLION for the Office of Refugee Resettlement. This would represent an increase of \$107.3 MILLION over the fiscal year 2009 appropriation for ORR. Within the appropriation, the Administration has requested to increase funding for ORR's resettlement activities by \$54.7 MILLION. It has requested to increase funding for the Division for Unaccompanied Alien Children (DUCS) by \$53 MILLION.

Major components of the Administration's overall fiscal year 2010 ORR request are broken down as follows:

- ORR's Resettlement Activities. The Administration proposed an appropriation of \$544.4 MILLION for ORR's resettlement activities in fiscal year 2010. This includes four programs: Transition & Medical Assistance, Social Services, Preventive Health, and Targeted Assistance. This is \$54.7 MILLION, or 11.2 percent, more than the amount appropriated in fiscal year 2009 for these services.
  - Unaccompanied Alien Children. The Administration's fiscal year 2010 budget submission proposes \$175.6 MILLION for ORR's Unaccompanied Alien Children program. This would be \$52.4 MILLION, or 44 percent, more than the amount appropriated for this purpose in the regular fiscal year 2009 appropriations bill.
- The Administration justifies the increase in funding by noting new mandates contained in P.L. 110-457, the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008.<sup>653</sup>
- Torture Victims Assistance. The Administration's fiscal year 2010 budget submission requests \$10.8 MILLION to provide support for services to torture victims. This is the same amount that was appropriated in fiscal year 2009 to assist torture victims.
  - Trafficking Victims Assistance. The Administration's fiscal year 2010 budget submission requests \$9.8 MILLION to assist trafficking victims. This is the same amount that was appropriated in fiscal year 2009 to assist trafficking victims.

Among the highlights of the Administration's refugee resettlement-related budget proposals are:

- Refugee Admissions Ceiling for Fiscal Year 2010. The Administration's budget documents indicate that the Administration's fiscal year 2010 budget would

<sup>653</sup> See page 259 of the [Department of Health and Human Services Fiscal Year 2010 Administration for Children and Families Justification of Estimates for Appropriations Committees](#)

accommodate 80,000 refugee admissions in fiscal year 2010, which the budget documents note would be the same number that was planned for in fiscal year 2009.<sup>654</sup>

- **Special Immigrant Iraqi and Afghan Arrivals.** The Administration's budget documents indicate that the Administration's fiscal year 2010 budget plans for 29,000 Special Immigrant arrivals from Iraq and Afghanistan in fiscal year 2010. This would be more than double the 12,000 such arrivals that the Administration estimates for fiscal year 2009.<sup>654</sup>

The chart that follows summarizes the Administration's fiscal year 2010 budget submission for ORR:

**Administration's Fiscal Year 2010 Request for the Office of Refugee Resettlement**

ITEM	'08 Actual	'09 Projected	'10 OMB
Transitional & Medical	\$ 296.1	\$ 282.3	\$ 337.1
Social Services	\$ 154	\$154	\$ 154
Preventive Health	\$ 4.75	\$ 4.75	\$ 4.75
Targeted Assistance	\$ 48.6	\$ 48.6	\$ 48.6
<b>SUBTOTAL</b>	<b>\$ 503.4</b>	<b>\$ 494.3</b>	<b>\$ 544.4</b>
Trafficking Victims	\$ 9.8	\$ 9.8	\$ 9.8
Torture Victims	\$ 9.8	\$ 10.8	\$ 10.8
Unaccompanied Alien Children	\$ 132.6	\$ 123.1	\$ 175.6
<b>TOTAL ORR</b>	<b>\$ 655.6</b>	<b>\$ 633.4</b>	<b>\$ 740.6</b>

Millions of Dollars

**Views of the Advocacy Community.** The pro-refugee advocacy community has expressed cautious praise for the Administration's fiscal year 2010 budget proposals for the Department of Health and Human Services' ORR account.

Refugee Council USA (RCUSA), the nation's leading coalition of refugee resettlement, human rights, and humanitarian organizations, has recommended an appropriation of \$949 MILLION for the Department of Health and Human Services Office of Refugee Resettlement (ORR) in fiscal year 2010.<sup>655</sup> This is \$208.3 MILLION, or

<sup>654</sup> See page 233 of the [Department of Health and Human Services Fiscal Year 2010 Administration for Children and Families Justification of Estimates for Appropriations Committees](#)

<sup>655</sup> RCUSA predicates its recommended level of fiscal year 2010 appropriations for the Office of Refugee Resettlement on 80,000 refugee admissions. It would recommend higher amounts of appropriations for ORR under scenarios where the number of refugee admissions is higher than 80,000

28.2 percent, more than the Administration is requesting for fiscal year 2010.

With regard to funding for ORR, most of the difference between the advocacy community's recommendations and the Administration's request is the advocacy community's support for substantially higher funding for ORR's resettlement services. RCUSA recommends an appropriation of \$646 MILLION for those services in fiscal year 2010. That is \$101.6 MILLION, or 18.7 percent, more than the Administration has proposed.

The Advocacy Community's proposed increase in spending for these services is mostly attributable to two factors:

- **Greater Use of the Voluntary Agency Matching Grant Program.** The pro-refugee advocacy community proposes greater use of the Voluntary Agency Matching Grant program, which leverages private sector contributions with federal dollars to help refugees and others who are eligible for the program reach self sufficiency without reliance on welfare programs. Approximately 25,000 refugees, asylees, and parolees were served by this program in fiscal year 2007. The pro-refugee advocacy community recommends that 57,000 persons be served by the program in fiscal year 2010. This accounts for approximately \$75 MILLION of difference between the Administration's submission and the advocacy community's proposal.
- **Emergency Housing Assistance.** The pro-refugee advocacy community is seeking funding to assist refugees who have lost their jobs or are in danger of losing their jobs with their housing needs. The community is fearful that, in the current economic climate, a number of refugees will fall into a cycle of homelessness and poverty. This accounts for approximately \$30 MILLION of difference between the Administration's submission and the advocacy community's proposal.
- **Services for Special Immigrant Iraqis.** The pro-refugee advocacy community assumes the admission of a number of Iraqis and Afghan special immigrants who helped the United States government during the conflict in Iraq and Afghanistan, all of whom are eligible for ORR services. RCUSA estimates that the cost of providing services to these individuals will be approximately \$68 MILLION.

There are other areas of difference between the Administration and the pro-refugee advocacy community.

For instance--

1. **Trafficking and Torture Victim Assistance.** The pro-refugee advocacy community recommends more spending on trafficking victim assistance and torture

victim assistance compared to the Administration’s request for those programs. This would increase spending in each of those programs from the approximately \$20.6 MILLION requested by the Administration (and provided in fiscal year 2009) to \$35 MILLION in fiscal year 2010.

2. Unaccompanied Alien Children. The pro-refugee advocacy community and children’s advocates recommend a substantial increase in fiscal year 2010 spending for the care and placement of unaccompanied alien children compared to the Administration’s request.

The chart that follows compares the Administration’s fiscal year 2010 request for ORR with RCUSA’s recommendations:

**Administration vs. RCUSA  
 Fiscal Year 2010 Request for ORR**

ITEM	'09 Projected	'10 OMB	'10 RCUSA
Transitional & Medical	\$ 282.3	\$ 337.1	\$ 391.4
Social Services	\$154	\$ 154	\$ 187.9
Preventive Health	\$ 4.75	\$ 4.75	\$ 5.9
Targeted Assistance	\$ 48.6	\$ 48.6	\$ 60.8
<b>SUBTOTAL</b>	<b>\$ 494.3</b>	<b>\$ 544.4</b>	<b>\$ 646</b>
Trafficking Victims	\$ 9.8	\$ 9.8	\$ 15
Torture Victims	\$ 10.8	\$ 10.8	\$ 20
Unaccompaned Alien Children	\$ 123.1	\$ 175.6	\$ 268
<b>TOTAL ORR</b>	<b>\$ 633.4</b>	<b>\$ 740.6</b>	<b>\$ 949</b>

Millions of Dollars ☼

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

### ***This Week’s Markups***

At the time of this writing, four committee actions having implications for immigration- or refugee-related matters were anticipated to take place this week in the House or Senate. Three are taking place in the House and the one is occurring in the Senate:

- FY ’10 Appropriations for Immigration Services and Enforcement. Two actions relating to the regular

appropriations bill that funds immigration services and enforcement are scheduled for this week—

1. The House Appropriations Subcommittee on Homeland Security has scheduled a markup for this week of the fiscal year 2010 Homeland Security Appropriations Bill; and
  2. The full House Appropriations Committee has scheduled a markup for this week of the fiscal year 2010 Homeland Security Appropriations Bill.
- FY ’10 Appropriations for the Immigration Court System. The full House Committee on Appropriations has scheduled a markup of the fiscal year 2010 Commerce, Justice, Science Appropriations Bill; and
  - Material Support to Terrorists. The Senate Committee on the Judiciary has scheduled a markup for this week at which the issue of material support to terrorists is expected to be considered.

### House

#### **House Appropriations Panels to Markup FY ’10 Homeland Security Appropriations Bill:**

The House Appropriations Subcommittee on Homeland Security and the full House Committee on Appropriations have scheduled markups for this week of the fiscal year 2010 appropriations bill that funds immigration services, immigration enforcement, and border security operations. This week’s subcommittee markup is scheduled for 5:00 pm on Monday, June 8, 2009, in Room B-308 of the Rayburn House Office Building. The full committee markup is scheduled for 9:00 am on Friday, June 12, 2009, in Room 2359 of the Rayburn House Office Building. ☼

#### **House Appropriations Committee to Markup Measure Appropriating FY ’10 Funds for the Immigration Court System:**

The House Committee on Appropriations has scheduled a markup for this week of the measure that appropriates funds for the immigration court system. This week’s full House Appropriations Committee markup of the Fiscal Year 2010 Commerce, Justice, Science, and Related Agencies Appropriations Bill is scheduled for 11:00 am on Tuesday, June 9, 2009, in Room 2359 of the Rayburn House Office Building.<sup>656</sup> ☼

### Senate

#### **Senate Judiciary Could Address Material Support to Terrorist Issue in Markup of State Secrets Bill:**

<sup>656</sup> See Pages 603-604 of this week’s edition of the Weekly Legislative Update for a summary of the June 4, 2009, House Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies markup of its version of the fiscal year 2010 C-J-S Appropriations bill

The Senate Committee on the Judiciary has scheduled a markup for this week at which a new take on the material support to terrorist issue could be addressed. This week's Senate Judiciary Committee markup, which the Committee calls an executive business meeting, is expected to occur in connection with [S. 417](#), the State Secrets Protection Act. The executive business meeting is scheduled for 10:00 am on Thursday, June 11, 2009, in Room SD-226 of the Dirksen Senate Office Building.

**Background.** S. 417 was introduced in the Senate on February 11, 2009, by Senate Judiciary Committee Chairman Patrick J. Leahy (D-VT). At the time of this writing, it had eight cosponsors, all of whom were Democrats.<sup>657</sup>

As introduced, S. 417 would limit the president's ability to use the state secrets privilege as a method of dismissing lawsuits alleging government abuses. It also would—

- proscribe procedures that courts may use when considering cases in which the president invokes the state secrets privilege,
- grant courts of appeal jurisdiction of an appeal by any party from any interlocutory decision or order of a U.S. district court, and
- require the Attorney General within 30 days to report in writing to Congress on any case in which the United States asserts the state secrets privilege.

**Summary of Immigration- and Refugee-Related Provisions.** The introduced version of S. 417 does not contain any immigration- or refugee-related provisions.

**Potential Immigration- or Refugee-Related Amendments.** At the time of this writing, only one immigration- or refugee-related amendment to S. 417 was anticipated. Senate Minority Whip Jon Kyl (R-AZ) has indicated plans to submit an amendment to the measure dealing with material support to terrorists.

Under a [draft of the Kyl Material Support Amendment that was circulating last week](#),<sup>658</sup> anyone who “provides, or attempts or conspires to provide, material support or resources to the perpetrator of an act of international terrorism, or to a family member or other person associated with such perpetrator, with the intent to facilitate, reward, or encourage that act or other acts of international terrorism” would be subject to up to 25 years of imprisonment.

<sup>657</sup> *Senator Arlen Specter (D-PA), a cosponsor of the measure, was a Republican at the time that he joined as a cosponsor of S. 417. He since has changed his allegiance to the Democratic party*

<sup>658</sup> *This is an unofficial version of the Kyl Material Support Amendment that he intends to offer in the Senate Judiciary Committee to S. 417, the State Secrets Protection Act*

While the Kyl Material Support Amendment would not directly impact refugees, nonprofit organizations that work with refugees have expressed a concern that it could negatively impact their ability to work with refugees. ☀ ◇

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

At the time of this writing, three measures containing significant immigration- or refugee-related provisions could see floor action this week:

- **Supplemental Funding for Refugee Assistance and Unaccompanied Alien Children.** The full House and Senate could take up the conference report on the fiscal year 2009 war supplemental appropriations bill, which contains appropriations for Migration and Refugee Assistance and the Office of Refugee Resettlement;
- **Refugee Admissions Reforms.** The full House could take up the Foreign Relations Authorization Bill, Fiscal Years 2010 and 2011, which contains a number of refugee admissions reforms and provisions relating to Iraqi refugees and internally displaced Iraqis; and
- **Resolution Honoring the Border Patrol.** The House could take up a resolution honoring the Border Patrol.

## House

**House to Take Up Foreign Relations Authorization Bill Containing Numerous Reforms to the U.S. Refugee Program:** The full House of Representatives is scheduled this week to take up a measure containing significant reforms in the United States refugee admissions program. Should it take place, this week's House floor action would occur in connection with [H.R. 2410](#), the Foreign Relations Authorization Act, Fiscal Years 2010 and 2011.<sup>659</sup> House floor consideration of the measure is scheduled for Wednesday, June 10, 2009.

**Parliamentary Situation.** At the time of this writing, the parliamentary situation that will govern House floor consideration of H.R. 2410 was not yet known. The House Committee on Foreign Affairs, which reported the measure, is believed to be seeking a modified closed rule limiting the number and nature of amendments that can be offered to bill.

The House Committee on Rules has requested that all Members seeking to offer amendments to the bill on the House floor file those amendments with the Rules Committee by 12:00 Noon on Monday, June 8, 2009. It is planning to meet at 3:00 pm on Tuesday, June 9, 2009, to consider a rule providing for consideration of H.R. 2410.

<sup>659</sup> [H. Rep. 111-136, June 4, 2009](#)

**Summary of Immigration- and Refugee-Related Provisions.** As reported by the House Committee on Foreign Affairs, Sections 104, 233, 234, 235, and 1104 of H.R. 2410 contain numerous refugee-related provisions.<sup>660</sup> The following is a summary of those provisions:

- Authorization of Appropriations for MRA. Section 104(a) would authorize \$1.577 BILLION in fiscal year 2010 and such sums as may be necessary in fiscal year 2011 for the Department of State's Migration and Refugee Assistance (MRA) account;
- Refugee Resettlement in Israel. Section 104(b) would authorize \$25 MILLION of the MRA account's fiscal year 2010 funds for resettlement of refugees in Israel. It would authorize such sums as may be necessary for that purpose in fiscal year 2011.
- Reforming Refugee Processing. Section 233 contains a number of provisions to reform refugee processing.

More specifically –

1. Reform of the Worldwide Processing System.

- A. Embassy Referrals. Section 233(a)(1) would require the Secretary of State to expand training of U.S. embassy and consular personnel to ensure that appropriate United States embassies and consulates are equipped and enabled to refer to the United States refugee admissions program aliens in urgent need of resettlement.
- B. NGO Referrals. Section 233(a)(2) would require the Secretary of State to expand training of and communication with nongovernmental organizations (NGOs) that provide assistance to displaced and persecuted persons to enable such organizations to refer to the United States refugee admissions program aliens in urgent need of resettlement.

2. Reform of the Refugee Consultation Process.

- A. Refugee Admissions in the Absence of a Presidential Determination on Refugee Admissions. Section 233(b)(1) would permit the Admission of up to 25 percent of the previous year's refugee ceiling during the first quarter of a subsequent fiscal year if the year begins with no Presidential Determination on refugee admissions in place.

- B. Timing of Refugee Consultation Meetings. Section 233(b)(2) would require that the in-person discussions between the Secretary of State and the House Committee on the Judiciary on the coming year's refugee admissions program commence no later than June 1.

3. Family Reunification.

- A. Multiple Forms of Relief. Section 233(c)(1) would provide that applicants for admission as refugees shall be permitted to simultaneously pursue admission under any other visa categories for which such applicants may be eligible.
- B. Separated Children. Section 233(c)(2) would provide that a child under the age of 18 who has been separated from his or her birth or adoptive parents and is living in a country of asylum under the care of an alien who has been approved for admission to the United States as a refugee shall, if it is in the best interests of the child to be placed with the alien in the United States, be admitted to the United States as a refugee.

Children of Refugee Spouses. Section 233(c)(3) would provide that if a refugee or asylee spouse proves that such spouse is the biological or adoptive parent of a child, such child shall be eligible to accompany or follow to join such parent.

4. ERMA Account.

- A. Increase in the ERMA Cap. Section 233(d)(1) would double the cap on the amount of funds that may be parked in the Emergency Refugee and Migration Assistance (ERMA) account at any one time, raising the cap from \$100 MILLION to \$200 MILLION.
- B. Authority of the Secretary of State. Section 233(d)(2) would permit the Secretary of State to draw down funds from ERMA. Current law gives that authority to the President of the United States, only.

5. Authorization of Appropriations.

- A. Authorization of Such Sums. Section 233(e)(1) would authorize such sums as may be necessary to carry out Section 233 of the bill and the amendments made by Section 233 of the bill..
- B. Rule of Construction. Section 233(e)(2) is a rule of construction stating that nothing in Section 233 Nothing in this section may be

<sup>660</sup> See Pages 609-614 of this week's edition of the Weekly Legislative Update for a detailed excerpt from the committee report accompanying H.R. 2410 explaining and justifying the refugee-related provisions in the bill

construed to reduce funds or services for other refugee assistance or resettlement.

6. Effective Date. Section 233(f) would provide that the effective date of Section 233 and the amendments made by the Section shall take effect on the first day of the first fiscal year that begins after the date of enactment of the section.

- English Language, Cultural Orientation, and Work Orientation Training for Approved Refugee Applicants. Section 234(a) would require the Secretary to establish training programs to provide English as a second language, cultural orientation, and work orientation training for refugees who have been approved for admission to the U.S. before their departure for the U.S.

Section 234(b) would require that, in establishing the ESL, cultural awareness, and work orientation programs, the Secretary consult with or utilize both NGOs or international organizations with direct ties to the U.S. refugee admissions program and NGOs or international organizations with appropriate expertise in developing curriculum and teaching English as a second language.

Sec. 234(c) would require the Secretary to ensure that training programs occur within current processing times and do not unduly delay the departure for the United States of refugees who have been approved for admission to the United States.

Section 234(d) would require that the training programs referred to in subsection (a) be implemented in at least three regions within a year after the date of enactment of the Act and that it be implemented in five regions within two years after the date of enactment of the Act.

Section 234(e) would require that the Government Accountability Office (GAO) to conduct a study of the programs implemented pursuant to the section and report to Congress on its findings.

Finally, Section 234(f) would provide that nothing in the Section should be construed to require that a refugee participate in such a training program as a precondition for the admission to the United States of such refugee.

- Iraqi Refugee and Internally Displaced Persons. Section 235 contains a number of provisions relating to Iraqi refugees and Internally Displaced persons.

More specifically --

1. Protection, Resettlement, and Assistance of Iraqi Refugees and IDPs. Section 235 would require the President to develop and implement policies and strategies to address the protection, resettlement, and assistance needs of Iraqi refugees and internally

displaced persons (IDPs), foster long-term solutions for stabilizing the lives of such refugees and IDPs, monitor the development and implementation of assistance strategies to countries in the Middle East that are hosting refugees from Iraq, encourage the Government of Iraq to actively engage the problem of displaced persons and refugees and monitor its resolution of the problem, and ensure that budget requests to Congress are sufficient to meet an appropriate United States contribution to the needs of Iraqi refugees, IDPs within Iraq, and other refugees in Iraq.

2. Interagency Process. Section 235(b) would require the President to establish an interagency working group consisting of high ranking officials from DOS, DHS, and USAID to carry out Section 235.
3. Increase in Refugee Processing Capacity. Section 235(c) would encourage the Secretary of State to seek substantial increases in fiscal year 2010 the resources available to support the processing of refugee applicants in Iraq.
4. Humanitarian Assistance. Section 235(d) would encourage the United States to ensure that other countries make contributions to the United Nations High Commissioner on Refugees (UNHCR) and to other international organizations assisting Iraqi refugees and IDPs; the United States continues to make contributions that are sufficient to fund not less than 50 percent of the amount requested by the UNHCR and such other international organizations in each of fiscal years 2010 and 2011; and the Government of Iraq makes significant contributions to UNHCR and to other international organizations assisting Iraqi refugees and IDPs.
5. Statement of Policy Regarding Encouraging Voluntary Returns. Section 235(e) would establish that it is the policy of the United States to encourage Iraqi refugees to return to Iraq only when conditions permit safe, sustainable returns on a voluntary basis with the coordination of the UNHCR and the Government of Iraq.
6. International Cooperation. Section 235(f) would require the Secretary of State to work with the international community, including governments hosting refugees, international organizations, nongovernmental organizations, and donors, to develop a long-term, comprehensive international strategy for assistance and solutions for Iraqi refugees and IDPs.
7. Enhanced Accounting. Section 235(g) would require the Secretary of State, in coordination with the USAID, to develop performance measures to

fully assess and report progress in achieving United States goals and objectives for Iraqi refugees and IDPs, as well as to track and report funding apportioned, obligated, and expended for Iraqi refugee programs in Jordan, Syria, Lebanon, and the other host countries, to the extent practicable.

8. Report to Congress. Section 235(h) would require the President to report to Congress regularly on the implementation of Section 235.
9. Authorization of Appropriations. Section 235(i) would provide that of the amounts authorized to be appropriated for Migration and Refugee Assistance, sums as may be necessary shall be authorized to be appropriated to carry out Section 235.
- Stateless Refugees. Section 1104 contains a number of provisions relating to stateless persons. Among the provisions are those that seek to encourage UNHCR and UNICEF to work to ensure that children born to refugees and IDPs receive birth certificates; require the Secretary of State to increase resources available within the Bureau of Population, Refugees, and Migration (PRM) devoted to statelessness; and establishing an interagency working group on statelessness that would include in its membership the Assistant Secretary of State for PRM.

**Potential Refugee-Related Floor Amendments.** It was not possible at the time of this writing to predict the totality of the immigration- or refugee-related amendments that Members will seek to offer to H.R. 2410 while the measure is pending on the House floor. It, further, was not possible at the time of this writing to predict what amendments the House Committee on Rules will permit to be offered on the House floor. The House Committee on Rules will meet at 3:00 pm on Tuesday, June 9, 2009, to decide what amendments can be offered to H.R. 2410.

At the time of this writing, it appeared that at least five amendments impacting the bill's refugee provisions will be included in a "Manager's Amendment" that House Foreign Affairs Committee Chairman Howard L. Berman (D-CA) will seek to offer to the measure on the House floor and at least one other Member intends to offer a refugee-related amendment on the House floor:

- BERMAN MANAGER'S AMENDMENT.—House Foreign Affairs Committee Chairman Howard L. Berman (D-CA) will seek to offer a "Manager's Amendment" that will include at least five changes to the refugee-related provisions in H.R. 2410. Included in the "Manager's Amendment" are the following:
  1. ERMA DRAWDOWN AUTHORITY.--The Manager's Amendment reportedly will include a provision striking Section 233(d)(2) of H.R. 2410.

As reported by the House Committee on Foreign Affairs, Section 233(d)(2) of H.R. 2410 would permit the Secretary of State to draw down funds from the Emergency Refugee Migration Assistance (ERMA) account. Current law gives that authority to the President of the United States, only.

The Manager's Amendment reportedly will preserve Section 233(d)(1) of the reported version of H.R. 2410, which would increase the ERMA cap from \$100 MILLION to \$200 MILLION. However, it also would preserve the provision in current law that gives the President, alone, the authority to draw down ERMA funds.

2. INCLUSION OF CHILDREN IN ESL TRAINING.--The Manager's Amendment reportedly will include a provision modifying Section 234(a) of H.R. 2410.

As reported by the House Committee on Foreign Affairs, Section 234(a) of H.R. 2410 would require the Secretary of State to establish overseas refugee training programs to provide English as a second language, cultural orientation, and work orientation training for refugees who have been approved for admission to the United States before their departure for the United States.

The Manager's Amendment reportedly will clarify that the trainings referred to in Section 234(a) include training for child as well as adult refugees.

3. STRIKE REFERENCE TO PILOT PROGRAM.--The Manager's Amendment reportedly will include a provision modifying Section 234(b) of H.R. 2410.

As reported by the House Committee on Foreign Affairs, Section 234(b) of H.R. 2410 contains the phrase, "pilot program". This was an editing error. The Manager's Amendment reportedly will strike the word "pilot" from Section 234(b), making it clear that the ESL, Work Orientation, and Cultural Orientation programs referred to in Section 234(a) are permanent programs; not pilot programs.

4. INTERAGENCY WORKING GROUP ON IRAQI REFUGEES.--The Manager's Amendment reportedly will include a provision modifying Section 235(b)(1) of H.R. 2410.

As reported by the House Committee on Foreign Affairs, Section 235(b)(1) of H.R. 2410 would require the Administration to establish an interagency working group to implement policies and strategies to address the protection, resettlement assistance, and assistance needs of Iraqi refugees and Iraqi internally displaced persons.

The Manager's Amendment will reportedly strike the mandate in Section 235(b)(1) that a working group be established in light of the fact that the Administration already has a group working under the auspices of the National Security Council. Instead, it is believed that the Manager's Amendment will leave in place a provision that encourages the existence of such a working group.

5. **DOD PARTICIPATION IN WORKING GROUP.**-- The Manager's Amendment reportedly will include a provision modifying Section 235(b)(2) of H.R. 2410.

As reported by the House Committee on Foreign Affairs, Section 235(b)(2) specifies a number of agencies to be part of an interagency working group on Iraqi refugees and displaced persons. The list includes the National Security Council, Department of State, Department of Homeland Security, and Agency for International Development.

The Manager's Amendment reportedly will add the Department of Defense to the list of agencies participating in the interagency working group.

- **MCGOVERN IRAQI REFUGEE BENEFITS AMENDMENT.**—Representative Jim McGovern (D-MA) will seek to offer an amendment to H.R. 2410 that would amend Sections 1244(g) of [P.L. 110-181](#) and Section 602(b)(8) of [P.L. 111-8](#) to allow special immigrants from Iraq and Afghanistan to be eligible for five years of public benefits rather than for eight months of eligibility, as is the case under current law.

**Views of the Refugee Advocacy Community.** The pro-refugee advocacy community has expressed strong support for Sections 104, 233, 234, and 235 of H.R. 2410. However, the community has indicated the need for a higher authorization level for the MRA account and for the inclusion of additional reforms to the refugee admissions process.

More specifically—

- **Authorization Amount.** The pro-refugee advocacy community has estimated the need for an authorization level of about \$1.9 BILLION for the MRA account if the United States admits 80,000 refugees in fiscal year 2010. It has estimated that should the Administration admit 125,000 refugees in fiscal year 2010, which is the number it advocates for, the level of appropriations needed for the MRA account would be \$2.05 BILLION.
- **Additional Reforms to the Refugee Program.** The pro-refugee advocacy community supports including several additional reforms to the refugee admissions and resettlement process.

1. **Reforms to the Reception and Placement Grant Program.** The pro-refugee advocacy community supports including a provision in the bill that would make reforms to the Reception and Placement (R&P) grant, a grant program administered by the Bureau of Population, Refugees and Migration of the Department of State's of Population, Refugees, and Migration Bureau (PRM). The program provides grants to resettlement agencies for the reception of refugees arriving in the United States and for their initial resettlement needs. The grant currently is set at \$900 per refugee. It is disbursed upon the refugee's arrival in the United States.

The pro-refugee advocacy community is seeking a provision in the bill that would require the Department of State to increase the R&P grant to at least \$1,800, reform the way it is disbursed, and mandate that it be adjust annually to keep pace with inflation and the cost of living. Such a provision would improve the functionality and effectiveness of the entire U.S. refugee program.

2. **Reforms to Grant Programs Administered by the Department of Health and Human Services.** Reforms that the pro-refugee advocacy community wants made to programs administered by the Department of Health and Human Services Office of Refugee Resettlement (ORR) constitute a far heavier lift for the community. That is because while programs administered by PRM are arguably relevant to the House Committee on Foreign Affairs' jurisdiction, programs administered by ORR clearly are not under the Committee's purview.

Among the additional programs that the pro-refugee advocacy community would like to see addressed in H.R. 2410 are the Refugee Matching Grant program, the utilization of which it would like to see increased. The community also would like Congress to establish several new grant programs, including programs that would implement case management services for refugees, help refugees in their integration into American life, and an emergency fund to help refugees and communities cope with unforeseen refugee resettlement needs and crises.

**CBO Analysis.** The Congressional Budget Office (CBO) has made the following estimates with regard to the refugee-related provisions in H.R. 2410, as reported to the House:

- **ERMA.** CBO has estimated that Sec. 233 of H.R. 2410, which would increase the ERMA cap from \$100 MILLION to \$200 MILLION, would cost \$410 MILLION from fiscal years 2010 through 2014.<sup>661</sup>

<sup>661</sup> [H. Rep. 111-136](#), June 4, 2009, Page 102

- ESL, Cultural and Work Orientation. CBO has estimated that Sec. 234 of H.R. 2410, which would require the Secretary of State to implement ESL, cultural orientation, and work orientation training for refugees who have been approved for admission to the U.S. before their departure for the U.S., would cost \$3 MILLION over the fiscal year 2010-2014 period.<sup>661</sup>

**Views of the Administration.** The Administration may release a Statement of Administration Policy (SAP) prior to House consideration of H.R. 2410. That SAP is expected to be critical of close to a dozen provisions in the version of the bill that was reported by the House Committee on Foreign Affairs. At least three of those criticisms are expected to be leveled at the measure's refugee-related provisions:

- ERMA Draw-Down Authority. Section 233(d)(2), which would permit the Secretary of State, rather than the President, to draw down funds.

The White House is expected to criticize this provision. It is expected that the Committee will propose striking it in its Manager's Amendment.

- ESL, Cultural Orientation, and Work Orientation. Section 234, which would require the Department of State to establish training programs to provide English as a second language, cultural orientation, and work orientation training for refugees who have been approved for admission before their departure for the U.S.

The White House is expected to criticize this provision as costly, duplicative of efforts that already are being carried out domestically by the Office of Refugee Resettlement, and ineffective..

- Iraqi Refugee Interagency Working Group. Section 235, which would establish an interagency working group on Iraqi refugees and impose a number of other requirements on the Administration with respect to Iraqi refugees and internally displaced persons.

The White House is expected to criticize this provision as one that intrudes on executive branch prerogatives. It is expected that Committee will propose modifying it in the Manager's Amendment to make some of the bill's mandates discretionary.

At the time of this writing, in the absence of a SAP, the only views on H.R. 2410 that the Administration has expressed were expressed by the Department of State. In those views, the Department expressed support for all of the provisions in sections 233, 234, and 235 with the following exceptions:

- Early Consultation Meeting. The Department of State has indicated its strong opposition to Section 233(b)(2),

which would require that the annual consultation meeting take place by June 1 of each year.

The Department contends that June 1 is unrealistic, given the demands on the time of the Secretary and the House and Senate Judiciary committees. It has suggested that the phrase, "Whenever possible" be added to the bill.

- ESL, Work and Cultural Orientation Training. The Department of State has indicated its strong opposition to Section 234, which would require the Department to establish English as a Second Language, work orientation, and cultural orientation programs for approved refugees prior to their departure for the U.S.

The Department bases its opposition on its experience with overseas training programs in Southeast Asia. It says that those programs were found to be costly and ineffective in developing language or other skills and had little impact on refugees' need for these same services once resettled in the U.S. It has suggested that funds would be better spent on these programs in the U.S. where they can be tailored and are directly relevant to what individual refugee needs are. Moreover, it asserts that interested refugees often study English informally or through non-USG funded programs while still overseas.

- Iraqi Refugees and Internally Displaced Persons. The Department of State has indicated its strong opposition to Section 235, which would establish a number of requirements relative to the Department's treatment of Iraqi refugees and internally displaced persons.

The Department has expressed broad concerns about nearly every aspect of Section 235. It has expressed particular concern about Section 235(d), which it interprets as requiring the U.S. to fund not less than 50 percent of UNHCR and other international organizations' appeals. It also expressed particular concern about 235(c), which it says inappropriately singles out one nationality for a special resettlement process. It also raised Constitutional concerns about language requiring it to negotiate or otherwise engage with foreign governments or international organizations.

**Outlook.** At the time of this writing, the outlook for House passage of H.R. 2410 was not known. ☼

**House to Take Up Resolution Commending the U.S. Border Patrol:** The House this week is expected to take up a resolution honoring and congratulating the U.S. Border Patrol on its 85<sup>th</sup> anniversary. This week's House action is expected to occur in connection with [H. Res. 498](#), which was introduced in the U.S. House of Representatives by Representative Harry Teague (D-NM). The House is expected to take up the measure on Tuesday, June 9, 2009.

**Parliamentary Situation.** The House is expected to take up H. Res. 498 under a procedure known as “suspension of the rules.” Under this procedure, debate on a measure is limited to 40 minutes, equally divided between Democrats and Republicans, the measure is not subject to amendment, and it must receive the affirmative votes of two-thirds of those Members who are present and voting.

**Outlook.** At the time of this writing, it did not appear as though H. Res. 498 would generate any controversy. ☼

### Bicameral

**House and Senate Could Complete Action on FY '09 War Supplemental Measure:** The House and Senate could take action as early as this week on a compromise version of the fiscal year 2009 war supplemental appropriations bill. The House and Senate have passed differing versions of the measure, both of which contain provisions that would provide supplemental fiscal year 2009 supplemental funds for refugee assistance and unaccompanied alien children. Conferees are expected to meet this week to resolve differences between the [House-passed](#) and [Senate-passed](#) versions of H.R. 2346, the Supplemental Appropriations Act, 2009.<sup>662</sup> ☼ ◇

## *This Week's Conference Activity*

At the time of this writing, one measure that contains significant immigration- or refugee-related provisions is pending in a House-Senate conference committee:

- [H.R. 2346, Fiscal Year 2009 War Supplemental.](#) The House and Senate have passed differing versions of H.R. 2346, the Supplemental Appropriations Act, 2009.

**Conferees Must Resolve Differing Versions of FY '09 War Supplemental Bill:** While the precise date and time of the meeting had not yet been set at the time of this writing, House and Senate conferees are expected to meet this week to resolve differences between the House- and Senate-passed versions of the fiscal year 2009 war supplemental appropriations bill. Both versions contain differing amounts of spending for refugee assistance, assistance to internally displaced persons, and the care and placement of unaccompanied alien children. When the conferees deliberate, they will do so in connection with the [House-passed](#) and [Senate-passed](#) versions of H.R. 2346, the Supplemental Appropriations Act, 2009.

**Summary of Refugee-Related Provisions.** As passed by the House and Senate, the two versions of the measure contain the following immigration- and refugee-related provisions:

- [Overseas Refugee Assistance and Refugee Resettlement.](#) The Senate-passed version of the fiscal year 2009 war supplemental appropriations bill would appropriate \$345 MILLION for the Department of State's Migration and Refugee Assistance (MRA) account.

The House-passed measure would appropriate \$343 MILLION for the MRA account.

The Administration requested \$293 MILLION for the MRA account in its supplemental request.

The Senate committee report directs that supplemental MRA funds be used “for the assistance and resettlement needs of refugees and internally displaced persons [IDPs].” The Senate report, further, directs that “[o]f this amount, the Committee recommends \$25,000,000 for returning refugees and IDPs in Afghanistan, \$25,000,000 for such needs in Africa, \$5,000,000 for refugees from Burma, \$15,000,000 for IDPs in Sri Lanka, and \$5,000,000 for IDPs in Colombia.”

The House committee report indicates that the funds provided “are necessary to respond to urgent humanitarian requirements to assist refugees and internally displaced persons in Iraq, Jordan, Syria, the West Bank and Gaza, Lebanon, Afghanistan, Pakistan, Africa, and Burmese refugees Asia.” The report went on to state that funds “also will help respond to urgent food pipeline breaks in refugee feeding operations, particularly in Africa.” Unlike the Senate committee report, the House committee report did not specify that any of the funds be used for refugee resettlement.

The House report expressed concerns about the United Nations Relief and Works Agency (UNRWA) and whether it was “taking all possible steps to prevent its funds from supporting terrorists and other extremists, particularly in the West Bank and Gaza, and is operating in an open and transparent manner.” The bill contains two provisions that seek to ensure that UNRWA makes progress in efforts to prevent that from occurring. The first of these, Section 21004(a), would limit to \$119 MILLION the amount of funding provided in the bill that can be made available to UNRWA for activities in the West Bank and Gaza. Section 21004(b) would require that the Secretary of State prepare and submit to the Committees on Appropriations an accountability report on UNRWA. There were no comparable provisions in the Senate committee report.

According to materials prepared by the Administration at the time it submitted its supplemental appropriations request to Congress, the funds it requested “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

<sup>662</sup> See Pages 588-590 of this week's edition of the *Weekly Legislative Update* for an analysis of the differing refugee-related provisions in the House- and Senate-passed versions of H.R. 2346

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.”<sup>663</sup>

- Funding for the Office of Refugee Resettlement. The Senate-passed version of the fiscal year 2009 war supplemental appropriations bill would appropriate \$82 MILLION in Refugee and Entrant Assistance for the Office of Refugee Resettlement (ORR). The Committee report accompanying the measure directs that the funds be “used for the care and custody of unaccompanied alien children. These funds will allow the Office of Refugee Resettlement [ORR] to implement the provisions of Public Law 110–457, the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008.” The report noted that “[t]he President requested these funds in the Department of Defense along with language providing transfer authority to other Federal agencies.”<sup>664</sup>

The House-passed version of the measure does not contain explicit funding to the ORR. However, it contains a proposal requested by the Administration that \$350 MILLION be appropriated to the Department of Defense (DOD) “for counternarcotics and other activities including assistance to other Federal agencies, on the United States’ border with Mexico.” It would permit DOD “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.” Appropriators understand that these funds would be transferred to the Office of Refugee Resettlement for the care and placement of unaccompanied alien children.

The House-passed provision was contained in the Administration’s FY ’09 war supplemental request.<sup>665</sup>

- ESF Funds for Refugees and Internally Displaced Persons. The Senate-passed version of the supplemental appropriations bill would appropriate \$2.828 BILLION for Economic Support Fund (ESF) funding. This would be \$76.5 MILLION below the Administration’s request and \$247 MILLION below the amount contained in the House-passed version of H.R. 2346.

The Senate committee report contains a number of directives relating to the use of ESF funds for refugees and IDPs. Among these are the following:

1. Jordan. The Senate committee report accompanying recommends \$150 MILLION in Economic Support Fund (ESF) funding for Jordan. The report directs that the funds be used “to help mitigate the impact of the global economic crisis, including for health, education, water and sanitation, and other assistance for Iraqi and other refugees in Jordan, and are in addition to funds otherwise made available for assistance for Jordan in other acts.”<sup>666</sup>

There was no comparable language in the House committee report.

2. Columbia. S. 1054 requires that \$3.5 MILLION of ESF funds that are intended for Columbia be transferred to the MRA account and may be made available “only for assistance to nongovernmental organizations that provide emergency relief aid to Colombian refugees in neighboring countries.”<sup>667</sup>

There was no comparable language in the House committee report.

3. Pakistan. The Senate committee report provides \$50 MILLION “for humanitarian assistance for internally displaced persons whose numbers have increased sharply in recent months due to the Taliban’s advances.”<sup>668</sup>

The House report would set aside “\$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.”<sup>669</sup>

The House committee report contains language that is not included in the Senate committee report directing the Administration to use ESF funds for other refugee or IDP populations. These mandates include directives to –

1. Burmese Refugees. spend \$3 MILLION for Burmese refugees, migrants in Thailand, and internally displaced persons;

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<sup>666</sup> [S. Rept. 111-20](#), Page 87

<sup>667</sup> [S. Rept. 111-20](#), Page 126

<sup>668</sup> [S. Rept. 111-20](#), Page 87

<sup>669</sup> [Page 84 of the Supplemental appropriations request](#)

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<sup>663</sup> [Page 81 of the Supplemental appropriations request](#)

<sup>664</sup> [S. Rept. 111-20](#), Page 69

<sup>665</sup> [Page 17 of the Supplemental appropriations request](#)

2. Iraqis. use ESF funds to assist Iraqi Christians, religious minorities in Iraq, and other displaced and refugee populations in Iraq;
  3. West Bank and Gaza. use ESF funds to assist and refugees on the West Bank and Gaza; and
  4. Georgia. provide funds for IDPs in Georgia.
- International Disaster Assistance. The Senate-passed version of the supplemental appropriations bill would appropriate \$245 MILLION for International Disaster Assistance (IDA). The committee report accompanying the measure would direct that the funds be used “to meet basic needs of internally displaced persons in Africa, the Middle East, and South and Central Asia, and to respond to other humanitarian crises.”<sup>670</sup>

The House-passed measure would appropriate \$200 MILLION for IDA. The committee report indicates that the funds “are needed to respond to increased insecurity, armed conflict, and weather complications in Africa, including Somalia, Ethiopia, the Democratic Republic of the Congo, and Zimbabwe.” The report went on to state that funds “also will help address growing needs in the Middle East, and Central and South Asia, particularly Pakistan, Tajikistan, and Kyrgyzstan.”

According to materials prepared by the Administration at the time that it submitted its supplemental appropriations request to Congress, a portion of the funds it requested for IDA would be used to “help to address increases in internally displaced persons in Pakistan.”<sup>671</sup>

The following compares funding for refugees or IDPs in the President’s request with the House- and Senate-passed bills:

**Refugee-Related Funding in FY ’09 War Supplemental Appropriations Bill**

Item	Obama	House	Senate
Migration and Refugee Assistance	\$ 293	\$ 343 <sup>672</sup>	\$ 345 <sup>673</sup>

<sup>670</sup> [S. Rept. 111-20](#), Page 82

<sup>671</sup> Page 91 of the Supplemental appropriations request

<sup>672</sup> Page 62 of [H. Rept. 111-105](#), the report accompanying the House version of the supplemental appropriations bill, provides that the MRA funds in the bill “are necessary to respond to urgent humanitarian requirements to assist refugees and internally displaced persons in Iraq, Jordan, Syria, the West Bank and Gaza, Lebanon, Afghanistan, Pakistan, Africa and Burmese refugees in Asia. Funds also will help respond to urgent food pipeline breaks in refugee feeding operations, particularly in Africa. The House report makes no mention of refugees’ resettlement needs.

Item	Obama	House	Senate
ESF for Pakistani IDPs	\$ 8	\$ 8	\$ 50
ESF for Jordan IDPs	-----	-----	\$ 150
ESF for Columbian IDPs	-----	-----	\$ 3.5
ESF for Burmese in Thailand	-----	\$ 3	-----
ESF for Georgian IDPs	\$ 68.5	-----	-----
Internat’l Dvlpmnt Assistance	\$ 200	\$ 200	\$ 245
Office of Refugee Resettlement	\$ 100 <sup>674</sup>	\$ 100 <sup>675</sup>	\$ 82 <sup>676</sup>

Millions of Dollars

***This Week’s Executive Activity***

No items this week. ◇

***Last Week’s Legislative Activity***

**Last Week’s Hearings**

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

<sup>673</sup> Page 91 of [S. Rept. 111-20](#), the report accompanying the Senate supplemental appropriations bill, provides that the MRA funds in the bill be used “for the assistance and resettlement needs of refugees and internally displaced persons (IDPs).”

<sup>674</sup> The Obama request for the Office of Refugee Resettlement (ORR) is hidden on Page 17 of [the Administration’s fiscal year 2009 war supplemental request](#). On that page, it requested that \$350 MILLION be appropriated to the Department of Defense “for counternarcotics and other activities including assistance to other Federal agencies, on the United States’ border with Mexico.” However, it also requested that DOD be permitted “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.”

<sup>675</sup> ORR funding in the [House-passed version of H.R. 2346](#), hidden on pages 5–6 of the bill, is identical to the Administration’s request.

<sup>676</sup> Page 67 of [S. Rept. 111-20](#) explicitly provides that “the Committee intends that these funds be used for the care and custody of unaccompanied alien children. These funds will allow the Office of Refugee Resettlement [ORR] to implement the provisions of Public Law 110–457, the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008. The President requested these funds in the Department of Defense along with language providing transfer authority to other Federal agencies.”

of the hearings took place in the Senate and one occurred in the House:

- FY '10 Appropriations for Refugee Resettlement. The House Appropriations Subcommittee on Labor, Health and Human Services, Education held a hearing last week on the Administration's Fiscal Year 2010 budget request for the Department of Health and Human Services;
- Permanent Gay Partners and Immigration Law. The Senate Committee on the Judiciary held a hearing last week on legislation to treat permit permanent gay partners the same as spouses under U.S. immigration law; and
- Nomination of Eric P. Schwartz to Head the State Department's Bureau of Population, Refugees, and Migration. The Senate Committee on Foreign Relations held a confirmation hearing last week on the nomination of Eric P. Schwartz to be Assistant Secretary of State for Population, Refugees, and Migration.

**House Appropriations Panel Holds Hearing on FY Obama '10 Appropriations Request for the Department of Health and Human Services:** The House Appropriations Subcommittee on Labor, Health and Human Services, Education, and Related Agencies held a hearing last week on the Administration's fiscal year 2010 budget request for the Department of Health and Human Services. Last week's hearing was held on Tuesday, June 2, 2009.<sup>677</sup>

**Witnesses.** The sole witness at last week's hearing was Secretary of Health and Human Services Kathleen Sebelius.

**Opening Statements.** The following summarizes the immigration and refugee-related references made by witnesses in their prepared testimony for last week's hearing:

- Chairman Obey. House Appropriations Committee Chairman David R. Obey (D-WI) did not make any references to immigration or refugee matters in his opening statement at last week's hearing.
- Ranking Republican Tiahrt. House Appropriations Subcommittee on Labor, Health and Human Services, Education, and Related Agencies Ranking Republican Todd Tiahrt (R-KS) did not make any references to

immigration or refugee matters in his opening statement at last week's hearing.

**Prepared Testimony.** Secretary Sebelius did not make any references to refugees during her prepared testimony for last week's hearing.

**Q&A Session.** No questions about refugees were asked of the Secretary during last week's hearing. ☼

**Senate Judiciary Committee Holds Hearing on Gay Partners and U.S. Immigration Law:** The Senate Committee on the Judiciary held a hearing last week on legislation to treat permit permanent gay partners the same as spouses under U.S. immigration law. Last week's hearing was held in connection with S. 424, the Uniting American Families Act (UAFA, which was introduced by Senate Judiciary Committee Chairman Patrick Leahy (D-VT)). The hearing took place on Wednesday, June 3, 2009.<sup>678</sup>

**Witnesses.** The following is the list of witnesses who testified at last week's hearing:

- Shirley Tan, Resident, Pacifica, California;
- Gordon Stewart, Resident, London, England;
- Julian Bond, Chairman, National Board of Directors, NAACP;
- Christopher Nugent, Cochairman, Committee on the Rights of Immigrants, American Bar Association;
- Roy Beck, President, NumbersUSA Education and Research Foundation; and
- Jessica M. Vaughan, Director of Policy Studies, Center for Immigration Studies, Franklin, Massachusetts.

**Opening Statements.** The following summarizes the immigration and refugee-related references made by witnesses in their prepared testimony for last week's hearing:

- Chairman Leahy. In his opening statement, Senate Judiciary Committee Chairman Patrick J. Leahy (D-VT) said that "[f]or too long, gay and lesbian American citizens whose partners are foreign nationals have been denied the ability to sponsor their loved ones for lawful permanent residency. Under current immigration law, many citizens have been forced to choose between their country and their loved ones. No American should face such a choice. The preservation of family unity is at the core of our immigration legal system. This American value must apply to all families." He went on to say that

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<sup>677</sup> [Click Here](#) to see video of the June 2, 2009, House Appropriations Subcommittee on Labor, Health and Human Services, Education, and Related Agencies hearing at which Secretary of Health and Human Services Secretary Kathleen Sebelius testified on the Administration's fiscal year 2010 budget proposal for the Department of Health and Human Services

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<sup>678</sup> [Click Here](#) to see video of the June 3, 2009, Senate Judiciary Committee hearing on S. 424, the Uniting American Families Act

“[d]uring the past several years, Americans have increasingly come to reject the notion that their fellow Americans who are gay or lesbian should not have loving relationships. Federal policy should encourage rather than restrict our opportunity as Americans to sustain the relationships that fulfill our lives.”<sup>679</sup>

Chairman Leahy touted his bill, the Uniting American Families Act, which he said “will allow the committed partners of Americans the opportunity to immigrate.” He said, “[w]hat we consider today with this legislation is an issue of fair treatment under Federal law. It is time for the United States to join 19 other nations, many of which are our closest allies, in providing our gay and lesbian citizens this benefit under our immigration laws.”

Chairman Leahy declared that “[t]here is no place for discrimination in our Federal law.” He noted the support of several “traditional civil rights leaders” for his legislation, such as Congressman John Lewis (D-GA) and Julian Bond, the chairman of the National Association for the Advancement of Colored People (NAACP).

Chairman Leahy dismissed concerns that some have expressed about increased fraud that they believe would result from enactment of S. 424, saying that he is “confident that the U.S. Citizenship and Immigration Services will have no more difficulty discovering fraudulent arrangements between same-sex couples than heterosexual couples.”

Chairman Leahy said that “[t]he benefits this legislation seeks to provide are not contingent upon the definition of marriage, which I believe is an issue best left to the States.” He noted that “[j]ust last month, President Obama and Secretary of State Clinton announced a new policy to provide domestic benefits to the men and women in our foreign service who are in same sex domestic partnerships.” He said that in doing so, they “acknowledged what many American corporations already recognize: The happiness and stability of their employees in their personal lives is essential to success and productivity in their professional lives.” He applauded the decision.

Chairman Leahy told the Committee that “Congress and the administration hope to return to a discussion of comprehensive immigration reform in the near future.” He said that Senator Schumer, who chairs our Immigration Subcommittee, has begun a series of hearing to prepare us for taking action and that, in his view, “no effort we make can be considered

comprehensive without providing gay and lesbian Americans with immigration benefits equal to those enjoyed by heterosexual citizens. I hope today's hearing will help.”

- Ranking Republican Sessions. In his opening statement, Senate Judiciary Committee Ranking Republican Jeff Sessions (R-AL) said that he had taken a look at S. 424 and determined that he could not support it. He said the measure amounts to “a redefinition of marriage, contrary to what the Congress has explicitly stated.” He said, as well, that “establishing a lawful system of immigration for this country that respects and affirms our great heritage of the rule of law is important and we must do it in a way that actually works. I believe this bill would make that more difficult.”

Ranking Member Sessions went on to say that “[i]t seems that we would be creating a special preference and benefit for a category of immigrants based on a relationship that is not recognized by federal law and overwhelmingly by most states. By creating a new and a legally tenuous definition of ‘permanent partnership,’ we would be expanding the avenue for fraud and abuse to an unlimited number of people who may not even fit into the idea that the drafters have in mind with this legislation.”

Ranking Member Sessions said that, “for the first time ever, this legislation would create a federal recognition of same sex marriage which would reverse current law.” He pointed to the Defense of Marriage Act, which was enacted into law in 1996, which he said included a provision that expressly defined the word marriage as only a legal union between one man and one woman as a husband and wife. He said that 29 states have now enacted constitutional amendments that bar the formal recognition of gay marriage and that others have passed statutory bars.

Ranking Member Sessions said in his statement that there is a real potential for fraud with S. 424. He recounted instances where he prosecuted marriage fraud cases when he was a prosecutor. He said that already, marriage fraud is difficult to prosecute. The permanent partner standard in S. 424, he said, which would not be a recognized standard, could provide an additional avenue for abuse of the marriage preference. He said that he doesn’t think Congress will be inclined to pass the legislation but that he looked forward to the hearing.

- Chairman Schumer. Senate Judiciary Subcommittee on Immigration, Refugees, and Border Security Chairman Charles Schumer (D-NY), said that at a recent hearing in his subcommittee, pastor Joel Hunter, who he described as a knowledgeable and influential conservative religious leader “reminded us that ‘out broken immigration system produces both broken and crooked people and tempts

<sup>679</sup> [Click Here](#) to see the full text of Senate Judiciary Committee Chairman Patrick J. Leahy’s prepared opening statement at the June 3, 2009, Senate Judiciary Committee hearing on the Uniting American Families Act

many to predatory practices.” He urged his colleagues to read Pastor Hunter’s testimony. Chairman Schumer went on to tell the Committee that “Pastor Hunter counseled us that in order to fix this broken system we must adopt an immigration system that deems each person as valuable, prioritizes the family, and provides compassion for those most in need.” Senator Schumer said that is why he supports UAFA.

In response to those who contend that UAFA would encourage fraud, Chairman Schumer said that immigration officials tell him that “what truly engenders fraud is the current broken system which, lamentably, places bi-national same sex couples in the dilemma of either being torn apart from their loved ones or breaking the law.” In response to those who oppose UAFA for moral reasons, Chairman Schumer said, “we should value the sanctity of preserving the family structure in whatever form it may take and in providing compassion for all Americans who yearn to live with their family.”

Chairman Schumer said UAFA incorporates the same principles that he believes should govern comprehensive immigration reform. He said that “[i]t’s tough on fraud and lawbreakers, it encourages people to abide by the law, requires people to prove they are really in a permanent partnership prior to receiving an immigration benefit, and -- best of all -- it fixes an aspect of our broken immigration system in order to discourage illegal immigration and encourage legal immigration.” Chairman Schumer went on to say that “the time has come for us to help people like Ms. Tam and to make the promise of America real for this sympathetic segment of the American population who is adversely and irrationally affected by our current immigration law.”

Chairman Schumer appealed to Senator Sessions, pleading that he not “let the perfect become the enemy of the good.” He said that no law is going to be perfect. But UAFA “will encourage people to abide by the law rather than break it”. He said that “love is one of the most strong forces that God has created and that people are going to figure out ways to keep that love intact.” He said that “sometimes that leads them to break the law, which is wrong. Why not have the law understand that and make a process that is more law abiding rather than less.”

- Senator Specter. Senator Arlen Specter (D-PA) said in his opening statement that the trend nationally has been to recognize relationships between people of the same sex. He said that “there have been five states now which have given full marriage equality to members of the same sex, other states have sanctioned civil unions, still other states have sanctioned domestic partnerships, some states have recognized same sex marriage performed in other states and some states have a limited relationship recognition law.” He said that “where there has been

such a significant trend to giving at least recognition to civil unions, I believe it is entirely consistent to accord people that opportunity on immigration.” He said he looked at it as a civil rights issue. He said that UAFA goes in the right direction and he supports it.

Senator Specter said that the issue of same sex marriage has changed very materially since enactment of the Defense of Marriage Act. He said that he agreed with former President Clinton, who has said that his views on the subject are evolving. He said he hoped that UAFA “will not prove to be so controversial that it derails our efforts to have comprehensive immigration reform.”

Senator Specter recounted the history over the last several years of Congress’ consideration of comprehensive immigration reform. He implied that the intransigence of the House on enforcement only approaches doomed immigration reform in 2006 and that the issue of “citizenship” doomed it in 2007. He touted his idea of postponing the ultimate question of eventual permanent residency for those who are legalized.

**Prepared Testimony.** The following summarizes the immigration and refugee-related references made by the witnesses at last week’s hearing:

Panel I

- Representative Jerrold Nadler (D-NY). In his testimony, Representative Jerrold Nadler (D-NY), who introduced the House version of S. 424, said that he has always found that the worse kinds of injustice are those in which the law harms individuals for no purpose at all. He said that the current law with regard to the treatment of gay partners is gratuitously cruel and unjust and that UAFA would correct that.

Representative Nadler said that just because they are gay or lesbian, gays and lesbians cannot sponsor their partners under immigration law. He said “this runs directly counter to the goal of family unity and to any consideration of plain humanity.”

Representative Nadler told the Committee that S. 424 would give same sex couples the same immigration benefits as opposite sex couples. He said that, contrary to Ranking Republican Sessions’ assertions, this issue is not properly part of the debate over same sex couples marriage. He said that his bill simply says that for immigration purposes, we are not going to single out gay couples and tell them that they cannot sponsor their partner, they cannot marry, and, therefore, they must remain separate and apart, perhaps a continent apart.

Representative Nadler said that his bill would help about 36,000 people. He said that same sex couples would have to prove the bona fide nature of their relationships just as same sex couples do, or face the same harsh

penalties for fraud. He said the odds of fraud under his bill are the same as under current law.

Representative Nadler said repeatedly that his bill has nothing to do with same sex marriage. He said that our unequal immigration laws presently wreak havoc on the lives of thousands of bi-national families and couples across the country. He said it doesn't have to be that way and that in a just country it would not be that way. He said that UAFA should be made part of comprehensive immigration reform.

- Representative Jackie Speier (D-CA). In her testimony, Representative Jackie Speier (D-CA), who has introduced a private bill on behalf of Shirley Tan, one of the witnesses at last week's hearing, told the Committee that UAFA "seeks to fix a fundamental injustice that rips children from the arms of their parents and sadly suggests that our Constitutional guarantee of equal protection under the law is often quite unequal.

Representative Speier said that she had only recently met Ms. Tan and her family. She said they are not a political family but an ordinary all-American family; not activists. She portrayed the Tan family as a victim of an anomaly in the law.

#### Panel II

- Shirley Tan. In her prepared testimony, Shirley Tan, who described herself as a 43-year-old mother and housewife from Pacifica, California, said that she met her partner of 23 years when she came to the United States from the Philippines as a tourist. She said that she returned the Philippines as her visa was expiring, but that she came to the United States again after learning that a man who had killed her mother and sister and injured her was released from a prison in the Philippines. She said that she had nowhere else to go and so she fled to the United States to stay with the person who became her partner.<sup>680</sup>

Ms. Tan said that she filed for asylum in 1995, was denied, and tried to keep track of the status of her case while it was on appeal.

Ms. Tan recounted how in January she was arrested by ICE agents. She said she was eventually released but that she had to wear an ankle monitoring bracelet.

I have a partner who is a U.S. citizen, and two beautiful children who are also U.S. citizens, but not one of them can petition for me to remain in the United States with them. Because my partner is not a man, she cannot do anything to help me. Nor can my children, who keep

asking why this happened to us and what will ultimately happen to our family.

She pleaded for the passage of UAFA, which she said "will not only benefit me, but the thousands of people who are also in the same situation as I am. And so I respectfully submit to the committee today that changing the immigration laws of this country to include permanent partners will serve in the long run to keep families like ours together. Americans will be able to live at home with their partners rather than living in fear or in exile."

- Gordon Stewart. In his prepared testimony, Gordon Stewart told the Committee that he is an American living abroad because United States immigration laws "have forced me to leave the United States in order to be with my partner, Renato, the person I love."<sup>681</sup>

He said he was fortunate to have worked for more than 14 years for Pfizer, a company that recognizes domestic partnership. Unfortunately, he said, "the US government does not recognize Renato, my partner of more than 9 years." He explained that his partner is a native of Brazil who had been living in the United States on a student visa but who had lost that visa. He said that U.S. law won't permit him to petition for a spouse visa, and so that forces him to live in the UK so they can live together.

- Julian Bond. In his prepared statement, NAACP President Julian Bond spent much of his testimony extolling the virtues of family-based immigration, decrying the current backlogs in family immigration visa availability and expressing support for [S. 1085](#), the Reuniting Families Act. He also expressed the NAACP's support for UAFA, the bill that was the subject of last week's hearing.<sup>682</sup>

Mr. Bond told the Committee that "the NAACP supports an overhaul of current law to ensure that the family preferences policies are functioning well and without discrimination" and stressed the NAACP's view that "the definition of "family" should not be interpreted so stringently as to omit people who are in a loving, committed relationship but happen to be of the same gender." He said that "[i]t is because the NAACP supports the civil rights protections of all people, and is opposed to discrimination based on any criteria, that we support inclusion of the principles inherent in Uniting

<sup>680</sup> [Click Here](#) to see the full text of Shirley Tan's prepared testimony at the June 3, 2009, Senate Judiciary Committee hearing on the Uniting American Families Act

<sup>681</sup> [Click Here](#) to see the full text of Gordon Stewart's prepared testimony at the June 3, 2009, Senate Judiciary Committee hearing on the Uniting American Families Act

<sup>682</sup> [Click Here](#) to see the full text of Julian Bond's prepared testimony at the June 3, 2009, Senate Judiciary Committee hearing on the Uniting American Families Act

American Families Act in any comprehensive immigration reform. This important legislation will ensure that gay and lesbian couples and families are treated just like other families who are bi-national. The inclusion of the Uniting American Families Act in comprehensive immigration reform would ensure the continuation of an expansion of civil rights to people who have historically been left out and mistreated by American immigration policies.”

- Christopher Nugent. In his prepared statement, Christopher Nugent, who testified on behalf of the American Bar Association (ABA) president Thomas Wells, Jr., told the Committee that the ABA strongly supports the Uniting American Families Act.<sup>683</sup>

Mr. Nugent said that the central principle undergirding the ABA’s recommendations on immigration is that “the basis upon which foreign nationals may seek lawful permanent resident status should be humane and equitable, and should reflect the historic emphasis on both family reunification and the economic and cultural interests of the United States.” He also said that “[t]he ABA also has adopted numerous policy recommendations that oppose discrimination based upon sexual orientation and recognize the importance of providing committed same-sex couples and their families with basic legal protections to help those families stay together.”

Mr. Nugent told the Committee that “data from the 2000 U.S. Census reported 35,820 same-sex bi-national couples live together in the U.S. Because current law and policy prevents overseas same-sex partners from immigrating to the U.S., many of these bi-national couples are forced to leave this country, depriving our nation of the economic, cultural, social and other contributions these individuals could make here.”

Mr. Nugent noted that until 1991, gay and lesbian foreigners were excludable from the U.S. solely on the basis of their sexual orientation. He said that “[w]hile that per se exclusion has been repealed, same-sex bi-national couples still face substantial discrimination because a U.S. citizen or lawful permanent resident cannot sponsor his or her same-sex partner for residency in the U.S. This inability of same-sex partners to access immigration status on an equal basis with that available to different-sex spouses and other family members is contrary to the ABA’s longstanding opposition to discrimination based upon sexual orientation.”

Mr. Nugent said that “[w]hile Connecticut, Iowa, Massachusetts, Belgium, the Netherlands, Canada, Spain and South Africa now permit same-sex couples to marry, and several additional jurisdictions recognize civil unions or domestic partnerships, couples legally joined in these jurisdictions are not recognized as spouses for purposes of U.S. immigration law. In fact, legally marrying in another country may actually impede a same-sex couple’s ability to remain together in the United States, even when one of the spouses is an American citizen. Since one requirement for obtaining a non-immigrant visa (such as a student or tourist visa) is a demonstrable lack of intent to remain permanently in the United States, any evidence of a relationship as a permanent partner of a United States citizen or permanent resident—including a marriage or civil union or other legal partnership—can be and has been used to deny a non-citizen partner’s entry into or continued stay in the United States. Same-sex partners therefore are ineligible to access immigration opportunities that are routinely extended to fiancés and married spouses, regardless of the depth of their love and the permanency of their commitment to one another.”

Mr. Nugent told the Committee that UAFA would not repeal or affect the Defense of Marriage Act in any way. Rather, he said, “the Act simply seeks to provide a mechanism by which same-sex permanent partners of U.S. citizens and lawful permanent residents have access to immigration status on an equivalent basis to married different-sex couples” He said that UAFA also “would not limit or affect the government’s ability to prohibit fraud and abuse in the immigration context. Specifically, the Act would not prevent the government from requiring that unmarried partners meet the stringent eligibility criteria that are imposed upon spouses and fiancés (for example, that neither member of the couple is married to anyone other than the other member of the couple).” And he said that, under UAFA, “same-sex couples would be subject to exactly the same documentation criteria that are imposed upon different-sex spouses, including being subject to the requirement that the parties demonstrate that the relationship is bona fide through documents like a joint lease or mortgage, joint bank account, family photos, and the like. The petitioning American partner also would be required to sign an Affidavit of Support, a legally binding contract that would obligate him or her to financially support the beneficiary for ten years.” Pointing to current penalties for marriage fraud, Mr. Nugent contended that those same penalties would apply to same-sex partners and that because of this, UAFA would not increase the opportunities for marriage fraud.

Mr. Nugent concluded by saying, “[c]entral to this nation’s long history of immigration law and policy is ensuring that Americans and their loved ones are able to stay together in the U.S. The current failure to recognize

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<sup>683</sup> [Click Here](#) to see the full text of Christopher Nugent’s prepared testimony at the June 3, 2009, Senate Judiciary Committee hearing on the Uniting American Families Act

same-sex permanent partnerships for immigration purposes is cruel and unnecessary, and critical protections should be available to help same-sex partners maintain their commitment to one another on an equal basis with different-sex spouses.”

- Roy Beck. NumbersUSA President Roy Beck’s prepared testimony was devoted to an attack on immigration, generally, and made no cogent, specific reference to the issues in UAFA.<sup>684</sup>
- Jessica M. Vaughan. In her prepared statement, Center for Immigration Studies Director of Policy Studies Jessica M. Vaughan told the Committee that while she understands the goal of UAFA and the difficulties that current law presents for same-sex couples, UAFA “is addressing the issue from the wrong direction, and would create new problems for officials who adjudicate immigration benefits applications and for the many individuals involved in those applications.”<sup>685</sup>

Ms. Vaughan said, “[t]he reason same-sex partners and others who are unmarried but in long-term relationships cannot now qualify for spousal immigration benefits is because federal law defines marriage as between a man and a woman. Immigration law and all other areas of federal law are subject to that definition. In addition, immigration law specifies exactly which types of relationships can qualify for visas, green cards, or other benefits, and in most cases they refer to marriage, employment or another close family tie that can be established through official documentation. If the goal is to give same-sex long-term partners equal access to immigration benefits, then the target should be the Defense Of Marriage Act, not the Immigration and Nationality Act. If that law were changed, which Congress has the power to do today, then this bill would not be necessary.”

Ms. Vaughn testified that “[f]rom a practical standpoint, this bill is unworkable and could wreak havoc in our legal immigration system.” She listed four main problems with UAFA:

1. There is no mechanism to officially recognize or sanction "permanent partnerships", at least not in more than a few states and foreign countries, that consular officers and USCIS adjudicators can rely on to determine the eligibility and legitimacy of individuals who are applying for benefits.

<sup>684</sup> [Click Here](#) to see the full text of Roy Beck’s prepared testimony at the June 3, 2009, Senate Judiciary Committee hearing on the *Uniting American Families Act*

<sup>685</sup> [Click Here](#) to see the full text of Jessica M. Vaughan’s prepared testimony at the June 3, 2009, Senate Judiciary Committee hearing on the *Uniting American Families Act*

2. This bill as written will introduce new opportunities for fraud in a program that is already a magnet for misrepresentation and abuse of the system.
3. This bill does not provide any new tools or resources to fight marriage or "partnership" fraud. Despite the fact that this proposal would produce an increase in benefits applications, and the fact that these benefits applications as a group would be especially vulnerable to fraud, the bill provides no new tools or resources for the State Department, USCIS, or state and local governments to preserve the integrity of the process and to fight fraud. The bill simply states that the existing anti-fraud measures and punishments, which are already inadequate, will apply to this category as well. Any proposal to create a new category such as this should also try to improve our benefits adjudication process so as to minimize the new cases of fraud.
4. Adding a new class of applicants with a high risk for fraud will make it more difficult for legitimate applicants. The people most affected by high rates of immigration fraud are the individuals with legitimate claims to immigration benefits and their families. High rates of fraud bog down the process for everyone and sap the time of the officers who adjudicate these cases.

**Q&A Session.** The following is a list of the immigration- or refugee-related subjects that were explored during the question-and-answer session at last week’s hearings:

- [Community Support for Same-Sex Immigration Benefits](#)
- [Loss of Skills and Taxes from Americans](#)
- [Other Countries’ Documentation Requirements](#)
- [Path to Citizenship for Undocumented Aliens](#)
- [Potential for Fraud](#)

The following summarizes the immigration and refugee-related matters that came up during the question-and-answer sessions that took place between committee members and witnesses at last week’s hearings:

- [Community Support for Same-Sex Immigration Benefits](#). Senate Judiciary Committee Chairman Patrick Leahy (D-VT) asked Ms. Tan whether she was getting support in her community for her plight.

Ms. Tan responded that she has received enormous support in Pacifica, the town in which she lives, as well as from her Church, her priest, her children’s school, and community leaders.

- [Loss of Skills and Taxes from Americans](#). Senate Judiciary Committee Chairman Patrick Leahy (D-VT) asked Mr. Stuart if the fact that he has left the United

States to live in the United Kingdom has meant that the United States is no longer receiving taxes from him.

Mr. Stuart responded that he pays taxes in both countries. In response to that, Chairman Leahy regrouped, asking him if his skills are missed in the United States. Mr. Stuart responded that he felt his skills would better serve his company in the United States rather than in the United Kingdom.

- Other Countries' Documentation Requirements. Ranking Republican Jeff Sessions (R-AL) asked Mr. Nugent if it is true that other countries that permit the immigration of permanent partners were with respect to documentation of the relationship.

Mr. Nugent replied that he did not know the answer to Senator Sessions' question and that he would like to provide it in writing at a later time. He said, however, that the ABA surveyed all of the other countries and that they likely had that information.

- Path to Citizenship for Undocumented Aliens. Senator Arlen Specter (D-PA) asked Julian Bond if he would support that we eliminate the fugitive status of undocumented aliens and postpone the question of a path to citizenship for current undocumented aliens.

Mr. Bond declined to address the question.

- Potential for Fraud. Senator Jeff Sessions (R-AL) asked Ms. Vaughn if it is true that marriage fraud is the most abused area of immigration law.

Ms. Vaughn agreed that marriage fraud is the single most difficult problem in immigrant visas. She said it is ripe for fraud. She said that is why it is critically important to be able to verify that relationships are valid. Ms. Vaughn said that is why U.S. immigration law provides for "conditional marriage", requiring people contending to be married to come back several years later to prove that they are, in fact, still in a bona fide marriage.

Ms. Vaughn told the Committee that marriage, itself, is an institution that brings with it legal entanglements and that those legal entanglements deter some people who otherwise might be complicit in marriage fraud. She said that permanent partnerships, on the other hand, do not have equivalent legal entitlements, making it more likely that someone might establish a partnership for money that is not, indeed, a bona fide partnership.

In response to further questioning from Senator Sessions, Ms. Vaughn agreed with him that permanent partner documentation doesn't exist in most countries, and that would make it difficult for consulate officials to verify whether or not the relationship actually exists. ☼

**Senate Foreign Relations Committee Holds Confirmation Hearing on the Nomination of Eric Schwartz to Head Refugee Bureau:** The Senate Committee on Foreign Relations held a hearing last week on the nomination of Eric P. Schwartz to be Assistant Secretary of State for Population, Refugees, and Migration (PRM). Last week's hearing occurred on Wednesday, June 3, 2009.

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

- Senator Jeff Merkley (D-RI);
- Former Representative Stephen Solarz (D-NY); and
- Assistant Secretary of State-Designate Eric P. Schwartz.

**Opening Statements.** The following summarizes the immigration and refugee-related references made by witnesses in their prepared testimony for last week's hearing:

- Chairwoman Boxer. In her opening statement, Senate Foreign Relations Subcommittee on International Operations and Organizations, Human Rights, Democracy, and Global Women's Issues Chairwoman Barbara Boxer (D-CA) began her statement by recounting the background of Assistant Secretary of State for Populations, Refugees, and Migration-Designate Eric P. Schwartz, noting that he currently serves as the Executive Director of Connect U.S. Fund, an alliance of foundations that support the efforts of non-governmental organizations to promote responsible U.S. global engagement. She said that "[b]etween 2005 and 2007, he served as UN Secretary-General Kofi Annan's Deputy Special Envoy for Tsunami Recovery, where he worked with the Special Envoy, former President Bill Clinton, to promote coordination, accountability to donors and beneficiaries, and best practices in the recovery effort. In 2003 and 2004, he served as the second-ranking official at the Office of the UN High Commissioner for Human Rights. From 1993 to 2001, Mr. Schwartz served at the National Security Council, ultimately as Special Assistant to the President and Senior Director for Multilateral and Humanitarian Affairs, where he managed Administration responses on a range of peacekeeping, humanitarian and refugee issues."<sup>686</sup>

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<sup>686</sup> [Click Here](#) to see the complete text of the prepared opening statement of Senate Foreign Relations Subcommittee on International Operations and Organizations, Human Rights, Democracy, and Global Women's Issues Chairwoman Barbara Boxer (D-CA) at the June 3, 2009, Senate Foreign Relations Committee hearing on the nomination of Eric P. Schwartz to be Assistant Secretary of State for Population, Refugees, and Migration

She said that the Assistant Secretary for Populations, Refugees, and Migration carries significant responsibilities, noting that “there are ever-growing numbers of displaced persons in the world today. According to the United Nations High Commissioner for Refugees, there were roughly 11.4 million refugees in the world at the end of 2007, and an additional 26 million internally displaced persons, or IDPs.” She said that “[w]hile the United States cannot single-handedly help every one of them, we need to ensure that the resources we expend helping refugees and IDPs are used wisely.” She noted that in a hearing that she recently held with Senator Russ Feingold (D-WI) on violence against women in Darfur and Sudan, “we heard horrifying stories of women being attacked in camps, raped, and brutalized. We also heard stories about the lack of basic resources such as firewood and water. The U.S. must make this a priority and take concrete action so that we can better protect these women.”

- Representative Wicker. In his opening statement, Senator Roger Wicker (R-MS) said that the challenge facing the Bureau of Population, Refugees, and Migration “is daunting.” He amplified on that, saying that “[a]t the end of 2007, the U.N. High Commissioner for Refugees estimated that there were 31.7 million people concerned worldwide. These include 11.4 million refugees, 740,000 asylum seekers and 13.7 million internally displaced persons protected or assisted by UNHCR and some 2.9 million stateless persons. Further the situation appears to have deteriorated in recent years as the number of refugees grows. In addition a good number of the world's refugees originate from regions that constitute stated administration priorities. The most important of these is Afghanistan, the country that represents the single largest source of the world's refugee population. At the end of 2007 there were about 3.1 million Afghan refugees or about 27 percent of the world's refugee population.”

Senator Wicker went on to state that “[o]ther countries that have been major sources of refugees and IDPs in recent years include Iraq, Sudan, Congo and Colombia.” He said he was looking forward to hearing Mr. Schwartz's views on how the administration plans on addressing these crises.

**Prepared Testimony.** The following summarizes the testimony that was presented at last week’s hearing:

Panel I

- Senator Jeff Merkley (D-RI). In his testimony, Senator Jeff Merkley (D-RI) told the Committee of his long relationship with Assistant Secretary-Designate Schwartz, which goes back to when they had both just graduated from college and were serving as interns in New York City for the Carnegie Endowment for International Peace. Senator Merkley said that at the end
- Former Representative Stephen Solarz (D-NY). In his testimony, former Representative Stephen Solarz (D-NY) said that he has known Assistant Secretary-Designate Schwartz for over 30 years. He said Schwartz “first came into my orbit in 1978 as an intern in my

of those internships, they decided to travel through Central America and traveled together to Costa Rica passing through most, not all, but most of the states of Central America including Guatemala, Honduras, Nicaragua, Mexico and Costa Rica. He said that they agreed to only speak Spanish even though neither of them spoke it very well, and that they would travel by the cheapest bus available and would sit separately so they could talk to folks and gain as great an understanding as possible.

Senator Merkley said that “it says a lot about an individual that their interest in international affairs is lifelong and they were willing to travel to one of the more dangerous sections of the world with no support structure to do all kind of on the ground exploration of the challenges that existed.” He said that Assistant Secretary-Designate Schwartz “has had a stellar career. He brings to his nomination both an academic background with a law degree with an emphasis on international human rights and his work in economic development, master's degree at the Public Policy School at Woodrow Wilson School.”

Senator Merkley noted that Schwartz’s experience includes four years in the House Foreign Affairs Subcommittee for Asian and Pacific Affairs where he was the lead staffer on Asian refugee issues and eight years working on refugee issues at the National Security Council. He said that Schwartz “was involved in high-level commissions and studies, staffing the council formulation study on Iraq co-chaired by Jim Schlesinger and Tom Pickering. He staffed the congressionally mandated task force on U.N. reform that was co-chaired by Speaker Gingrich and Senator Mitchell. And in terms of being on the ground, he was the U.N. deputy special envoy for tsunami recovery after the devastating 2004 Indian Ocean tsunami and spent a great deal of time in that region working with many, many nations.”

Senator Merkley told the Committee that Schwartz “has established a reputation for working with colleagues on both sides of the aisle. I think if you were looking for the ideal individual for this position, you would want somebody with a strong background in international law, extensive expertise in refugee issues and a broad background in international affairs including a lot of experience on the ground.” He concluded by declaring that he could not think of anyone who brings those very significant experiences together in a way like Eric Schwartz does and I certainly add my strong recommendation in support of his nomination.”

congressional office on which he worked on a number of issues, particularly relating to foreign aid. A decade later I managed to persuade him to leave his job as head of the Washington office for Asia Human Rights Watch to join the professional staff of the Subcommittee on Asian and Pacific Affairs, which I chaired.” Solarz said, “during the years that he worked with me on the subcommittee, he worked on a number of refugee and human rights issues ranging from crafting a meaningful response to the tragedy of the Vietnamese Boat People, to advancing the struggle for democracy and human rights in Burma, and in securing substantial additional amounts of foreign aid to Poland to facilitate the transition to democracy after the collapse of communism in that country.”

Former Representative Solarz told the Committee that there were three primary criteria, which it you ought to take into account as it considered the Schwartz nomination.

“The first is is he someone who has the experience and knowledge of how to work the bureaucracy in the executive branch and manage the politics of the Hill. And here I can only say that after a few years working in the House and several years in the executive branch, Eric has a demonstrable track record of succeeding in securing support for the policy initiatives which he has generated.

“Secondly it seems to me that you want someone with the experience and the policy skills to determine how the U.S. can most effectively forestall and respond to refugee crises around the world. And here I have to say that Eric's broad experience and track record in dealing with issues, the kind of issues he'll be confronting as assistant secretary, demonstrate that he superbly qualified for this position.

“And finally, I think you want someone who, if I can use a phrase which is currently come into currency, you want someone who has empathy for the displaced and the dispossessed. And who will be a passionate advocate on their behalf.”

Former Representative Solarz told the Committee that “for Eric, helping the unfortunate, assisting the victims of history has been what much of his life has been all about. And I have no doubt that he will bring to this position a deep compassion and inexhaustible energy in the effort to help those who need our assistance.”

Former Representative Solarz told the Committee that there was no one better than Eric Schwartz to head PRM. He said that “with millions of displaced people now in Pakistan and Sri Lanka craving, crying out for desperately needed assistance, I urge you to expeditiously vote to confirm his nomination because not only do those people need him but we as Americans need

him to craft an effective and meaningful response to the current refugee crisis as well.”

Panel II

- Assistant Secretary-Designate Schwartz. In his prepared testimony, Mr. Schwartz told the Committee that “[d]ay-in and day-out, the overseas humanitarian programs of the United States Government provide critical life-saving assistance to those engulfed in tragedies that most of us can only imagine – persecution, forced displacement, separation of families, abuse at the hands of militaries or militias, and other basic violations of human dignity. United States’ support for relief and rehabilitation of shattered communities, and for durable solutions for the displaced and dispossessed, reflect the most noble ideals of the U.S. Congress and the American people, and communicate solidarity with hundreds of millions of people around the world.” He said that, “[f]or all these reasons, I am humbled to be considered for this important assignment. If confirmed, I would take it on with enormous enthusiasm, with a deep and abiding commitment to humanitarianism and to public service, and with an enduring interest in and concern for the plight of refugees. As a young child, I listened to my grandfather, who emigrated from Romania at the turn of the century, as he conveyed to me the fear of persecution he experienced as a young Jewish boy in Eastern Europe. He also told me of the adversity he faced after his arrival in the United States, underscoring for me the critical importance of a refugee admissions program that adequately addresses the needs of newly resettled refugees and welcomes them into our communities.”<sup>687</sup>

Assistant Secretary-Designate Schwartz touted his long experience on refugee and migration issues. He said that, if confirmed, he would seek “to sustain the long-standing and extraordinary partnership between the Executive and Legislative Branches on humanitarian issues, paying close attention to the concerns of the Congress.”

Assistant Secretary-Designate Schwartz noted that during her confirmation hearing, Secretary of State Hillary Rodham Clinton told Senators that she intended to elevate refugee issues and to develop more comprehensive and effective strategies to deal with these humanitarian challenges. He said that he has “reflected carefully on the most important contributions I could make to promote the Secretary’s objectives, and four areas of focus seem particularly important.

“First, I would be a determined and persistent advocate for humanitarian principles – especially protection --

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<sup>687</sup> [Click Here](#) to see the complete text of Assistant Secretary of State-Designate Eric P. Schwartz at the February 3, 2009, Senate Foreign Relations Committee hearing on his nomination

within the U.S. government policy-making process, in contacts with governments whose policies impact refugees and displaced persons, and among other donors. I would seek to ensure that the U.S. government continues to lead efforts to champion the needs of the most vulnerable, whether that means responding quickly and generously to the crisis in Pakistan, pressing Sri Lankan government officials to respect international humanitarian law and protect hundreds of thousands of displaced civilians at risk, rallying other governments to help bear the burden of large-scale displacement in sub-Saharan Africa, or working with host governments and humanitarian organizations to improve the conditions for displaced Iraqis in the Middle East.

“Second, I would promote more active efforts to tackle one of the most vexing and compelling humanitarian challenges confronting governments around the world -- that of protracted refugee situations. Nearly 10 million people -- over 60 percent of the world’s refugees -- have been displaced for more than five years, and approximately 8 million have lived as refugees for more than a decade. Women and children are especially vulnerable in such situations. Some progress has been made, but much more must be done for populations -- such as the Burmese in Thailand and Somalis in Kenya -- who have suffered in refugee camps for far too long. If confirmed, I would seek to build on recent successes in promoting local integration, voluntary and assisted return, and expanded third country resettlement, while sustaining and strengthening protection and assistance for long-staying populations who have yet to find durable solutions. I would work closely with colleagues in the geographic bureaus of the State Department on resolving conflicts and abuses that create these refugees in the first place.

“If confirmed, a third priority for me would be to ensure that U.S. humanitarian assistance efforts help to create the conditions for longer term, sustainable recovery. U.S. foreign assistance programs focused on displaced persons and refugees in places like Liberia, Colombia, Iraq and Afghanistan not only reflect our most noble values, they also help to begin the process of recovery and reconstruction that is crucial to long-term economic growth and political stability.

“Finally, if confirmed as Assistant Secretary, I would seek to ensure that the U.S. Refugee Admissions Program continues to serve as a model of responsible humanitarian action for other governments around the world. The program, which was established by the Congress in response to the Indochinese refugee crisis in the 1970’s and 1980’s and has historically enjoyed strong bipartisan support, has had recent successes, including increased diversity. But that diversity has imposed challenges for government officials and voluntary agencies providing the support and assistance

that enables new arrivals to become productive members of society. If confirmed as Assistant Secretary, I would work closely with other government offices, including the Office of Refugee Resettlement in the Department of Health and Human Services, to ensure the continued strength and vitality of the admissions program. I would also work closely -- and seek to strengthen relationships -- with the voluntary agencies that serve as partners of the government in providing reception and placement services for newly resettled refugees.”

Assistant Secretary-Designate Schwartz concluded by recognizing that the PRM Bureau has “a well-earned reputation for passionate dedication to its mission.” He told the Committee that he wants to assure the members of the Committee that, “if confirmed, I would take on the role of steward with the utmost sense of responsibility and accountability -- to the President, to the Secretary of State, to the Congress, to the American people, and to the millions of refugees, displaced persons, and conflict victims whom the Bureau seeks to protect and assist.”

**Q&A Session.** The following is a list of the immigration- or refugee-related subjects that were explored during the question-and-answer session at last week’s hearings:

- [Alleviating the Crisis in Pakistan](#)
- [Better Coordination with UNHCR](#)
- [Gender-Based Violence](#)
- [Laotians Hmong in Thai Refugee Camps](#)

The following summarizes the immigration and refugee-related matters that came up during the question-and-answer sessions that took place between committee members and witnesses at last week’s hearings:

- [Alleviating the Crisis in Pakistan.](#) Senator Ted Kaufman (D-DE) asked Assistant Secretary-Designate Schwartz if he had ideas on alleviating the IDP crisis in Pakistan.

Assistant Secretary-Designate Schwartz responded by saying that “the first response has got to be additional resources. The magnitude of the crisis far outstrips, certainly outstrips, what had initially been anticipated over the course of this fiscal year and even outstrips the initial estimations after the crisis broke. Initial estimations were about 1.7 million people would be displaced. Now it looks like the number’s around 3 million.” He went on to say, “I think the administration’s decision to seek supplementary funding was a critically important one. And I think that we need to do everything possible to assist the U.N. High Commissioner for Refugees which is on the ground trying to provide support.” He also warned, “frankly, be ready for additional displacement. As high as the number of 3 million is there is concern that the numbers could increase by hundreds of thousands and we have to be in a

position to respond. And if that means additional resources I think that may well be necessary.”

- Better Coordination with UNHCR. Senator Ted Kaufman (D-DE) asked Assistant Secretary-Designate Eric Schwartz if he had any thoughts on how the United States could better coordinate with UNHCR.

Assistant Secretary-Designate Schwartz responded, “I think the partnership between the State Department and UNHCR has really been an excellent one. I'd even say extraordinary in terms of the work of the bureau that should I be confirmed I would be in charge of.” He went on to say that “there are three or four priorities that the administration has and the prior administration had with UNHCR. Number one, reduction of headquarters staff, number two empowering local offices of UNHCR, and number three which might have implications for our own budgeting process a needs-based budgeting by UNHCR because, you know, it doesn't do any good to have a budget that doesn't reflect what the requirements are.”

- Gender-Based Violence Against Women. Senator Jeanne Shaheen (D-NH) asked Assistant Secretary-Designate Schwartz what PRM could do to address violence against women in regions of conflict like Darfur and the Congo.

Assistant Secretary-Designate Schwartz responded that this is an issue he cares deeply about. He said he was proud to have played a part in enactment of the Trafficking Victims Protection Act in 1999 and that one of the things that motivated him was meeting a woman who were being abused. He said that he and the Clinton Administration “pushed very hard to get a provision in the INA that would provide a degree of protection for such women. I was fortunate to be the lead expert on the issue of sexual abuse -- exploitation and abuse peacekeepers for the Gingrich-Mitchell panel.” He said, further, that PRM “cares deeply about this issue. They've spent about \$33 million over the past decade or so on programs in refugee areas to address this issue.” He pointed to a recent report from Physicians for Human Rights which concluded that the problem needs constant attention and made a number of recommendations. He endorsed three recommendations made in the report, which he said are good guideposts, “greater efforts at prevention and protection in the camps, greater efforts to promote accountability so militaries and others know that they will be punished and efforts to assist victims.” He said, “I think that's a pretty good three-pronged approach that would very much inform my thinking on this issue on which I expect to spend a great deal of time and energy if I'm confirmed.” He concluded his response to Senator Shaheen's question by saying, “I think it's critical that we not lose our sense of outrage about these kinds of horrific violations. And I certainly would not.”

- Laotians Hmong in Thai Refugee Camps. Senator Russ Feingold (D-WI) asked Assistant Secretary-Designate Schwartz about Laotian Hmong currently living in Thai refugee camps, given that the Thai government thus far being unwilling to allow UNHCR monitors to screen the inhabitants for legitimate refugee status.

Assistant Secretary-Designate Schwartz responded, saying, “I think it's time that we turn the corner on this issue. Everybody knows what's needed. We need to have confidence that the process for refugee determination in Thailand is transparent so that the international community has confidence that decisions that are being made about the status of these people are rendered fairly, number one. Number two, if it is determined in a fair and transparent process that there are individuals among the population of 5,000 in Phetchabun who require protection, they should be resettled.” He said that “the United States needs to continue to press the Thai authorities on this issue until it gets resolved.” He also said, “I was encouraged to learn in December of 2008 that the Laotian authorities had permitted a monitoring mission back into Laos. That's the other side of this coin and I think we have to continue to press the issue of monitoring of those returnees who are not deemed to be refugees. But the critical issue is a transparent process into Thailand.” Finally, he said that “the decision of MSF to withdraw was very unfortunate. I think we have to -- the United States has to talk to the Thai military about creating conditions that would permit assistance providers to operate effectively in the camp.” ☼

### Last Week's Markups

Three panels took actions last week having implications for immigration- or refugee-related matters:

- Refugee Admissions Reforms. The House Committee on Foreign Affairs filed the report accompanying the Foreign Relations Authorization bill that it had ordered reported during the week of May 18, 2009;
- Expiring Immigration Program Extenders. The House Judiciary Committee scheduled and then abruptly canceled a markup of a measure extending four expiring immigration programs; and
- FY '10 Appropriations for the Immigration Court System. The House Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies held a markup of the fiscal year 2010 Commerce, Justice, Science Appropriations Bill.

**House Foreign Affairs Committee Reports Foreign Relations Authorization Bill Containing Numerous Reforms to the U.S. Refugee Program:**  
The House Committee on Foreign Affairs last week formally

reported to the full House of Representatives a measure containing significant reforms in the United States refugee admissions program. Last week's Committee action occurred in connection with [H.R. 2410](#), the Foreign Relations Authorization Act, Fiscal Years 2010 and 2011.<sup>688</sup> The Committee approved the measure on Wednesday, May 20, 2009, by a voice vote, ordering that it be reported to the full House of Representatives. It formally reported the measure to the full House of Representatives on Thursday, June 4, 2009.<sup>689</sup>

The full House of Representatives is set to take up H.R. 2410 on Wednesday, June 10, 2009.<sup>690</sup> ☀

### **House Panel Notices and then Abruptly Cancels Markup of Measure Extending Expiring Immigration Programs:**

The House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law scheduled a markup last week of a measure that would extend four popular but expiring immigration programs. However, the Subcommittee just as abruptly canceled the markup while Subcommittee Members were congregating in the hearing room. Last week's aborted markup was (not) held in connection with [H.R. 2679](#), a measure that was introduced by Representative Gabrielle Giffords (D-AZ) just hours before the scheduled markup. The measure would extend four immigration programs that are scheduled to expire on September 30, 2009: the E-Verify employment verification, EB-5 Investor Visa Regional Center, Conrad State 30 for foreign-born doctors in medically underserved communities, and the special immigrant non-minister religious worker visa programs.

**Need for the Legislation.** When the 110th Congress adjourned in December, 2008, it did so without providing long-term extensions of four expiring immigration programs:

- the E-Verify employment verification program,
- EB-5 Investor Visa Regional Centers,
- the Conrad State 30 Program for foreign-born doctors in medically underserved communities, and
- the special immigrant non-minister religious worker visa program.

Instead, Congress extended the E-Verify and Investor Visa Regional Center programs through March 6, 2009, in the

<sup>688</sup> [H. Rep. 111-136](#), June 4, 2009

<sup>689</sup> See Pages 542-546 of the [May 25, 2009, edition of the Weekly Legislative Update](#) for a detailed description of the May 20, 2009, House Committee on Foreign Affairs markup of H.R. 2410

<sup>690</sup> See Pages 609-614 of this week's edition of the [Weekly Legislative Update](#) for a preview of this week's scheduled House floor action on H.R. 2410

fiscal year 2009 continuing appropriations resolution it enacted last December. It extended the special immigrant religious worker visa and Conrad 30 State programs in separate legislation, also through March 6, 2009.

Congress acted in March to extend authority for the programs through the end of fiscal year 2009. Authority for the E-Verify and the EB-5 Investor Visa Regional Center programs was extended through September 30, 2009, by Division J, Section 101 of P.L. 111-8, the Omnibus Appropriations Act, 2009, which was considered in the House and Senate as H.R. 1105. Authority for the Conrad 30 and special immigrant non-minister religious worker visa programs was extended through September 30, 2009, by P.L. 111-9, a measure that was considered in the House and Senate as H.R. 1127.

**Background on the E-Verify Program.** The E-Verify Program is more formally known as the Basic Pilot Employment Verification Program. It is an Internet based system operated by the Department of Homeland Security (DHS) in partnership with the Social Security Administration (SSA). It allows participating employers to electronically verify the employment eligibility of their newly hired employees. It is free of charge to employers, and most employers who participate in the program do so voluntarily. The Department of Homeland Security maintains that it is the best means available for determining employment eligibility of new hires and the validity of their Social Security Numbers. To participate, an employer must enroll and sign a memorandum of understanding (MOU) that spells out the responsibilities of the SSA, DHS USCIS, and the employer.

The Basic Pilot Employment Verification Program was created by Sections 401(b) and 403(a) of P.L. 104-208, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). Initially operated in five of the seven states with the highest estimated population of aliens who are not lawfully present in the United States, the program is now operated on a nationwide basis. Its use is mandatory in the state of Arizona for virtually all of the state's public and private sector employers. The State of Mississippi is phasing in the mandatory use of the E-Verify system for its private and public sector employers.

The basic pilot program was originally set to expire in November of 2001. However, it was subsequently extended. It currently is set to expire on September 30, 2009.

**Background on the EB-5 Regional Center Program.** The immigrant investor visa, known as the EB-5 visa, was created in 1990 and grants lawful permanent residency to individuals willing to invest at least \$1 million in an enterprise that directly employs at least 10 legal workers in the United States. In certain rural or high-unemployment areas, however, the dollar amount is reduced to at least \$500,000, though the job-creation requirements remain the same.

In 1992, to stimulate interest in these immigrant investor visas, Congress created the Immigrant Investor Pilot Program. By investing in the designated "regional centers" instead of creating their own enterprises or partnerships, immigrant investors can meet the job-creation requirements of their visas more easily, since they need only show the indirect creation of ten jobs through a "regional center." Otherwise, an immigrant investor would have to show that his or her investment directly created the jobs.

The Investor Visa Regional Centers Basic Pilot program encourages investors seeking to immigrate to the United States to invest in Regional Centers where they may create jobs "indirectly".

This program expires from time-to-time. It currently is set to expire at the end of fiscal year 2009. Unless Congress acts to prevent it, this part of the program will expire at that time.

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

The program is composed of two parts:

- The *first* part provides for up to 5,000 Special Immigrant visas (or permanent resident visas) per year which religious denominations or organizations in the United States can use to sponsor foreign nationals to perform religious service in the United States. Once granted, this type of visa allows religious workers to permanently immigrate to the United States and eventually become citizens of our country. This program expires from time-to-time. It currently is set to expire at the end of fiscal year 2009. Unless Congress acts to prevent it, this part of the program will expire on September 30, 2009.
- The *second* part of the program provides religious denominations and organizations with the ability to sponsor temporary religious workers, called Nonimmigrants, to perform religious service in the United States. Nonimmigrant religious workers under this part of the program may remain and work in the United States for no more than five years. Unlike the special immigrant provision, the nonimmigrant provision is permanent law which has no expiration date.

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

missionaries, pastoral care providers, and in other religious occupations.

The Program has been extended five times.

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

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

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

This program expires from time-to-time. It currently is set to expire at the end of fiscal year 2009. Unless Congress acts to prevent it, this part of the program will expire at that time.

**Next Steps.** At the time of this writing, it was unclear whether or when the Subcommittee would reschedule its markup of H.R. 2679. The decision on how to proceed on the measure could well be in the hands of the House Democratic Leadership, which has shown reluctance to take up immigration-related legislation during the 111<sup>th</sup> Congress.

Apart from having to navigate a nervous Democratic Leadership, advocates for the programs also have to navigate around the Congressional Hispanic Caucus, which has vowed to block any immigration legislation from coming to the House floor unless it is part of a comprehensive immigration reform bill. Previous House-passed immigration extender bills have died in the Senate because of the opposition of Senator Bob Menendez (D-NJ) who, like the Congressional Hispanic Caucus, does not want Congress to take up what is derisively called "piece meal" immigration measures. He and the Congressional Hispanic Caucus have asserted that rather than passing separate immigration measures, Congress should take up comprehensive immigration reform legislation. This position throws into doubt whether Congress will be able to extend expiring programs before their expiration date of September 30, 2009. ☼

**House Appropriations Committee Panel Defies the Obama Administration and Votes to Fund the State Criminal Alien Assistance Program:** The House Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies last week approved its version of the fiscal year 2010 appropriations bill that funds the

nation's immigration court system. Last week's Subcommittee action occurred in connection with the yet-to-be-introduced Fiscal Year 2010 Commerce, Justice, Science, and Related Agencies Appropriations Bill. The Subcommittee marked up the measure on Thursday, June 4, 2009, approving it by a voice vote.

**Jurisdiction.** From an immigration perspective, the Subcommittee has jurisdiction over the Department of Justice, including the Executive Office for Immigration Review (EOIR), Office of Special Counsel (OSC), Office of Immigration Litigation (OIL), and Bureau of Prisons (BOP).

**Administration's Budget Request.** The Administration's fiscal year 2010 budget submission for the Department of Justice proposed an appropriation of \$298 MILLION for the Executive Office for Immigration Review (EOIR). This would be an increase of \$30 MILLION, or 11.2 percent, when compared to the \$268 MILLION that was appropriated for EOIR in fiscal year 2009. It proposed to eliminate funding in fiscal year 2010 for the State Criminal Alien Assistance Program (SCAAP), which Congress provided \$400 MILLION for in fiscal year 2009.

Of the amount that the Administration requests be appropriated for Department of Justice—

- \$4 MILLION would be transferred to EOIR from the Examinations Fee account and the remaining \$294 MILLION would be directly appropriated.
- \$14 MILLION for EOIR “to implement the hiring of 172 new positions, including 44 new attorneys to implement a Department of Homeland Security initiative, Secure Communities, which will significantly increase EOIR's workload.”
- \$2 MILLION for EOIR for a program to provide legal orientation to the custodians of unaccompanied alien children.
- Eliminate funding for SCAAP.

**Summary of Immigration- and Refugee-Related Provisions.** The text of the Subcommittee-approved measure was not available at the time of this writing. Accordingly, few details are available. The sole information available at the time of this writing, however, indicates that the bill would provide \$400 MILLION for SCAAP, thus, defying the Obama Administration's proposal to eliminate funding for the program.

**Next Steps.** Now that the House Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies has approved its version of the Fiscal Year 2010 Commerce, Justice, Science appropriations bill, the next step in the legislative process is for the full Committee to take up the measure. The full Committee on Appropriations is

scheduled to take up the bill on Tuesday, June 9, 2009, in Room 2359 of the Rayburn House Office Building.

### Last Week's Floor Actions

Congress took no floor actions last week on measures or matters containing significant immigration- or refugee-related provisions or having significant consequences for immigration- or refugee-related policy.

### Last Week's Conference Committee Actions

#### **Conferees End Last Week in Holding Pattern on FY '09 War Supplemental Appropriations Bill:**

House and Senate conferees working on the fiscal year 2009 war supplemental appropriations bill did not complete their consideration of measure last week. Reports indicate that final conference committee action has been delayed because the House Democratic Leadership was struggling to come up with the necessary votes to pass the measure.

House passage of the impending conference agreement on the fiscal year 2009 war supplemental appropriations bill is reportedly in doubt in the wake of a decision that conferees have made to add more than \$5 BILLION in funding for the International Monetary Fund (IMF), a decision that Republicans appear to be nearly unanimously against. In order to approve the conference report with IMF funding with no Republican votes, the House Democratic Leadership will need to secure at least 218 votes from Democrats, a feat that will require the Leadership to flip the votes of at least 18 Democrats who voted against the bill when it was considered by the full House of Representatives last May.

While agreements have reportedly been reached on most of the differing provisions in the measure, there are no reliable reports on how differences between the two versions of the bill on refugee issues have been resolved.

The House completed action on the [House-passed version of H.R. 2346](#)<sup>691</sup> on Thursday, May 14, 2009, passing it by a vote of 368-60.<sup>692</sup> The Senate completed action on the [Senate-passed version of H.R. 2346](#)<sup>693</sup> on Thursday, May 21, 2009, passing it by a vote of 86-3.<sup>694</sup>

Both the House-passed and the Senate Appropriations-approved versions of the fiscal year 2009 war supplemental appropriations bill contain provisions appropriating supplemental fiscal year 2009 funds for the Department of

<sup>691</sup> [H. Rept. 111-105](#), May 12, 2009

<sup>692</sup> [House Roll Call No. 265](#), May 14, 2009

<sup>693</sup> [S. Rept. 111-20](#), May 14, 2009

<sup>694</sup> [Senate Roll Call No. 202](#), May 21, 2009

State's Migration and Refugee Assistance (MRA) account, as well as for Internally Displaced Persons (IDPs) in the Middle East, South Asia, and elsewhere.

**Outlook.** At the time of this writing, the precise timing of conference committee deliberations was not yet known. Congress is expected, however, to complete conference committee deliberations sometime this week. ◇

## *Last Week's Executive Activity*

### **President Postpones Meeting with Congressional Stakeholders on Comprehensive Immigration Reform:**

President Barack Obama has postponed a meeting that was supposed to take place this week with Members and Senators on comprehensive immigration reform. The meeting had been scheduled for Monday, June 8, 2009. It has been postponed to Wednesday, June 17, 2009. The meeting attendees will consist of Members and Senators from both parties and on both sides of the comprehensive immigration reform issue. ☼

### **Administration Delays Implementation of Mandatory Contractor E-Verify Rule:**

The Department of Homeland Security has agreed to delay until at least September 8, 2009, implementation of a Bush-era rule that would require federal agencies to amend agreements with federal contractors to require their enrollment in the E-Verify system.<sup>695</sup> The delay was first indicated in a May 29, 2009, court filing. A Federal Register notice of the delay that provides more detail will be forthcoming soon.

This most recent delay in implementing the federal contractor e-verify rule marks the fourth time the federal government has postponed the implementation of the mandate. The rule was first set to go into effect on January 15, 2009.

**Background.** On November 14, 2008, the administration of President George W. Bush published a rule in the Federal

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<sup>695</sup> *Formally known as the Basic Pilot/Employment Eligibility Verification Program, the E-Verify system is an internet-based system operated by the Department of Homeland Security (DHS) and U.S. Citizenship and Immigration Services (USCIS) in partnership with the Social Security Administration (SSA). Based on the information provided by the employee on his or her Form I-9, E-Verify checks this information electronically against records contained in DHS and Social Security Administration (SSA) databases. It is intended to enable participating employers to electronically verify the employment eligibility of new hires. At present, the use of E-Verify is voluntary for the most part and applies only to new hires. However, the State of Arizona has made it mandatory for employers in its state.*

Register requiring certain federal contractors and subcontractors to use the E-Verify system administered by the Department of Homeland Security and U.S. Citizenship and Immigration Services as the means of verifying that certain of their employees are eligible to work in the United States.<sup>696</sup> As published on November 14, 2008, the rule was set to go into effect on January 15, 2009. However, on January 9, 2009, the Bush Administration agreed to suspend the implementation of the E-Verify Federal Contractor Rule until February 20, 2009, one month after the Obama Administration was to assume office. The Bush Administration announced the suspension days after the U.S. Chamber of Commerce, along with other business groups, filed a lawsuit challenging the legality of this law.

Shortly after taking office, the Obama Administration announced it would delay implementation of the Bush-Era rule. That announcement, made in the January 30, 2009, edition of the *Federal Register*,<sup>697</sup> gave federal contractors and subcontractors until May 21, 2009, to begin using the E-Verify system to verify the work eligibility of its employees, rather than requiring that they comply with the previous deadline of February 20, 2009. On April 17, 2009, the Administration published. ◇

## *Recently Introduced Legislation*

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

### House

#### **Citizenship & Naturalization**

- **People Resolved to Obtain an Understanding of Democracy Act:** Representative Joe Baca (D-CA) has introduced [H.R. 2681](#), a bill to amend the Immigration and Nationality Act to provide for naturalization for certain high school graduates.

As introduced, H.R. 2681 would ease the naturalization requirements for aliens who were under the age of 25 at the time of application for naturalization and who completed grades 6 through 12 in the United States.

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<sup>696</sup> [Click Here](#) to see rule on E-Verify and federal contractors that was published in the November 14, 2008, edition of the *Federal Register*. [Click Here](#) to see a question-and-answer document prepared by the Department of Homeland Security on the E-Verify rule.

<sup>697</sup> [Click Here](#) to see the announcement, made in the January 30, 2009, edition of the *Federal Register*, of the delay in the implementation of the E-Verify Federal contractor rule.

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

### Control of Illegal Immigration

- **Commemoration of U.S. Border Patrol:** Representative Harry Teague (D-NM) has introduced [H. Res. 498](#), a resolution honoring and congratulating the U.S. Border Patrol on its 85th anniversary.

As introduced, H. Res. 498 would honor and congratulate the U.S. Border Patrol on its 85th anniversary.

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

### Employment-Based Immigration System

- **Extension of Expiring Immigration Programs:** Representative Gabrielle Giffords (D-AZ) has introduced [H.R. 2679](#), a bill to extend certain immigration programs, and for other purposes.

As introduced, H.R. 2679 would extend through September 30, 2014 four expiring immigration programs, including the E-Verify employment verification program, the EB-5 Investor Visa Regional Centers, the Conrad State 30 Program for foreign-born doctors in medically underserved communities, and the special immigrant non-minister religious worker visa program.

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

### Family-Based Immigration System

- **Reuniting Families Act:** Representative Michael M. Honda (D-CA) has introduced [H.R. 2709](#), a bill to amend the Immigration and Nationality Act to promote family unity, and for other purposes.

As introduced, Title I of H.R. 2709 would amend the Immigration and Nationality Act to reduce family-based visa backlogs and promote family reunification. Title II of H.R. 2709 would provide for permanent gay partners to be treated under the immigration laws of the United States as if they were spouses of citizens or permanent residents.

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

### Senate

#### Asylum

- **Strike the Offset for Chinese Students Adjusting Under the Chinese Student Protection Act:** Senator Kirsten E. Gillibrand (D-

NY) has introduced [S. 1182](#), a bill to amend the Chinese Student Protection Act of 1992 to eliminate the offset in per country numerical level required under that Act.

As introduced, S. 1182 would strike the provision of law that subtracts a visa from the number of available immigrant visas for each Chinese student who adjusts to permanent residency under the Chinese Student Protection Act of 1992.

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

**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 110<sup>th</sup> Congress. The measure was strongly supported during the 110<sup>th</sup> 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.<sup>698</sup>

### Senate

**REAL ID Act Mitigation Bill:** A bipartisan group of senators is reportedly working on legislation that would repeal some of the mandates on states contained in the REAL ID Act and replace them with a set of provisions that governors and state legislators would find less onerous.

The measure has a working title of "Providing for Additional Security in States' Identification Act of 2009" or PASS ID Act. It reportedly is being negotiated between a number of governors and Secretary of Homeland Security Janet Napolitano.

**Secure and Safe Detention and Asylum Act:** Senate Homeland Security and Governmental Affairs Committee

<sup>698</sup> See Pages 409-410 of the [April 27, 2009, edition of the Weekly Legislative Update](#) for a more detailed description of the immigration-related provisions in the 110<sup>th</sup> Congress' H.R. 4088

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 110<sup>th</sup> Congress. <sup>699</sup>◇

## *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

**Full House to Take Up State Department Authorization Bill Containing Significant Refugee Reforms:** The full House is likely to take up [H.R. 2410](#), the State Department Authorization Bill for Fiscal Years 2010 and 2011 sometime in June. House floor action on the measure could occur either this week or next week.

The measure was introduced by House Foreign Affairs Committee Chairman Howard L. Berman (D-CA) on Thursday, May 14, 2009. The Committee approved an amended version of the measure on May 20, 2009, ordering that it be reported to the full House of Representatives.

As approved by the Committee, the measure contains numerous refugee-related provisions. Among them are those that would authorize \$1.557 BILLION for the Department of State’s Migration and Refugee Assistance (MRA) account; make a number of reforms to the refugee admissions program and process; provide for English instruction, cultural orientation, and work orientation for approved refugees prior to their departure for the United States; and direct the Department to State to take steps to assist refugees from and Internally Displaced persons within Iraq.

### Senate

**Senate Judiciary Panel to Continue Hearings on Comprehensive Immigration Reform:** Senate Judiciary Subcommittee on Immigration, Refugees, and Border Security Chairman Charles Schumer (D-NY) has announced plans to hold a series of hearings on comprehensive immigration reform in the coming months.

**Confirmation Hearings Yet to Be Scheduled for Key Immigration- and Refugee-related nominee:** One nominee for a key immigration- or refugee-related position in the Obama Administration is pending in committee without a confirmation hearing scheduled:

- [U.S. Citizenship and Immigration Services](#). On April 24, 2009, President Obama announced his intention to nominate Alejandro Mayorkas, a Cuban-born trial lawyer, to be the new Director of the Department of Homeland Security’s U.S. Citizenship and Immigration Services (USCIS) bureau. [The United States Citizenship and Immigration Services](#) (USCIS) component of the Department of Homeland Security is responsible for adjudicating requests for immigration benefits, including applications for naturalization, applications for refugee status, and affirmative applications asylum.

According to materials released by the White House, Mayorkas is a partner at the law firm of O’Melveny and Myers. He previously served as the United States Attorney for the Central District of California.

Mr. Mayorkas’ nomination will be handled by the Senate Committee on the Judiciary. No official word has been released concerning the timing of the confirmation process for his nomination. ◇

## *Next Week’s Edition ...*

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

- [Fiscal Year 2009 Supplemental Funding for Refugees](#). Next week’s Weekly Legislative Update will report on any conference committee, as well as any House or Senate floor action that occurs on the fiscal year 2009 war supplemental appropriations bill, should such action take place this week.
- [Fiscal Year 2010 Appropriations for Immigration Services and Enforcement](#). Next week’s Weekly Legislative Update will report on action on the Fiscal Year 2010 Homeland Security Appropriations bill, which is scheduled for markup this week in the House Appropriations Subcommittee on Homeland Security and the full House Committee on Appropriations.
- [Refugee Admissions Reforms](#). Next week’s Weekly Legislative Update will report on House floor action that is expected to occur this week in connection with [H.R. 2410](#), the Foreign Relations Authorization Act, Fiscal Years 2010 and 2011., which contains a number of reforms to the refugee admissions process.

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<sup>699</sup> See Page 410 of the [April 27, 2009, edition of the Weekly Legislative Update](#) for a more detailed description of the immigration-related provisions in the 110<sup>th</sup> Congress’ S. 3114

**Weekly Immigration and Refugee Legislative Update (continued)**  
**Monday, June 8, 2009**

- Fiscal Year 2010 Appropriations for the Executive Office for Immigration Review. Next week's Weekly Legislative Update will report on the immigration-related provisions that are contained in the Fiscal Year 2010 Commerce, Justice, Science, and Related Agencies Appropriations Bill, which the full House Committee on Appropriations is expected to markup this week.
- Material Support to Terrorists. Next week's Weekly Legislative Update will report on any action that occurs in the Senate Committee on the Judiciary on an amendment expected to be offered on by Senator Jon Kyl (R-AZ) during the Committee's markup of [S. 417](#), the State Secrets Protection Act.
- Fiscal Year 2010 Appropriations for Refugee Resettlement. Next week's Weekly Legislative Update will report on any refugee-related matters that are discussed during this week's Senate Appropriations Subcommittee on Labor, Health and Human Services, Education, and Related Agencies hearing at which Secretary of Health and Human Service Secretary Kathleen Sebelius is scheduled to testify. ◇

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*Appendix*

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Excerpts from Committee Report Accompanying H.R. 2410  
June 4, 2009

**Refugee- and IDP-Related Excerpts from the Committee Report Accompanying H.R. 2410, Foreign Relations  
Authorization Act,  
Fiscal Years 2010, 2011<sup>700</sup>**

**CONGRESSIONAL BUDGET OFFICE COST ESTIMATE  
BASIS OF ESTIMATE**

**Refugee Processing.** Two provisions of the bill would affect refugee processing at the Department of State. In total, CBO estimates that implementing these provisions would cost about \$413 million over the 2010-2014 period, assuming appropriation of the authorized and estimated amounts.

Section 233 would authorize such sums as may be necessary to carry out certain reforms of the department's refugee admissions program and to raise the limit on appropriations for the Emergency Refugee and Migration Assistance (ERMA) Fund from \$100 million to \$200 million (when added to amounts previously appropriated to the Fund but not yet obligated). The department has indicated that it is already in the process of implementing the specified refugee processing reforms, including providing additional training to consular personnel and NGOs as well as re-opening its family reunification program. As a result, the primary effect of section 233 would be to authorize the appropriation of an additional \$100 million to the ERMA Fund in any fiscal year. CBO estimates that providing those additional amounts to the ERMA fund would cost \$410 million over the 2010-2014 period.

Section 234 would require the department to establish and operate overseas programs to provide training in English as a second language (ESL), cultural orientation (CO), and work orientation for refugees who have been approved for admission to the United States but have not yet left the processing site. Such training would have to be provided at three refugee processing sites within a year of the bill's enactment and at five sites within two years. The Bureau of Population, Refugees, and Migration (PRM) currently funds cooperative agreements with several entities to provide CO classes for eligible refugees prior to their departure at sites throughout the world. Such classes last from one to three days. Based on information from the department, CBO estimates a cost of about \$125,000 per year to establish and implement two-month ESL classes for about 240 eligible refugees at the average overseas refugee processing site. Thus CBO estimates that implementing programs of this scale at three sites in 2010 and five sites thereafter would cost \$3 million over the 2010-2014 period.<sup>701</sup>

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**SUBTITLE C--CONSULAR SERVICES AND RELATED MATTERS**

*Section 233. Reforming Refugee Processing.*<sup>702</sup>

This section would make a number of reforms to refugee processing and resettlement.

Subsection (a) reforms the State Department's processing of refugees for admission to the United States. Paragraph (1) would require the Secretary of State to: Set forth a plan for ensuring that all U.S. embassies and consulates are equipped and enabled to refer individuals in need of resettlement to the U.S. refugee admissions program; and establish a system for nongovernmental organizations (NGOs) to refer individuals in need of resettlement to the U.S. refugee program. The

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<sup>700</sup> [H. Rept. 111-136](#), June 4, 2009

<sup>701</sup> [H. Rept. 111-136](#), Page 102

<sup>702</sup> [H. Rept. 111-136](#), Pages 120-123

nongovernmental organizations (NGOs) to refer individuals in need of resettlement to the U.S. refugee program. The committee is that despite prior efforts to support refugee referrals from NGOs, some refugees who are qualified for resettlement to the U.S. are not identified by the program. When refugees approach a U.S. Embassy, they are instructed to register with the U.N. High Commissioner for Refugees. While the committee supports the primary role of UNHCR in identifying and screening refugee applicants to the U.S., we encourage the State Department to ensure that applicants who approach the Embassy directly are able to access the resettlement program for consideration.

Subsection (b) would make reforms in the refugee consultation process between the Executive and Legislative Branches. Paragraph (1) would amend section 207(a)(2) of the Immigration and Nationality Act to permit up to one-fourth of the admissions goal that was set in the previous fiscal year to be admitted in the first quarter of the succeeding fiscal year in the event that a fiscal year begins without a Presidential Determination being in place. Paragraph (2) would amend section 207(e) of the Immigration and Nationality Act to require that the refugee consultation take place no later than June 1 of each year.

In some fiscal years, there are delays in the administration's release of the Presidential Determination (PD) which identifies the number of refugees from each region who may be admitted in that fiscal year. When this happens, refugees who may be in the process of resettlement are required to halt such processing until the PD is released. The new provision in paragraph (1) will provide flexibility that will allow the continued admission of refugees in the pipeline until the PD for the new fiscal year is issued.

The committee is concerned that the executive branch's consultation with Congress on the President's annual determination on refugee admissions often occurs so late in the fiscal year that Congress is unable to play its legally mandated consultative role in advising the administration on how many and what populations of refugees to admit to the United States. These consultations often occur in September, just a few days or weeks before the issuance of the Presidential Determination and long after the House of Representatives and Senate have made decisions about appropriations for refugee admissions and refugee resettlement. A requirement that the consultation occur by June 1 of each year would ensure that Congress performs more than just a perfunctory role in the consultation process.

Subsection (c) would make a number of reforms to better ensure the reunification of refugees with their family members. Paragraph (1) would nullify 8 C.F.R. 207.1(d), which precludes refugee applicants who are also eligible for immediate relative or special immigrant status from being admitted as refugees. Instead, Paragraph (1) would explicitly provide that refugee applicants may simultaneously pursue admission under visa categories for which they may be eligible. While current law does not preclude a person who is seeking refugee status from also pursuing admission to the United States under any other visa category for which he or she is eligible, current regulations provide that a person who is eligible for admission to the United States as an immediate relative of a United States citizen or as a special immigrant cannot be admitted to the United States as a refugee. This has led to unfortunate circumstances in which an alien in a refugee camp has a legitimate refugee claim but cannot pursue it because the alien has a U.S. citizen spouse, child, or parent and is unable to communicate with that person.

Paragraph (2) would provide that a child who has been separated from his birth or adoptive parents and is living in a country of asylum under the care of an alien who has been granted refugee status shall, if it is in the best interest of the child, be admitted as a refugee and considered for placement with the alien who was caring for him or her.

The committee finds that it is not uncommon in refugee camps for children who have fled violence and turmoil to find themselves separated from their birth or adopted parents, either because of the death of their parents, because they have been abandoned by their parents, or because of their inability to locate their parents in the midst of a chaotic crisis. In many societies, these children are often taken in and cared for by other adults on the way to a place of refuge, or after arrival in places of refuge. Unfortunately, however, when these adults are granted refugee status in the U.S., current immigration law does not allow the children to accompany or follow to join these informal adoptive parents or guardians once those adults depart for the United States. Permitting separated children to accompany or follow to join these adoptive adults with whom they have been living, after appropriate review of their best interests, including a search for their birth parents or other family members who may wish to resume or assume custody of the child, would greatly alleviate the plight of these children.

Paragraph (3) would provide that if the spouse of a refugee or of a person who seeks asylum proves that such spouse is the biological or adoptive parent of a child, such child shall be eligible to accompany or follow to join such parent. A gap in current U.S. immigration law makes it possible for the child of a refugee's spouse to be unable to follow to join his or her parent in the United States. For example, this can happen when a derivative refugee is abandoned by her principal refugee spouse once she gets to the United States. Under current U.S. immigration law, even though she may well be a bona fide

refugee, since she is not the principal refugee, she is not entitled to have her child to follow to join her. Changing immigration law to permit a derivative refugee to petition for her child to follow to join her would remedy this unfortunate situation.

Subsection (d) would amend the Migration and Refugee Assistance Act of 1962 to increase the cap on funds in the Emergency Refugee and Migration Assistance Account (ERMA) from \$100,000,000 to \$200,000,000 and permit the Secretary of State to draw down funds rather than the President of the United States.

Currently, the amount of funds that can be in the ERMA account at any moment are capped at \$100,000,000. However, in recent years, refugee crises around the world have required appropriations that exceed that amount. The Committee on Appropriations has regularly 'waived' the \$100,000,000 cap. This increase in the cap would obviate the need for the appropriators to waive the cap.

Subsection (e) authorizes such sums as may be necessary to carry out this section.

Subsection (f) specifies that this section, and the amendments made by this section, shall take effect on the first day of the first fiscal year that begins after the date of the enactment of this section.

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*Section 234. English Language and Cultural Awareness Training for Approved Refugee Applicants.*<sup>703</sup>

This section provides basic English language and cultural awareness training for refugees in advance of their arrival in the United States.

Subsection (a) requires the Secretary of State to establish overseas refugee training programs to provide English as a Second Language (ESL), cultural orientation, and work orientation training for refugees who have been approved for admission to the United States before their departure to the United States.

In designing the training programs, subsection (b) requires the Secretary to consult with or utilize international or nongovernmental organizations with direct ties to the United States resettlement program and those with appropriate expertise in developing curriculum and teaching English as a second language.

Subsection (c) requires the Secretary to ensure that such training programs occur within the current processing times and do not unduly delay the departure for the United States of refugees who have been approved for admission to the United States.

Subsection (d) requires programs be established in at least three refugee processing regions within a year of the enactment of the act and in five regions within 2 years of enactment of the act. Subsection (e) calls on GAO to conduct a study assessing the program, its benefits, the quality of ESL instruction and to make a recommendation to Congress on continuation of the program 2 years after the date of enactment of the act. Subsection (f) provides that nothing in the section shall be construed to require that a refugee participate in the training programs described in the section as a precondition for being admitted to the United States as a refugee.

The committee has authorized this new program to improve the opportunities for newly arrived refugees who must make difficult and challenging transitions to live in the United States, enter school, find and keep jobs and in only a few months support themselves financially. Many refugees come to the United States after many years of displacement in refugee camps or other unsettled areas. Often they have been unable to work since leaving their homes; they may have lost their central breadwinner to violence and often do not speak English. Often women refugees must work outside of their household for the first time when they come to the United States. While the committee recognizes that a short-term ESL class will not guarantee fluency in the near term, the committee believes that refugees, who often come to the U.S. with few resources, little education and limited work experience, should receive appropriate education on the work and culture of the United States before their arrival to prepare them for the transition and the hard work that will be required for them to support their families. In addition, even limited familiarity with key words and phrases of English can help build confidence, provide basic vocabulary upon arrival, and hopefully motivate arriving refugees to continue language studies once they settle in to their new environment.

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<sup>703</sup> [H. Rept. 111-136, Pages 123-124](#)

During the resettlement of refugees from Southeast Asia in the 1970s and 1980s, some language training was provided to admitted refugees in Thailand. Given that most refugees spend months in the resettlement process, the committee believes this time can be used to provide ESL and the orientations needed for their transition to the U.S. In addition, providing this service regionally would allow the State Department to develop solid programs that work across nationalities. The committee does not believe that admission to the United States should in any way depend on a refugee's participation in such training, though we expect many refugees will be eager to participate in these programs to prepare them for their new lives in the United States.

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*Section 235. Iraqi Refugees and Internally Displaced Persons.*<sup>704</sup>

This section would require the President to develop and implement policies and strategies to address the protection, resettlement, and assistance needs of Iraqi refugees and internally displaced persons (IDPs), foster long-term solutions for stabilizing such persons' lives, monitor the development and implementation of assistance strategies to countries in the Middle East that are hosting refugees from Iraq, encourage the Government of Iraq to actively engage the problem of displaced persons and refugees and monitor its resolution of the problem, and ensure that budget requests to Congress are sufficient to meet an appropriate U.S. contribution to the needs of Iraqi refugees, internally displaced persons within Iraq, and other refugees in Iraq.

Six years into the war in Iraq, and three years after the major refugee outflow following the Samara bombing, the United States has failed to develop a well coordinated strategy and government response to the Iraq refugee crisis. While prior congressional proposals created a coordinator for Iraq refugee and IDP policy inside the White House, given the change in administration, the committee now wishes to give the President flexibility and is therefore authorizing an interagency working group to coordinate U.S. Government policy in this area. Subsection (b) would require the President to compose an interagency working group, consisting of the Department of State, the National Security Council, the Department of Homeland Security and the U.S. Agency for International Development (USAID), to carry out these objectives, facilitate interagency coordination and implement policies for Iraqi refugees and IDPs. It also would identify the Secretary of State as the principal liaison on diplomatic efforts on the needs of Iraqi refugees and IDPs with foreign governments, international organizations and nongovernmental organizations.

Subsection (c) calls on the Secretary to increase the resources available to support the processing of Iraqi refugees from inside Iraq. Currently, in-country processing of refugees from within Iraq is moving ahead but slowly at times. The committee understands that the Bureau of Population, Refugees and Migration has limited space within the Green Zone and cannot add additional staff at this time, but we urge the Secretary to be mindful of the need to improve processing of refugees from Baghdad and take steps necessary to achieve that goal.

Subsection (d) supports U.S. humanitarian assistance efforts on behalf of Iraqi refugees and IDPs by: 1) seeking to ensure that other countries contribute to UNHCR and other international assistance organizations, 2) providing U.S. contributions that fund 50 percent or more of UNHCR and other international organizational appeals for Iraqi refugees; and 3) urging the Government of Iraq to make significant contributions to these appeals. By far, the United States has been the largest donor to the Iraq refugee crisis, including through its donations to UNHCR. Yet, this is an international crisis. The committee urges the Secretary of State to increase efforts to encourage contributions by other nations to UNCHR for this purpose. In addition, given our country's unique role in the war in Iraq, the committee supports the continuation of the U.S. providing 50 percent of the appeals issued by UNHCR, the International Committee for the Red Cross and other international organizations.

Subsection (e) states the policy of the U.S. to only encourage Iraqi refugee returns to Iraq on a safe and voluntary basis with the coordination of the Government of Iraq and UNHCR. The committee is concerned about the Government of Iraq's efforts to recruit refugees to return from Syria and Jordan before there is any plan or infrastructure in place to reabsorb these populations into Iraq and, most importantly, before security conditions inside Iraq warrant such returns. The committee is likewise concerned that the Government of Iraq not impose artificial or otherwise inappropriate deadlines for the refugees' return. The committee supports U.S. Government efforts to work with the Government of Iraq, UNHCR and other entities to address conditions inside Iraq and develop solid plans for the return of refugees when security conditions are safe enough for them to return in an organized manner. The committee is likewise concerned that the Government of Iraq does not impose artificial or otherwise inappropriate deadlines for the refugees' return.

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<sup>704</sup> [H. Rept. 111-136, Pages 124-126](#)

Subsection (f) calls on the Secretary to work with foreign governments, international organizations and nongovernmental organizations to develop a long term comprehensive strategy for responding to the Iraqi refugee and IDP crisis. This includes: Assessing the needs of refugees, IDPs and their host communities; providing assistance through international organizations, including resettlement; providing assistance that supports psychosocial services and cash assistance programs; providing technical assistance to the Government of Iraq and other organizations to better meet the needs of Iraqi refugees and IDPs and to address the land and housing claim disputes, including restitution; and providing enhanced residency and work opportunities for Iraqi refugees and improving transparency among all governments and organizations relating to assistance provided to Iraqi refugees and IDPs. In particular, the committee remains concerned about the ability of assistance to meet the needs of refugees who have suffered incredible traumas as a result of the war or due to human rights violations of the Saddam Hussein regime or warring political factions inside Iraq. We note the reported success of cash assistance programs and encourage their expansion to larger numbers of refugee families. In addition, we note the continuing dearth of psychosocial services for refugee populations and reports of very high levels of trauma that have been found, and the need for widespread access to psychosocial services. Also, the committee notes the generosity of the people of Jordan and Syria in admitting and hosting these refugees and urges their governments to adopt plans that will allow refugees to make a livelihood during their stay in these neighboring countries.

Subsection (g) enhances accounting of U.S. assistance to Iraqi refugees and IDPs by calling on the Secretary of State and the USAID Administrator to develop performance measures to assess and report progress on U.S. goals and objectives for Iraqi refugees and IDPs and track funding apportioned, obligated and expended for Iraqi refugee programs in Jordan, Syria, Lebanon and other countries. This subsection adopts the recommendations of the GAO in report number GAO-09-120 to improve the U.S. Government's response to the Iraq refugee crisis.

Subsection (h) requires an annual report through 2011 concerning U.S. assistance funding, U.S. efforts for resettlement of Iraqi refugees, an evaluation of the Government of Iraq's efforts on behalf of Iraqi refugees and IDPs, including expenditures and reporting on the accounting measures required by subsection (g).

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*Section 1104. Statelessness.*<sup>705</sup>

This section addresses the issue of statelessness.

Subsection (a) states that the purposes of the section is to reduce the number of individuals who are de jure or de facto stateless and thereby increase global security and stability and combating trafficking in persons and legal and societal discrimination. Subsection (b) contains a number of findings establishing the right to de jure and de facto nationality as guaranteed in a number of international instruments; documents that at least 11 million people remain stateless; describes the negative impacts of statelessness in terms of employment, vulnerability to exploitation and deprivation of political and social rights; and establishes that UNHCR has been given the mandate to help stateless people, but has inadequate resources to carry out this mandate. Subsection (c) contains a policy section stating that it is the policy of the United States that the President and the Permanent Representative to the U.N. will work with the international community to increase political and financial support for the work of UNHCR to increase its activities and provide structural changes to prevent and resolve problems of statelessness. The Subsection authorizes \$5 million in extra-budgetary funds be provided to UNHCR and \$3 million to UNICEF for each of Fiscal Years 2010 and 2011 to improve these agencies' assistance to stateless individuals. Subsection (d) establishes that the President shall make the prevention and reduction of statelessness an important goal of U.S. foreign policy. It also establishes that the U.S. will comply with the principles and sections of the 1954 Convention Relating to the Status of Stateless Persons to the largest extent possible, and that it will encourage other countries to do the same. It calls for a permanent and unspecified increase in resources to the States Department's Bureau of Population, Refugees, and Migration (PRM) to combat statelessness and directs the Secretary of State to establish an interagency working group on statelessness to include the Department of Justice and Homeland Security. It authorizes such sums as may be necessary to carry out the title.

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<sup>705</sup> [H. Rept. 111-136](#), Page 166

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

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