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

Monday, June 22, 2009

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Immigration- and refugee-related appropriations matters continue to dominate the agenda as Congress begins its last week in session prior to its week-long Independence Day recess.

This Week's Hearings

At the time of this writing, two hearings had been scheduled for this week at which significant immigration- or refugee-related matters are expected to be discussed. Both hearings were scheduled to occur in the Senate:

- Examination of the Benefits to the United States of the EB-5 Investor Visa Program. The Senate Committee on the Judiciary has scheduled a hearing for this week on the benefits to the United States of the EB-5 Investor Visa Program; and
- Confirmation Hearing. The Senate Committee on the Judiciary has scheduled a hearing on the nomination of Alejandro Mayorkas to be director, Citizenship and Immigration Services.

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This Week's Hearings (continued)

House

At the time of this writing, no hearings had been scheduled for this week in the House at which significant immigration- or refugee-related matters are expected to be examined.

Senate

Senate Judiciary Committee to Hold Hearing on Investor Visa Regional Centers: While late word was that the hearing was likely to be postponed to a later week, at the time of this writing, the Senate Judiciary Committee had scheduled a hearing for this week examining job creation and the EB-5 Centers. This week's hearing was scheduled for 2:00 pm on Wednesday, June 25, 2009, in Room SD-226 of the Dirksen Senate Office Building.

Anticipated Witnesses. At the time of this writing, the list of witnesses at this week's hearing had not been published.

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. ☼

Senate Judiciary Committee to Hold Confirmation Hearing on USCIS Nominee: The Senate Committee on the Judiciary has scheduled a hearing for this week on the nomination of Alejandro Mayorkas to be Director of the U.S. Citizenship and Immigration Services component of the Department of Homeland Security. This week's hearing is scheduled for Wednesday, June 24, 2009, in Room SD-226 of the Dirksen Senate Office Building.

USCIS Jurisdiction Over Immigration Matters. 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 admission to the United States an immigrant or nonimmigrant, applications for naturalization, applications for refugee status, and affirmative applications asylum.

USCIS also is responsible for providing verification of work eligibility of prospective employees and benefit eligibility for aliens.

Background on Alejandro Mayorkas. On April 24, 2009, the White House announced the President's intention to nominate Alejandro Mayorkas, a Cuban-born trial lawyer, to be the new Director of U.S. Citizenship and Immigration Services, a component of the Department of Homeland Security. The announcement was made on Friday, April 24, 2009, in a [White House press release](#).



According to materials released by the White House, Mr. Mayorkas was a partner at the law firm of O'Melveny and Myers at the time of his nomination. He previously served as the U.S. Attorney for the Central District of California.

The White House bio of Mr. Mayorkas boasts that that "[a]s a litigation partner at O'Melveny, Mr. Mayorkas represents Fortune 100 and other companies in their highest profile and most complex and sensitive matters throughout the country and the world. He advises boards of directors and top executives, tries cases, leads internal investigations, and litigates bet-the-company matters in a wide array of industries, including telecommunications, health care, consumer safety, sports and entertainment, aerospace, media, and real estate." The White House press materials go on to assert that "[a]t 39 he was the youngest U.S. Attorney in the nation and the first in the Central District of California to be appointed from within the Office. Mr. Mayorkas led an office of 240 Assistant U.S. Attorneys in the prosecution of

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This Week's Hearings (continued)

cases in varied areas of law enforcement, including cases of public corruption, investment fraud, civil rights violations, high-tech and computer-related crime, organized crime, environmental crime, and international money laundering. The National Law Journal recently named him one of the 50 Most Influential Minority Lawyers in America.”” ☀ ◇

This Week's Markups

At the time of this writing, four committee actions that have implications for immigration- or refugee-related matters were scheduled for this week in the House or Senate. One of the markups is taking place in the House and the other three are occurring in the Senate:

- FY '10 Appropriations for Refugee Admissions and Overseas Refugee Assistance. The House Appropriations Committee has scheduled a markup for this week of the Fiscal Year 2010 State, Foreign Operations, and Related Programs Appropriations Bill;
- FY '10 Appropriations for Immigration Court System.
 1. The Senate Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies has scheduled a markup for this week of its version of the Fiscal Year 2010 Commerce, Justice, Science, and Related Agencies Appropriations Bill; and
 2. The full Senate Committee on Appropriations has scheduled a markup for this week of its version of the Fiscal Year 2010 Commerce, Justice, Science, and Related Agencies Appropriations Bill; and
- Material Support to Terrorists. The Senate Committee on the Judiciary has yet again scheduled a markup for this week at which the issue of material support to terrorists is expected to be considered.

House

Full House Appropriations Committee to Markup Bill Appropriating FY '10 Funds for Refugee Admissions and Overseas Refugee Assistance: The House Committee on Appropriations has scheduled a full committee markup for this week of the bill that appropriates funds for refugee admissions and overseas refugee assistance. This week's markup will take place in connection with the yet-to-be-introduced Fiscal Year 2010 State, Foreign Operations, and Related Programs Appropriations Bill. The markup is scheduled for 4:00 pm on Tuesday, June 23, 2009, in Room 2359 of the Rayburn House Office Building.

Background on the Migration and Refugee Assistance Account. The House Appropriations Subcommittee on State, Foreign Operations, and Related Programs has appropriating jurisdiction over the Department of State and the federal government's foreign assistance programs, including the Migration and Refugee Assistance (MRA) and Emergency Refugee and Migration Assistance (ERMA) programs and accounts. Those programs and accounts fund the bulk of federal government's refugee admissions and overseas refugee assistance programs. They are administered by the Department of State's [Bureau of Population, Refugees, and Migration](#) (PRM), which has primary responsibility for formulating policies on population, refugees, and migration, and for administering U.S. refugee assistance and admissions programs. PRM is headed by an Assistant Secretary of State, who is appointed by the President, with the advice and consent of the U.S. Senate.

Through PRM and using the MRA and ERMA accounts, the Department of State works in close conjunction with international organizations, such as the [United Nations High Commission for Refugees](#) (UNHCR), to provide life-sustaining assistance to refugees in countries of asylum. The Department also works closely with international organizations, nongovernmental organizations (NGOs), and the United States [Department of Homeland Security](#) (DHS) to admit a relatively small number of refugees into the United States through its Refugee Admissions Program.

In addition to having jurisdiction over some aspects of U.S. policy toward refugees, the Department of State, through its [Bureau of Consular Affairs](#) (BCA), is involved in the processing and adjudication of visa requests.

As indicated above, PRM operates two accounts that assist refugees. The first of these is the Migration and Refugee Assistance (MRA) account, which the Department of State uses to fund the federal government's refugee admissions and overseas refugee assistance programs. The second is the Emergency Refugee Migration Assistance (ERMA) account, a no-year account that holds funds that the President can draw down from in order to meet emergency refugee needs.

Two other Federal departments also play a major role in refugee protection. The [Department of Health and Human Services](#), through its [Office of Refugee Resettlement](#) (ORR), provides resettlement assistance to refugees once they have arrived in the United States. And the Department of Homeland Security, through its U.S. Citizenship and Immigration Services Bureau (ORR), interviews and adjudicates refugee applicants once they have been identified.

Administration's Fiscal Year 2010 MRA and ERMA Requests. On May 7, 2009, President Barack Obama submitted detailed information to Congress about his proposed fiscal year 2010 budget for refugee protection. The submission proposed significant increases for refugee admissions and overseas refugee assistance in fiscal year

2010 compared to the amount appropriated for those purposes in fiscal year 2009. It also proposed significant increases in spending on refugee resettlement compared to the amount appropriated in fiscal year 2009 for that purpose.

Among the highlights of the Administration's refugee admissions and overseas assistance budget proposals are:

- Funding for Refugee Admissions and Overseas Assistance to Refugees. The Administration's fiscal year 2010 budget submission proposes a fiscal year 2010 appropriation of \$1.480 BILLION for the Department of State's Migration and Refugee Assistance (MRA) account. This would represent an increase of \$195 MILLION, or 15.2 percent, over the amount that has been appropriated so far for fiscal year 2009.⁷⁸³

As great as the Administration's proposed 15.2 percent increase in funding for the MRA account is, that figure might well be overstated. That is because the Administration has requested an additional \$293 MILLION in supplemental fiscal year 2009 funds for the MRA account. Should Congress provide those funds, as requested, the Administration's fiscal year 2010 MRA request would wind up being \$980 MILLION below the fiscal year 2009 appropriated level, constituting a reduction of 6.2 percent from the fiscal year 2009 level of funding.

The following breaks down the major components of the Administration's overall fiscal year 2010 MRA request:

1. Funding for Refugee Admissions. Within the overall MRA budget, the Administration asks for \$305.4 MILLION for refugee admissions. This would represent an increase of \$22.7 MILLION, or 8 percent, over the amount that has been appropriated so far for fiscal year 2009.

The Administration contends its fiscal year 2010 budget would support 80,000 refugee admissions in fiscal year 2010, which is the same number of refugees the President set for admission in fiscal year 2009. However, this would assume a per capita admissions cost of about \$3,817 per refugee.

⁷⁸³ *At the time of this writing, the fiscal year 2009 appropriation for the MRA account totals \$1.285 BILLION. This includes \$934.5 MILLION that was provided in the fiscal year 2009 Omnibus Appropriations Bill and an additional \$350 MILLION that was provided in a fiscal year 2009 supplemental appropriations bill. The Administration has requested an additional \$333 MILLION and Congress has provided an additional \$390 MILLION in the just-cleared fiscal year 2009 war supplemental appropriations bill. The additional supplemental appropriation that the Administration has requested is not included in the fiscal year 2009 total.*

2. Funding for Overseas Refugee Assistance. The Administration's fiscal year 2009 budget submission proposes a total fiscal year 2010 appropriation of \$.123 BILLION for overseas refugee assistance. This would represent an increase of \$174 MILLION, or 18.3 percent compared to the amount appropriated so far for fiscal year 2009 for overseas refugee assistance.

The proposed 18.3 percent increase in overseas refugee assistance funding from fiscal year 2010 to 2009 might well be overstated, however. That is because the Administration has requested \$293 MILLION in supplemental fiscal year 2009 funds for overseas refugee assistance. Should Congress provide those funds, as requested, the Administration's fiscal year 2010 request for overseas refugee assistance would wind up being \$119 MILLION below the fiscal year 2009 appropriated level, constituting a reduction of 9.6 percent from the fiscal year 2009 level of funding.

- Refugee Admissions Ceiling for Fiscal Year 2010. The Administration's budget documents indicate that the Administration's fiscal year 2010 budget would 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 2009.⁷⁸⁴
- Funding for Emergency Refugee and Migration Assistance. The Administration's fiscal year 2010 budget proposes an appropriation of \$75 MILLION to replenish the Emergency Refugee Migration Assistance (ERMA) account. This would be an increase of \$35 MILLION compared to the \$40 MILLION that was appropriated in fiscal year 2009 for the ERMA account.

In previous fiscal years, administrations have asked Congress to waive the law that limits the ERMA account to no more than \$100 MILLION at any given time. The Obama Administration did not explicitly request that Congress waive that law this year. However, it appears that the Administration's request would place more than \$100 MILLION being placed in the account at the beginning of fiscal year 2010.⁷⁸⁵

The charts that follow summarize the Administration's fiscal year 2010 budget submission for MRA, ERMA, and ORR:

⁷⁸⁴ 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](#)

⁷⁸⁵ See Page 820 of the [Budget of the United States Government Fiscal Year 2010--Appendix](#)

**Administration's Fiscal year 2009
 Request for MRA**

ITEM	'08 Actual	'09 Projected	'10 OMB
Overseas Assistance ⁷⁸⁶	\$ 1,064.5	\$ 948.8	\$ 1,123.1
Refugee Admissions	\$ 211.7	\$ 282.8	\$ 305.4
Refugees to Israel	\$ 39.7	\$ 30.0	\$ 25.0
Administrative Expenses	\$ 22.3	\$ 23.0	\$ 27.0
TOTAL MRA⁷⁸⁷	\$ 1,338.2	\$ 1,284.5	\$ 1,480.4

Millions of Dollars

**Administration's Fiscal year 2009
 Request for ERMA**

ITEM	'08 Actual	'09 Projected	'10 OMB
TOTAL ERMA	\$ 75.6	\$ 40.0	\$ 75.0

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 State's MRA accounts.

- **MRA Account.** Refugee Council USA (RCUSA), the nation's leading coalition of refugee resettlement, human rights, and humanitarian organizations, has asked Congress to appropriate \$2.05 BILLION for the MRA account in fiscal year 2010. That is \$570 MILLION more than the Administration is requesting for fiscal year 2010. It is \$765 MILLION more than has been appropriated so far in fiscal year 2009 and \$472.5 MILLION more than the combination of the amount that Congress has already appropriated for fiscal year

⁷⁸⁶ The fiscal year 2008 appropriation of \$1.064 BILLION for Overseas Assistance includes \$749.5 MILLION in regular appropriations and \$315 MILLION in supplemental appropriations. The fiscal year 2009 projection of \$948.8 MILLION for Overseas Assistance does not include \$293 MILLION in supplemental fiscal year 2009 funds that was requested by the President but that had not yet enacted into law at the time of this writing.

⁷⁸⁷ The fiscal year 2009 TOTAL MRA amount does not include \$293 MILLION in supplemental fiscal year 2009 funds that was requested by the President or the \$390 MILLION in supplemental fiscal year 2009 MRA funds that Congress, at the time of this writing, is poised to enact in the fiscal year 2009 war supplemental appropriations bill

2009 and the amount that the Administration has asked for in supplemental fiscal year 2009 MRA funding.

The biggest differences between RCUSA's recommendations for the MRA account and the Administration's request are found in two areas.

1. **Refugee Admissions.** First, RCUSA recommends \$251.5 MILLION more for refugee admissions in fiscal year 2010 than the Administration has requested, enough to accommodate at least 45,000 more refugee Admissions than the Administration is planning for.⁷⁸⁸
2. **Overseas Refugee Assistance.** Second, RCUSA recommends \$302 MILLION more for overseas assistance to refugees than the Administration has requested.

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

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

ITEM	'09 Projected	'10 OMB	'10 RCUSA
Overseas Assistance	\$ 948.8	\$ 1,123.1	\$ 1,425
Refugee Admissions	\$ 282.8	\$ 305.4	\$ 556
Refugees to Israel	\$ 30.0	\$ 25.0	\$ 25
Administrative Expenses	\$ 23.0	\$ 27.0	\$ 27
TOTAL MRA⁷⁸⁷	\$ 1,284.5	\$ 1,480.4	\$ 2,050

Millions of Dollars

Outlook. The House Appropriations Subcommittee on State, Foreign Operations, and Related Programs marked up its version of the Fiscal Year 2010 State, Foreign Operations, and Related Programs Appropriations Bill last week. However, at the time of this writing, no word had leaked about the specific level of appropriations in the bill for the Migration and Refugee Assistance or the Emergency Refugee and Migration Assistance accounts. ☼

**Senate
 Senate Appropriations Panels to Markup Bill
 Funding Immigration Court System:** The Senate

⁷⁸⁸ The RCUSA recommended level of funding for refugee admissions assumes 125,000 refugee admissions in fiscal year 2010 compared with the Administration's planned for 80,000 admissions in the fiscal year.

Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies and the full Senate Committee on Appropriations this week are scheduled to markup their respective versions of the fiscal year 2010 bill that funds the nation's immigration court system and funds reimbursements to states for the costs they bear for incarcerating criminal aliens. While no date for the Subcommittee markup had been set as of the time of this writing, it is widely anticipated that the Subcommittee markup will occur on Wednesday, June 24, 2009. The full Appropriations Committee markup is scheduled for 3:00 pm on Thursday, June 25, 2009. This week's markups will occur in connection with the yet-to-be-introduced Fiscal Year 2010 Commerce, Justice, Science, and Related Agencies Appropriations Bill.

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).

Summary of Immigration- and Refugee-Related Provisions. The text of the Chairman's Mark of the FY '10 Commerce, Justice, Science, and Related Agencies Appropriations Bill was not available at the time of this writing. Accordingly, no details of what will be in the bill with regard to EOIR, OSC, and OIL are available at this time.

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. ☼

Senate Judiciary Committee Could Address Material Support to Terrorist Issue in Markup of State Secrets Bill: The Senate Committee on the Judiciary has scheduled a markup for this week at which the material support to terrorist issue could be addressed. This week’s markup, which the Committee calls an executive business meeting, is expected to occur in connection with [S. 417](#), the State Secrets Protection Act. The meeting is scheduled for 10:00 am on Thursday, June 25, 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.⁷⁸⁹

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](#),⁷⁹⁰ 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

⁷⁸⁹ 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 switched his allegiance to the Democratic party

⁷⁹⁰ 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

encourage that act or other acts of international terrorism” would be subject to up to 25 years of imprisonment.

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 are likely to see House or Senate floor action this week:

- Torture Victims Relief Act Reauthorization. The full House of Representatives is expected to take up legislation reauthorizing programs under the Torture Victims Relief Act; and
- FY '10 Funding for Immigration Services, Immigration Enforcement, and Border Security.
 1. House Version of Homeland Security Appropriations Bill. The full House of Representatives is expected to take up its version of the Fiscal Year 2010 Homeland Security Appropriations Bill.
 2. Senate Version of Homeland Security Appropriations Bill. The full House of Representatives is expected to take up its version of the Fiscal Year 2010 Homeland Security Appropriations Bill.

House

House to Take Up Bill Reauthorizing Programs Under the Torture Victims Protection Act: The full House of Representatives this week is scheduled to take up legislation authorizing funding for programs to assist the victims of torture who are resettled in the United States. This week's House floor action will take place in connection with [H.R. 1511](#), the "Torture Victims Relief Reauthorization Act of 2009". The House is scheduled to take up the measure on Tuesday, June 23, 2009.

Legislative History. Representative Christopher Smith (R-NJ) introduced H.R. 1511 on March 16, 2009. It was referred to two committees: the House Committee on Foreign Affairs and House Committee on Energy and Commerce. Neither committee has held a hearing or markup of the measure. The two committees are expected to be discharged from considering the measure and the measure is being brought directly to the House floor.

Parliamentary Situation. The House is expected to take up H.R. 1511 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.

Summary of Immigration- and Refugee-Related Provisions. As introduced, H.R. 1511 contains a number of provisions. Among them is Section 2, which would authorize up to \$25 MILLION in each of fiscal years 2010 and 2011 for the Department of Health and Human Services to fund domestic treatment centers for trafficking victims.

Outlook. At the time of this writing, it did not appear as though H.R. 1511 would generate any controversy. ☼

House to Take Up FY '10 Bill Appropriating Funds for Immigration Services and Enforcement: The full House of Representatives this week is scheduled to take up the fiscal year 2010 appropriations bill that funds immigration services, immigration enforcement, and border security operations. This week's House floor action will take place in connection with [H.R. 2892](#), the Fiscal Year 2010 Homeland Security Appropriations Bill.⁷⁹¹ Floor action is scheduled for sometime after 10:00 am on Wednesday, June 24, 2009.

Parliamentary Situation. At the time of this writing, the parliamentary situation that will govern House floor consideration of the Fiscal Year 2010 Homeland Security Appropriations Bill was not yet known. After the chaos of last week, during which House Republicans forced a modern-day record number of votes on the Fiscal Year 2010 Commerce, Justice, Science, and Related Agencies Appropriations Bill, it is anticipated, that the House Committee on Rules will report a fairly restrictive rule permitting a relatively few amendments to be offered to the bill on the House floor.

The House Committee on Rules has set a deadline of 3:00 pm on Monday, June 22, 2009, for Members wishing to offer floor amendments to H.R. 2892 to file those amendments with the House Committee on Rules.

Legislative History. The House Appropriations Subcommittee on Homeland Security marked up its version of H.R. 2892 on Monday, June 8, 2009, forwarding the measure to the full Committee on Appropriations. The full House Committee on Appropriations held a markup session

⁷⁹¹ [H. Rept. 111-157](#), June 16, 2009

on Friday, June 12, 2009, ordering that the bill be reported to the full House of Representatives as an original measure.⁷⁹²

Summary of Immigration- and Refugee-Related Provisions. As reported by the House Committee on Appropriations, H.R. 2892 contains the following immigration-related provisions:

- Funding for U.S. Citizenship and Immigration Services. The House Appropriations Committee-reported version of H.R. 2892 would provide \$248 MILLION in directly appropriated funding for the U.S. Citizenship and Immigration Services (ICE) component of DHS. The committee report accompanying the measure indicates that this would be \$116 MILLION below the Administration's request and \$146.260 MILLION above the amount that was directly appropriated for USCIS in fiscal year 2009.

Notwithstanding the directly appropriated funding that the House Appropriations Committee-reported version of H.R. 2892 would provide for USCIS, the bulk of funding for USCIS in fiscal year 2010 would come from fee-generated funds. The Committee-approved bill assumes \$2.503 BILLION in fee-generated funding for fiscal year 2010, bringing the total projected USCIS funding in fiscal year 2010 under the Committee-approved bill to \$2.751 BILLION.

The draft committee report indicates that the Committee-approved bill reflects differences with the Administration on one major funding matter. The Administration requested \$206 MILLION to directly fund all refugee and asylum adjudication operations and for funding military naturalizations. The Committee-approved bill would appropriate only \$100 MILLION of that request.

- Funding for Immigration Services Ombudsman. The House Appropriations Committee-reported version of H.R. 2892 would appropriate \$6.685 MILLION FOR THE Citizenship and Immigration Services Ombudsman. The draft committee report accompanying the Committee-approved bill notes that this would be \$250,000 less than the amount the Administration requested and \$214,000 more than was provided in fiscal year 2009 for that purpose.
- Funding for Customs and Border Protection. The House Appropriations Committee-reported version of H.R. 2892 would appropriate \$7.577 BILLION for salaries and expenses of the United States Customs and Border Protection (CBP) component of the Department of DHS.

The draft committee report accompanying the measure indicates that this would be \$46.171 MILLION below the Administration's request and \$26.309 MILLION below the amount appropriated for that purpose in fiscal year 2009.

- Funding for Immigration and Customs Enforcement. The House Appropriations Committee-reported version of H.R. 2892 would appropriate \$5.311 BILLION for salaries and expenses of the Immigration and Customs Enforcement (ICE) component of DHS. The draft committee report accompanying the measure indicates that this would be \$36 MILLION below the Administration's request and \$384.3 MILLION above the amount appropriated for that purpose in fiscal year 2009.
- Funding for the US-VISIT System. The House Appropriations Committee-reported version of H.R. 2892 would appropriate \$351.8 MILLION for the US-VISIT system. The draft committee report accompanying the Committee-approved bill notes that this is \$4.394 MILLION below the amount requested by the Administration and \$51.8 MILLION above the amount provided in fiscal year 2009.
- Legislative Riders and Limitations. The House Appropriations Committee-reported version of H.R. 2892 contains numerous legislative riders and limitations, including a number of immigration-related riders and limitations. The following lists the immigration-related provisions in the measure:
 1. Background Checks for Immigration Benefit Applicants. Sec. 524 of the House Appropriations Committee-reported version of H.R. 2892 continues a provision from previous fiscal years that prohibit funding to grant an immigration benefit to any individual unless the results of background checks required in statute to be completed prior to the grant of the benefit have been received by DHS.
 2. Use of E-Verify to Hire DHS Personnel. Sec. 529 of the House Appropriations Committee-reported version of H.R. 2892 continues a provision from previous fiscal years prohibiting the obligation of funds for the Office of Secretary and Executive Management for any new hires at DHS if they are not verified through the E-Verify program.
 3. Prohibition of Implementation of H-2B Rule. Sec. 531 of the House Appropriations Committee-reported version of H.R. 2892 continues a provision from previous fiscal years prohibiting funds available in the Act from being used to implement a rule or regulation which implements the notice of proposed rulemaking related to Petitions for Aliens to Perform Temporary Nonagricultural Services or

⁷⁹² See Pages 634-641 of the [June 15, 2009, edition of the Weekly Legislative Update](#) for a detailed report on the June 12, 2009, full House Appropriations Committee markup and the June 8, 2009, House Appropriations Subcommittee on Homeland Security markup of the fiscal year 2010 Homeland Security Appropriations bill

Labor (H-2B) set out beginning on 70 Federal Register 3984 (January 27, 2005).

4. Prohibition of a National ID Card. Sec. 533 of the House Appropriations Committee-reported version of H.R. 2892 continues a provision from previous fiscal years prohibiting funds for planning, testing, piloting, or developing a national identification card.
5. Airport Participation in the E-Verify Program. Sec. 538 of the House Appropriations Committee-reported version of H.R. 2892 continues a provision from previous fiscal years requiring the Assistant Secretary of Homeland Security (TSA) to certify that no security risks will result if an airport does not participate in the E-Verify Program.
6. Extension of the E-Verify Program. Sec. 545 of the House Appropriations Committee-reported version of H.R. 2892 would extend authority for the E-Verify Program through September 30, 2011.
7. Use of H and L Visa Fraud Prevention Fees. Sec. 546 of the House Appropriations Committee-reported version of H.R. 2892 would revise the Immigration and Nationality Act to provide that one-third of fees generated from H and L Visa Fraud Prevention fees shall be allocated to the Department of State, one-third shall be allocated to the Department of Homeland Security, and one-third shall be allocated to the Department of Labor.
8. Clarification of Authority with Respect to the TPS Fee. Sec. 547 of the House Appropriations Committee-reported version of H.R. 2892 would permit the Department of Homeland Security to charge for fingerprinting services, biometric services, and other necessary services associated with applications for Temporary Protected Status, notwithstanding the statutory limitation of \$50 for TPS application fees.

Potential Immigration- and Refugee-Related Floor Amendments. The Homeland Security Appropriations Bill is usually the target of numerous immigration-related floor amendments. It was not possible at the time of this writing, however, to predict the totality of the immigration-related amendments that Members will seek to offer to the bill during this year's consideration of the measure. ☼

Senate

Senate to Take Up FY '10 Bill Appropriating Funds for Immigration Services and Enforcement: The full Senate this week is scheduled to take up the fiscal year 2010 appropriations bill that funds immigration services, immigration enforcement, and border security operations. This week's Senate floor action will take

place in connection with [S. 1298](#), the Fiscal Year 2010 Homeland Security Appropriations Bill.⁷⁹³ Senate floor action is scheduled to begin after 10:00 am on Tuesday, June 23, 2009.

Parliamentary Situation. At the time of this writing, no unanimous consent agreement was in place governing Senate floor consideration of S. 1298.

Legislative History. The Senate Appropriations Subcommittee on Homeland Security marked up its version of the Fiscal Year 2010 Homeland Security Appropriations Bill on Wednesday, June 17, 2009, forwarding the measure to the full Committee on Appropriations. The full Senate Committee on Appropriations held a markup session on Thursday, June 18, 2009, ordering that the bill be reported to the full Senate as an original measure.⁷⁹⁴

Summary of Immigration- and Refugee-Related Appropriations Provisions. As reported by the Senate Committee on Appropriations, S. 1298 would appropriate--

- Funding for Immigration Services Ombudsman. \$6.685 MILLION for the U.S. Citizenship and Immigration Services Ombudsman. The report notes that this would be \$250,000 less than the amount the Administration requested and \$214,000 more than was provided in fiscal year 2009 for that purpose.
- Funding for U.S. Citizenship and Immigration Services. \$2.639 BILLION for U.S. Citizenship and Immigration Services (USCIS), including \$136 MILLION in directly appropriated funds and \$2.503 BILLION in fee generated revenue. The directly appropriated funds would be \$228 MILLION below the Administration's request and \$36 MILLION more than was directly appropriated for USCIS in fiscal year 2009.
- Funding for Customs and Border Protection. \$11.602 BILLION in total resources for the United States Customs and Border Protection (CBP) component of the Department of Homeland Security. This includes \$10.170 BILLION in directly appropriated funds and \$1.432 BILLION in fee-generated funds. The appropriation would be \$347 MILLION less than was appropriated for CBP in fiscal year 2009⁷⁹⁵ and \$120.5

⁷⁹³ [S. Rept. 111-31](#), June 18, 2009

⁷⁹⁴ See Pages 673-678 of this week's edition of the Weekly Legislative Update for a detailed report on the June 18, 2009, Senate Appropriations Committee and the June 17, 2009, Senate Appropriations Subcommittee on Homeland Security markup of the Fiscal Year 2010 Homeland Security Appropriations bill

⁷⁹⁵ The fiscal year 2009 appropriation for the Department of Homeland Security's Customs and Border Protection includes \$680 MILLION in supplemental funding that was included in P.L. 111-5,

MILLION more than the Administration requested for fiscal year 2010.

- Funding for Immigration and Customs Enforcement. S. \$5.75 BILLION in total resources for the United States Immigration and Customs Enforcement (ICE) component of the Department of Homeland Security. This includes \$5.445 BILLION in directly appropriated funds and \$304.8 MILLION in fee-generated funds. The appropriation would be \$436 MILLION more than was appropriated for ICE in fiscal year 2009 and \$12.9 MILLION less than the Administration's requested for fiscal year 2010.
- Funding for the US-VISIT System. \$378.194 MILLION for the US-VISIT system. The report notes that this is \$22 MILLION above the amount requested by the Administration.

Legislative Riders and Limitations. S. 1298 contains numerous legislative riders and limitations, including a number of immigration-related riders and limitations. The following lists the immigration-related provisions in the measure:

- Naturalization Oath. Sec. 513 of S. 1298, as reported by the Senate Committee on Appropriations, would prohibit funds appropriated in the bill from being used to amend the oath of allegiance required by section 337 of the Immigration and Nationality Act (8 U.S.C. 1448).
- Contracting Out of USCIS Services. Sec. 514 of S. 1298, as reported by the Senate Committee on Appropriations, would prohibit funds appropriated in the bill from being used to process or approve a proposal initiated in 2004 to contract out USCIS services.
- Background Checks for Immigration Benefit Applicants. Sec. 526 of S. 1298, as reported by the Senate Committee on Appropriations, would continue a provision from previous fiscal years that prohibits funding to grant an immigration benefit to any individual unless the results of background checks required in statute to be completed prior to the grant of the benefit have been received by DHS.
- Use of E-Verify to Hire DHS Personnel. Sec. 533 of the S. 1298, as reported by the Senate Committee on Appropriations, would continue a provision from previous fiscal years prohibiting the obligation of funds for the Office of Secretary and Executive Management for any new hires at DHS if they are not verified through the E-Verify program.
- Prohibition of Implementation of H-2B Rule. Sec. 535 of S. 1298, as reported by the Senate Committee on Appropriations, would continue a provision from previous years prohibiting funds in the Act from being used to implement a rule which implements the notice of proposed rulemaking related to Petitions for Aliens to Perform Temporary Nonagricultural Services or Labor (H-2B) set out beginning on 70 Federal Register 3984 (January 27, 2005).
- Prohibition of a National ID Card. Sec. 537 of S. 1298, as reported by the Senate Committee on Appropriations, would continue a provision from previous fiscal years prohibiting funds for planning, testing, piloting, or developing a national identification card.
- Extension of the E-Verify and EB-5 Regional Center Programs. Sec. 545 of S. 1298, as reported by the Senate Committee on Appropriations, would extend for three years authority for the E-Verify and EB-5 Regional Center Programs, extending the programs through September 30, 2012.
- Disposal of ICE Detention Facilities. Sec. 546 of S. 1298, as reported by the Senate Appropriations Committee, would authorize the Secretary of Homeland Security to dispose of ICE detention facilities that the Secretary determines are no longer needed.

Potential Immigration- and Refugee-Related Floor Amendments. The Homeland Security Appropriations Bill is usually the target of numerous immigration-related floor amendments. It was not possible at the time of this writing, however, to predict the totality of the immigration-related amendments that senators will seek to offer to the bill during this year's consideration of the measure. ☼ ◇

This Week's Conference Activity

At the time of this writing, no immigration- or refugee-related bills are pending in conference committees. ◇

This Week's Executive Activity

President (Finally) to Meet with Members and Senators on Comprehensive Immigration Reform:

The oft-delayed White House meeting between President Barack Obama and Members and Senators on comprehensive immigration reform is scheduled (once again) to take place this week. This week's meeting is scheduled for Thursday, June 25, 2009, at the White House.

While few details of the upcoming meeting were available at the time of this writing, by all reports, the attendees will

include Members and Senators from both parties and on both sides of the comprehensive immigration reform issue.

The meeting was originally expected to take place in May. To the consternation of many in the pro-immigrant advocacy community, the meeting was not actually scheduled until June 8, 2009. Days before the June 8 meeting date, the White House postponed the meeting to June 17, 2009. But the White House eventually postponed the meeting yet again, scheduling it this time for June 25.

Congressional Quarterly (CQ) has quoted an unnamed Administration official as saying of the meeting and postponements, “[t]he president is inviting a small group of bipartisan Senate and House leaders on the immigration issue ... to have an honest discussion of the issues, identify areas of agreement, and areas where we still have work to do.” CQ continued quoting the official, who added, “[t]he meeting is intended to launch a policy conversation, with the hope of beginning the debate in earnest later this year.” ☀ ◇

Last Week's Legislative Activity

Last Week's Hearings

Only one congressional panel held a hearing last week on which significant immigration- or refugee-related matters:

- Oversight Over the Department of Justice. The Senate Judiciary Committee held an oversight hearing on the operations of the Department of Justice, at which Attorney General Eric H. Holder, Jr., testified.

Senate Judiciary Committee Holds Oversight Hearing on the Operations of the Department of Justice: The Senate Committee on the Judiciary last week held an oversight hearing on the Department of Justice. Last week's hearing was held on Wednesday, June 17, 2009.⁷⁹⁶

Witnesses. The sole witness at last week's hearing was Attorney General Eric H. Holder, Jr.

Opening Statements. The following summarizes the immigration- and refugee-related comments that were contained in opening statements made by senators at last week's hearing:

- Chairman Leahy. Senate Judiciary Committee Chairman Patrick Leahy (D-VT) did not make any substantive

reference to immigration in his prepared opening statement for last week's hearing.⁷⁹⁷

- Ranking Republican Sessions. Senate Judiciary Committee Ranking Republican Jeff Sessions (R-AL) did not make any substantive reference to immigration in his prepared opening statement for last week's hearing.

Prepared Testimony. Attorney General Holder's prepared testimony addressed a broad range of matters, most of which had nothing to do with immigration- or refugee-related matters.⁷⁹⁸

With regard to immigration, the Attorney General referred to a recent decision that he made to overturn a controversial ruling made by his predecessor relating to the right of aliens to effective assistance of counsel. Of that decision, Attorney General Holder said, “Consistent with the Department's commitment to transparency, I recently vacated Attorney General Mukasey's order in *Matter of Compean*, and directed the Executive Office of Immigration Review to begin a rulemaking process to evaluate the procedures for bringing claims of ineffective assistance of counsel in immigration proceedings. The previous *Compean* order had made significant changes to those procedures, which are critical to the integrity of immigration proceedings, without the benefit of adequate notice and comment. In the new rulemaking, the public will have a full and fair opportunity to participate in the formulation of those procedures. My order did not reverse the previous order on the merits, restores the status quo ante, and will not affect the Department's litigating positions.”

Most of the immigration-related comments in the Attorney General's prepared testimony related to the Department of Justice's efforts to combat southwest border violence. On that subject, the Attorney General told the Committee that “[c]onfronting the Mexican cartels, together with our partners in the Mexican government, is a paramount priority for the United States and the Department. The southwest border in particular is a vulnerable area for illegal immigration, drug trafficking, and the smuggling of illegal firearms. Implementing a comprehensive strategy for confronting the cartels and security at the border involves collaboration and coordination at various levels of the government.” He said that “[a]ddressing the Southwest Border threat has two basic elements: policing the actual border to interdict and deter the illegal crossing of undocumented persons or contraband

⁷⁹⁶ [Click Here](#) to see video of the June 17, 2009, Senate Judiciary Committee oversight hearing on the operations of the Department of Justice at which Attorney General Eric H. Holder, Jr. testified

⁷⁹⁷ [Click Here](#) to see the complete text of the prepared opening statement of Senate Judiciary Committee Chairman Patrick Leahy (D-VT) at the June 17, 2009, Senate Judiciary Committee oversight hearing on the operations of the Department of Justice

⁷⁹⁸ [Click Here](#) to see the complete text of the prepared testimony of Attorney General Eric H. Holder, Jr., at the June 17, 2009, Senate Judiciary Committee oversight hearing on the operations of the Department of Justice

goods, and confronting the large criminal organizations operating on both sides of the border. To that end, the Justice Department is targeting the Mexican cartels as it did La Cosa Nostra or any other large organized crime organization. The efforts of Justice Department law enforcement components – DEA, FBI, ATF, U.S. Marshals Service (USMS), the U.S. Attorneys, the Criminal Division and the Organized Crime Drug Enforcement Task Force (OCDETF) – along with the Department of Homeland Security and other federal agencies – have already yielded important results.”

Attorney General Holder told the Committee that “[o]ver the last nine months, the USMS has deployed an additional 94 Deputy U.S. Marshals to district offices and will be sending four additional deputies to assist the Mexico City Field Office in order to step-up efforts along the Southwest Border. In addition, within the last three months, four new Criminal Investigators have been placed in the asset forfeiture field units along the Southwest Border. These new positions will support U.S. Attorneys’ Offices and law enforcement agencies in their efforts against the cartels, as well as contributing to other large-scale investigations.” He said that “Our strategy to address the Mexican cartels will allow the Department to commit 100 ATF personnel to the southwest border to supplement our ongoing Project Gunrunner. DEA will add 16 new positions on the border, as well as newly reconstituted Mobile Enforcement Teams, and the FBI is creating a new intelligence group that will focus on gang/drug criminal enterprises, public corruption, kidnapping, extortion and other investigative matters related to the Southwest Border.” In addition, the Attorney General noted that he has “had a series of meetings with Secretary Napolitano to discuss increased coordination on various matters between the Department of Justice and DHS.”

Q&A Session. Committee Members asked numerous questions of the Attorney General during the Question & Answer Session (Q&A Session) at last week’s hearing. The following is a list of the immigration- or refugee-related subjects that were explored during the Q&A Session:

- [Expansion of Operation Streamline](#)
- [State Criminal Alien Assistance Program \(SCAAP\)](#)

The following summarizes the immigration- and refugee-related matters that came up during the Q&A Session that took place between committee members and witnesses at last week’s hearings:

- [Expansion of Operation Streamline.](#) Senate Minority Whip Jon Kyl (R-AZ) asked Attorney General Holder if the Administration was considering expanding Operation Streamline to a larger area along the U.S. border with Mexico and how much it would cost to do so.

The Attorney General indicated that the Department was studying the issue but had no results yet of the study.

- [State Criminal Alien Assistance Program \(SCAAP\).](#) Senate Minority Whip Jon Kyl (R-AZ) asked Attorney General Holder if the Administration was planning to ask for funds for the State Criminal Alien Assistance Program in fiscal year 2010 or 2011.

In response, the Attorney General said, “I think the administration’s made the determination that, in dealing with that issue, there are better ways to do it that through the use of the program that you mentioned. And I think that’s why that is reflected as having been zeroed out in the 2010 budget. So I think -- as I said, I think that is the administration’s position at this point.” When pressed on the matter, Attorney General Holder added, “ I think, regardless of the position that the administration has taken, that you do raise a valid point. And that is that the federal government has to be sensitive to the burdens that are placed on our state and local partners as a result of enforcement efforts that happen along the border. And we have to find ways in which we alleviate those burdens by -- in working with them. I think that the administration’s position is that, with regard to this particular program, that there are -- are better ways, perhaps, that we could do this.” ☼

Last Week’s Markups

Five committee actions occurred last week at which significant immigration- or refugee-related matters were acted on. One of the actions took place in the House and the other four occurred in the Senate:

- [FY ’10 Appropriations Subcommittee Spending Allocations.](#) The Senate Appropriations Committee approved its subcommittee spending allocations for fiscal year 2010;
- [FY ’10 Appropriations for Immigration Services and Enforcement.](#)
 1. The Senate Appropriations Subcommittee on Homeland Security approved its version of the Fiscal Year 2010 Homeland Security Appropriations Bill.
 2. The Senate Appropriations Committee approved its version of the Fiscal Year 2010 Homeland Security Appropriations Bill;
- [FY ’10 Appropriations for Refugee Admissions and Overseas Refugee Assistance.](#) The House Appropriations Subcommittee on State, Foreign Operations, and Related Programs approved its version of the Fiscal Year 2010 State/Foreign Operations Appropriations Bill; and
- [Nomination of Eric P. Schwartz to Head the State Department’s Bureau of Population, Refugees, and](#)

Migration. The Senate Committee on Foreign Relations approved the nomination of Eric P. Schwartz to be Assistant Secretary of State for Population, Refugees, and Migration.

Senate Appropriations Committee Approves Increased Funding Allocations for Bills that Fund Immigration- and Refugee-Related Agencies, Functions, Programs, and Activities: The Senate Committee on Appropriations last week approved the allocation of discretionary spending for its 12 subcommittees, including for the four subcommittees with jurisdiction over the federal government's immigration- and refugee-related departments, agencies, functions, programs, and activities. Last week's Committee action occurred on Thursday, June 18, 2009.

The following compares the fiscal year 2010 allocations for each of the four subcommittees with the equivalent allocations from fiscal year 2009:

**Senate Appropriations Subcommittee Discretionary Spending Allocations
 Fiscal Years 2009 through Fiscal Year 200**

SUBC	FY '09	FY '10	\$ DIFF	% DIFF
C-J-S	\$ 57.9	\$ 64.8	+\$ 6.9	+ 11.9%
HLS	\$ 40.1	\$ 42.7	+\$ 2.6	+ 6.5%
LHHS	\$ 153.1	\$ 163.1	+\$ 10.0	+ 6.5%
SFOPS	\$ 36.6	\$ 48.7	+\$ 12.1	+ 33.1%

Billions of Dollars ☼

Senate Appropriations Panels Approve FY '10 Homeland Security Appropriations Bill: The Senate Appropriations Subcommittee on Homeland Security and the full Senate Committee on Appropriations last week approved the fiscal year 2010 appropriations bill that funds immigration services, immigration enforcement, and border security operations, ordering that the measure be reported to the full Senate. Included in the measure that the panels approved is a three year-long authorization of the EB-5 Regional Centers Program and the controversial E-Verify program; none of the funds requested by the Obama Administration to directly fund refugee and asylum adjudications; and a slight cut in the Obama Administration's fiscal year 2010 requests CBP, ICE, and USCIS. Last week's markups occurred in connection with [S. 1298](#), the Fiscal Year 2010 Homeland Security Appropriations Bill.⁷⁹⁹ The subcommittee approved the bill by a voice vote on Wednesday, June 17, 2009. The full committee approved the measure one day later on Thursday, June 18, 2009, by a vote of 30-0.

⁷⁹⁹ [S. Rept. 111-31](#), June 18, 2009

Summary of Immigration- and Refugee-Related Provisions. As reported by the Senate Committee on Appropriations, S. 1298 contains the following immigration- and refugee-related provisions:⁸⁰⁰

- Funding for Immigration Services Ombudsman. The bill would appropriate \$6.685 MILLION for the U.S. Citizenship and Immigration Services Ombudsman. The committee report accompanying the bill notes that this would be \$250,000 less than the amount the Administration requested and \$214,000 more than was provided in fiscal year 2009 for that purpose. The report defended the Committee's decision by noting that "[f]unds are decreased below the request due to the delay in filling full-time permanent positions within this office."
- Funding for U.S. Citizenship and Immigration Services. The bill would provide a total of \$2.639 BILLION for U.S. Citizenship and Immigration Services (USCIS), including \$136 MILLION in directly appropriated funds and \$2.503 BILLION in fee generated revenue. The directly appropriated funds would be \$228 MILLION below the Administration's request and \$36 MILLION more than was directly appropriated in fiscal year 2009.

Examination of the committee report accompanying S. 1298 reveals that the Committee-reported version of the measure reflects differences with the Administration on one major matter relating to funding for immigration adjudications: The Administration requested \$206 MILLION to directly fund all refugee and asylum adjudication operations and for funding military naturalizations. The Committee-reported version of S. 1298 endorses \$5 MILLION to fund military naturalizations. However, it rejected the Administration's requested \$201 MILLION to fund refugee and asylum adjudications, demanding, instead, that the Administration propose a reprogramming request to make up for the bill's rejection of the Administration's proposal.

The committee report accompanying S. 1298 contains numerous observations and directives relating to USCIS. A selection of some of the more significant ones follows:

1. Refugee and Asylum Adjudications. The committee report accompanying S. 1298 notes that the Committee rejected the Administration's proposal that refugee and asylum adjudications be funded by a direct appropriation of \$201 MILLION rather than by continuing the current practice of assessing a surcharge on fees paid by applicants for other immigration services. Instead, the committee report

⁸⁰⁰ See Pages 688-695 of this week's edition of the Weekly Legislative Update for extended excerpts from S. Rept. 111-31, the committee report accompanying S. 1298

indicated that the Committee was directing the Department of Homeland Security "to submit a reprogramming within 30 days after the date of enactment of this act, to reflect the continuation of these activities as fee funded."

2. Military Naturalizations. The committee report accompanying S. 1298 notes that the Committee supports the Administration's request that military naturalizations be funded through directly appropriated funds. In approving the request, the committee report noted that the Committee "supports appropriations to support those men and women serving this Nation in the military and has included \$5,000,000, as requested, for military naturalizations."
3. Basic Pilot/E-Verify System. The committee report accompanying S. 1298 notes that the bill would appropriate \$118.5 MILLION for the Basic Pilot/E-Verify program, which is \$6.5 MILLION more than the Administration requested.

The committee reported included an extensive write-up on the E-Verify program, defending and expressing support for the E-Verify program. After explaining why it thought that USCIS had made great improvements in the program, the report went on to state that, "[g]iven the concerns by some of the general public with E-Verify, the Committee urges USCIS to continue to work to enhance the system to further improve performance, to continue its public outreach and education campaign, and to perform a new, independent evaluation of the system during the first quarter of fiscal year 2010."

4. Immigration Integration Programs. The committee report accompanying S. 1298 notes that the Committee has rejected the Administration's request for \$10 MILLION for immigrant integration programs, opting, instead to continue funding for such programs at \$1.2 MILLION, the amount provided in fiscal year 2009. In support of its position, the committee report stated, "[t]he Committee notes that the current year grant applications are still being evaluated and that the 2009 funds have yet to be awarded. The Committee does not recommend the \$10,000,000 requested in the budget for a new immigrant integration activity. The Committee notes that the Office of Citizenship Services has long provided admirable services to assist those individuals seeking to become U.S. citizens or otherwise legally adjust their status and will have \$6,400,000 of carry forward balances to continue these efforts. This makes a total of \$7,600,000 available for immigrant services and integration grants."

5. REAL ID Implementation. The committee report accompanying S. 1298 notes that the Committee has rejected the Administration's request for \$50 MILLION in fiscal year 2010 funds for a Driver's License Security Hub to assist State motor vehicle offices and other drivers' license entities to produce secure drivers licenses. In defending its decision, the report noted "that Congress provided \$50,000,000, as requested, in fiscal year 2009 for this purpose." It went on to say that, "[d]ue to the fact that these funds remain unobligated and the Department continues to review plans for development of the hub, the Committee provides no new funding for this activity. The Committee strongly encourages the Department to deliver its plan for the hub and anticipates receiving the development plan this year."

6. FBI Background Check Backlog. The committee report accompanying S. 1298 notes that the "Committee is pleased to note that the multiyear FBI name check backlog has been eliminated. As of April 30, 2009, there were only 32 cases, out of 1,645 pending, which were more than 30 days old, compared to over 327,000 pending cases on April 1, 2008. The Committee expects USCIS to report to the Committee in the event that there are indications that the backlog is returning."

- Funding for Customs and Border Protection. S. 1298 would appropriate \$11.602 BILLION in total resources for the United States Customs and Border Protection (CBP) component of the Department of Homeland Security. This includes \$10.170 BILLION in directly appropriated funds and \$1.432 BILLION in fee-generated funds. The appropriation would be \$347 MILLION less than was appropriated for CBP in fiscal year 2009⁸⁰¹ and \$120.5 MILLION more than the Administration requested for fiscal year 2010.

Close examination of committee report accompanying S. 1298 shows that the major differences between the Administration's immigration-related funding priorities for CBP and the Committee-reported bill's is found in the areas of Salaries and Expenses and Construction and Facilities Management. S. 1298 would appropriate \$8.076 BILLION for CBP Salaries and expenses, compared with the Administration request of \$7.623 BILLION. S. 1298 would appropriate \$316 MILLION for Construction and Facilities Management compared to Administration's request of \$678.6 MILLION for that purpose.

⁸⁰¹ *The fiscal year 2009 appropriation for the Department of Homeland Security's Customs and Border Protection includes \$680 MILLION in supplemental funding that was included in P.L. 111-5, the American Recovery and Reinvestment Act of 2009 (Economic Stimulus Bill)*

The committee report contains numerous observations and directives relating to CBP. A selection of some of the more significant ones follows:

1. Border Patrol Staffing. The committee reported accompanying S. 1298 notes that the bill would appropriate "the full funding necessary for 20,063 Border Patrol agents and the attendant support positions, as compared with 12,349 agents on board at the beginning of fiscal year 2007." The report notes that "the amount recommended by the Committee for 'Border Security and Control' is a total of \$3,525,008,000, 22,800 positions, and 22,774 FTE, \$20,000,000 above the request. The amount above the request is for non-intrusive inspection equipment for use by the Border Patrol in doing southbound enforcement discussed earlier in this section. This is an increase of \$98,553,000 over the fiscal year 2009 level. These funds provide the full funding necessary for 20,063 Border Patrol agents and the attendant support positions, as compared with 12,349 agents on board at the beginning of fiscal year 2007."

The report, further, notes that the Administration is planning to increase the number of Border Patrol agents along the U.S. Northern border from 1,525 currently to 2,212 by the end of fiscal year 2010.

The Committee report, further directed CBP to hire additional "mission support personnel" along the U.S. border in order to free up Border Patrol agents for more pressing duties.

2. Unaccompanied Alien Children. The committee report accompanying S. 1298 notes that the Obama Administration's fiscal year 2010 budget submission for the Department of Homeland security did not request any additional funding for CBP's role in caring for and transporting unaccompanied alien children (UACs) to the custody of the Department of Health and Human Services Office of Refugee Resettlement (ORR) upon their apprehension by CBP officers or agents. The committee report, further, noted that "[t]he conference report accompanying the 'Supplemental Appropriations Act, 2009' included \$6,200,000 for CBP for this purpose based upon estimated increased UAC requirements resulting from the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (Public Law 110-457). While the Committee provides no additional funding for this activity for fiscal year 2010, the Committee directs CBP to report not later than March 31, 2010, on the actual fiscal year 2009, and estimated fiscal year 2010, costs of care and transportation of UACs."

3. Border Security Fencing, Infrastructure, and Technology. The committee reported accompanying S. 1298 notes that the measure would provide \$800 MILLION for Border Security Fencing, Infrastructure, and Technology (BSFIT), which it noted is \$20.5 MILLION above the Administration's request.

- Funding for Immigration and Customs Enforcement. S. 1298 would appropriate \$5.75 BILLION in total resources for the United States Immigration and Customs Enforcement (ICE) component of the Department of Homeland Security. This includes \$5.445 BILLION in directly appropriated funds and \$304.8 MILLION in fee-generated funds. The appropriation would be \$436 MILLION more than was appropriated for ICE in fiscal year 2009 and \$12.9 MILLION less than the Administration's requested for fiscal year 2010.

Language in the committee reported accompanying S. 1298 contains numerous observations and directives relating to ICE. A selection of some of the more significant ones follows:

1. Southwest Border Enforcement Initiative. The committee report accompanying S. 1298 praises the Administration's southwest border enforcement initiative, for which the Administration's FY '10 budget proposal requested \$70,000,000, 349 positions, and 176 FTE, to enhance current efforts to identify criminal activities and eliminate vulnerabilities that pose a threat to our Nation's borders. It notes that S. 1298 fully funds the Administration's request. It also adds an additional \$45 MILLION, 230 positions, and 119 FTE, above the request to further build upon this effort.
2. Worksite Enforcement. The committee report accompanying S. 1298 declares that "[w]orksite enforcement must remain an immigration enforcement priority activity for ICE and the Department as a whole." The report noted that the Committee "is pleased that through fiscal year 2008, ICE continued to aggressively conduct worksite enforcement actions and achieve increases in both criminal and administrative arrests. The new worksite enforcement guidelines issued by the Secretary state that, 'The prospect for employment in the United States continues to be one of the leading causes of illegal immigration, creating a market for criminal smuggling organizations who exploit people willing to pay high fees and take great risks to enter the United States without detection.' The Committee said much the same thing in its report accompanying the Senate version of the fiscal year 2009 bill when it said, 'By turning off the spigot of cheap labor and taking action against unscrupulous employers who exploit illegal aliens, we can begin

to stem the tide of illegal immigration.'" The report notes that DHS's guidance "goes on to state that, 'the administrative arrest of the illegal workforce under ICE's existing immigration authorities continues to be an integral aspect of the overall ICE worksite enforcement strategy.' The Committee notes that the Secretary has promised to continue worksite enforcement actions against both employers and employees, and has requested a slight increase in the budget for this activity. The Committee recommends a total of \$138.778 MILLION for worksite enforcement. The \$10 MILLION above the request is for 100 positions, 50 FTE, for forensic auditors to increase targeting of criminal employers and critical infrastructure locations. The Committee will pay careful attention to the implementation of this new guidance and requests quarterly briefings on worksite enforcement activities in general and specifically on how these funds are being used."

3. Detention Beds. The committee report accompanying S. 1298 notes that "[m]aintaining an adequate number of detention beds is critical to ensuring the integrity of our detention and removal system while at the same time preventing a return to the ill-advised 'catch and release' policy." The report went on to assert that "Congress took the lead and added funding for additional detention beds above the President's request the past 5 fiscal years. The request includes \$36,200,000 to annualize the beds added by Congress in fiscal year 2009 and to fully support a detention bed level of 33,400." The report notes that "Bill language is included directing that a detention bed level of 33,400 beds shall be maintained throughout fiscal year 2010."
4. Alternatives to Detention. The committee report accompanying S. 1298 notes that "ICE detains all illegal aliens who pose a threat to community safety or national security, as well as those required to be detained under the Nation's immigration laws. The Alternatives to Detention [ATD] program was created to enable ICE to maintain current detention levels and to monitor aliens who are likely to comply, without detention, with immigration proceedings." It pointed to families with children as "[a]n excellent example of a population for consideration for the use of ATD."

The committee report notes, further, that the Committee has recommended \$63.913 MILLION in fiscal year 2010, as requested by the Administration, for Alternatives to Detention. The report noted that "the Committee encourages ICE to prioritize enrollment of families with children in this program, to continue to use intensive supervision, and directs ICE to brief the Committee semiannually on the

program beginning no later than 60 days after the date of enactment of this act."

5. Impact of Enforcement on U.S. Citizen Children. The report accompanying S. 1298 notes that "the Committee is aware that increased interior immigration enforcement has resulted in families being separated. The Committee directs the Department to analyze and report on the feasibility of establishing procedures to ensure that data can be collected and documented for the purposes of submitting a quarterly report to the Committee which tracks the number of deportation, exclusion, and removal orders sought and obtained by ICE that involve verified alien parents of a U.S. citizen child. The report should also provide a break down by district in which the removal order was issued; by type of order (deportation, exclusion, removal, expedited removal, and others); by agency issuing the order; by the number of cases in each category in which ICE has successfully removed the verified alien parent; and by number of cases in each category in which ICE has not removed the verified alien parent. The analysis and report on the feasibility of establishing procedures to ensure that data can be collected and documented for reporting purposes shall be submitted not later than December 15, 2009."
6. Fugitive Operations. The committee report accompanying S. 1298 notes that the bill includes \$229.682 MILLION for 677 positions and 677 FTE, as proposed by the Administration's budget submission, for fugitive operations. The report noted that "[t]he National Fugitive Operations Program is responsible for reducing the fugitive alien population in the United States. As of May 2009, ICE estimates that there are approximately 549,408 immigration fugitives in the United States, a decrease of over 83,318 since October 2006. ICE works to reduce the population of these fugitives from the law through the use of Fugitive Operations teams. All 104 Fugitive Operations teams are operational and conducting enforcement operations."
7. Criminal Alien Program. The committee report accompanying S. 1298 notes that the bill includes \$192.539 MILLION for 935 positions and 932 FTE, as proposed in the Administration's budget submission, for 126 Criminal Alien Program teams.
8. Secure Communities Program. The committee report accompanying S. 1298 noted that the bill includes \$195.589 MILLION 552 positions, and 512 FTE, as proposed in the Administration's budget submission, requested, for the Secure Communities program. The report noted that this was an increase of \$45.589 MILLION compared to the amount

appropriated for the program in fiscal year 2009, supporting 92 additional positions.

The committee report expresses the Committee's pleasure "that the administration has embraced this program as one of many tools at its disposal to identify and remove illegal aliens, including criminal aliens, and otherwise enforce our Nation's existing immigration laws. With these additional funds, Secure Communities plans to expand coverage by at least 50 counties during fiscal year 2010 to establish biometric identification of arrested criminal aliens in over 140 counties. Secure Communities' threat-based deployment schedule prioritizes those counties with the highest threat criminal alien populations first, consisting primarily of counties in major metropolitan areas throughout the country as well as all counties along the southwest border. In fiscal years 2007 and 2008, 216,439 criminal aliens were removed after being incarcerated. Secure Communities estimates that after deploying to these counties, ICE will cover over 50 percent of the Nation's criminal alien population. The Department anticipates that, with continued funding, including redeployment of existing resources, it will establish biometric identification of arrested criminal aliens in all counties that are willing and technically able to participate by the end of fiscal year 2012."

The Committee report, further, notes that included in S. 1298 is bill language "ensuring that all illegal aliens encountered when enforcing our immigration laws are apprehended." The report also noted that the Committee "directs ICE to provide quarterly briefings on progress being made in implementing the Secure Communities program. The briefings shall include Secure Communities' impact on removals reporting at the level of detail of the quarterly detention and removals report. The first briefing should occur no later than 45 days after the date of enactment of this act."

9. Transportation of Unaccompanied Alien Children. The committee report accompanying S. 1298 notes that the Administration's fiscal year 2010 budget did not request additional funding for ICE's role in caring for and transporting unaccompanied alien children (UACs) to Office of Refugee Resettlement (ORR) custody. The report notes that S. 1298 does not include funding for ICE's transport of UACs. The report noted, however, that "the Committee directs ICE to report not later than March 31, 2010, on the actual fiscal year 2009, and estimated fiscal year 2010, costs of care and transportation of UACs."

- Funding for the US-VISIT System. The committee report accompanying S. 1298 notes that the measure would appropriate \$378.194 MILLION for the US-VISIT system. The report notes that this is \$22 MILLION above the amount requested by the Administration.
- Legislative Riders and Limitations. The committee report accompanying S. 1298 contains numerous legislative riders and limitations, including a number of immigration-related riders and limitations. The following lists the immigration-related provisions in the measure:
 - Naturalization Oath. Sec. 513 of S. 1298, as reported by the Senate Committee on Appropriations, would prohibit funds appropriated in the bill from being used to amend the oath of allegiance required by section 337 of the Immigration and Nationality Act (8 U.S.C. 1448).
 - Contracting Out of USCIS Services. Sec. 514 of S. 1298, as reported by the Senate Committee on Appropriations, would prohibit funds appropriated in the bill from being used to process or approve a proposal initiated in 2004 to contract out USCIS services.
 - Background Checks for Immigration Benefit Applicants. Sec. 526 of S. 1298, as reported by the Senate Committee on Appropriations, would continue a provision from previous fiscal years that prohibits funding to grant an immigration benefit to any individual unless the results of background checks required in statute to be completed prior to the grant of the benefit have been received by DHS.
 - Use of E-Verify to Hire DHS Personnel. Sec. 533 of the S. 1298, as reported by the Senate Committee on Appropriations, would continue a provision from previous fiscal years prohibiting the obligation of funds for the Office of Secretary and Executive Management for any new hires at DHS if they are not verified through the E-Verify program.
 - Prohibition of Implementation of H-2B Rule. Sec. 535 of S. 1298, as reported by the Senate Committee on Appropriations, would continue a provision from previous years prohibiting funds in the Act from being used to implement a rule which implements the notice of proposed rulemaking related to Petitions for Aliens to Perform Temporary Nonagricultural Services or Labor (H-2B) set out beginning on 70 Federal Register 3984 (January 27, 2005).
 - Prohibition of a National ID Card. Sec. 537 of S. 1298, as reported by the Senate Committee on Appropriations, would continue a provision from previous fiscal years

prohibiting funds for planning, testing, piloting, or developing a national identification card.

- Extension of the E-Verify and EB-5 Regional Center Programs. Sec. 545 of S. 1298, as reported by the Senate Committee on Appropriations, would extend for three years authority for the E-Verify and EB-5 Regional Center Programs, extending the programs through September 30, 2012.
- Disposal of ICE Detention Facilities. Sec. 546 of S. 1298, as reported by the Senate Appropriations Committee, would authorize the Secretary of Homeland Security to dispose of ICE detention facilities that the Secretary determines are no longer needed.

Subcommittee and Committee Consideration and Amendments. Both the Senate Appropriations Subcommittee on Homeland Security and the full Committee on Homeland Security held quick markups of the Fiscal Year 2010 Homeland Security Appropriations Bill. No immigration-related amendments were offered to the measure during either the Subcommittee or full Committee markups.

Next Steps. Now that the Senate Committee on Appropriations has approved the Fiscal year 2010 Homeland Security Appropriations Bill and formally reported it to the Senate, the next step in the legislative process is for the Senate to take up the measure. Senate floor consideration of the bill is scheduled to begin on Tuesday, June 23, 2009. ☀

House Appropriations Panel Approves FY '10 Funding for Refugee Admissions and Overseas Refugee Assistance: The House Appropriations Subcommittee on State, Foreign Operations, and Related Programs last week approved the fiscal year 2010 appropriations bill that funds the nation's refugee admissions and overseas refugee assistance programs. In doing so, the Subcommittee approved a dramatic increase in funding for the refugee program, relative to the regular appropriation that it received in fiscal year 2009, although the increase is much more modest when compared to the combined amount of regular and supplemental appropriations that the program has received in fiscal year 2009. Last week's Subcommittee action occurred in connection with the yet-to-be-introduced Fiscal Year 2010 State, Foreign Operations, and Related Programs Appropriations Bill, which the Subcommittee marked up on Wednesday, June 17, 2009. The Subcommittee approved the measure by a voice.

Summary of Immigration- and Refugee-Related Provisions. The Subcommittee-approved measure was not available for public inspection at the time of this writing. Accordingly, it was not at that time to determine the precise level of funding in the measure for refugee admissions, overseas refugee assistance, or Emergency Refugee and Migration Assistance (ERMA) accounts.

The only information that was available about refugee funding in the bill comes from a press release issued by Subcommittee Chairwoman Nita Lowey (D-NY). In that press release, the Subcommittee states that the bill contains "\$2.4 billion for refugee and disaster assistance including for the humanitarian crisis in Pakistan." It was unclear, however, at the time of this writing, whether the \$2.4 BILLION mentioned refers to an aggregation of Migration and Refugee Assistance, International Development Assistance, and Emergency Refugee and Migration Assistance or if it is an aggregation of funding for two of those accounts.

Subcommittee Consideration and Amendments. The Subcommittee took up the draft FY '10 State, Foreign Operations, and Related Programs on Wednesday, June 17, 2009, approving it without amendment by a voice vote.

Next Steps. Now that the House Appropriations Subcommittee on State, Foreign Operations, and Related Programs has approved its version of the FY '10 State, Foreign Operations, and Related Programs Appropriations Bill, the next step in the legislative process for the full Committee on Appropriations to take up the measure. Full Committee consideration of the measure is scheduled to take place at 4:00 pm on Tuesday, June 23, 2009. ☀

Senate Foreign Relations Committee Approves Nomination of Eric Schwartz to Head Refugee Bureau: The Senate Committee on Foreign Relations last week approved the nomination of Eric P. Schwartz to be Assistant Secretary of State for Population, Refugees, and Migration (PRM). Last week's committee action occurred on Tuesday, June 16, 2009. The Committee approved the nomination by a voice vote. ☀

Last Week's Floor Actions

Congress last week took floor action on three matters impacting immigration- or refugee-related issues:

- Supplemental Funding for Refugee Assistance and Unaccompanied Alien Children. The full House and Senate took up and cleared the conference report on the fiscal year 2009 war supplemental appropriations bill for the President's consideration;
- FY '10 Appropriations for the Immigration Court System. The full House of Representatives passed its version of the Fiscal Year 2010 Commerce, Justice, Science, and Related Agencies Appropriations; and
- Nomination of Eric P. Schwartz to Head the State Department's Bureau of Population, Refugees, and Migration. The Senate confirmed the nomination of Eric P. Schwartz to be Assistant Secretary of State for Population, Refugees, and Migration.

Congress Clears Bill Appropriating Supplemental FY '09 Funds for Refugees, Unaccompanied Alien Children, and Child Trafficking Victims:

Congress last week cleared for the President's consideration a compromise version of the fiscal year 2009 war supplemental appropriations bill that contains supplemental fiscal year 2009 funding for overseas refugee assistance, unaccompanied alien children, and child trafficking victims. Last week's House and Senate floor action occurred in connection with the conference report accompanying [H.R. 2346](#), the Supplemental Appropriations Act, 2009. The House acted on the conference agreement on Tuesday, June 16, 2009, approving it by a vote of 226-202.⁸⁰² Senate floor action followed two days later, on June 18, 2009, with the Senate clearing the conference report by a vote of 91-5.⁸⁰³

Legislative History. The following is a brief legislative history of H.R. 2346—

• House Actions.

1. The House Committee on Appropriations held a markup session on May 7, 2009, approving H.R. 2346 and ordering that it be reported to the House of Representatives.⁸⁰⁴
2. On May 12, 2009, the House Committee on Appropriations reported H.R. 2346 to the full House as an original measure.⁸⁰⁵
3. The House of Representatives took H.R. 2346 on May 14, 2009, passing it by a vote of 368-60.^{806 807}

• Senate Actions.

1. On May 12, 2009, the Senate Appropriations Subcommittee on State, Foreign Operations, and

Related Programs held a markup session and approved its portion of S. 1054.⁸⁰⁸

2. The full Senate Committee on Appropriations held a markup session on May 14, 2009, approving S. 1054 and reporting the measures to the full Senate.^{809 810}
3. The full Senate took up H.R. 2346 on May 19, 2009, passing it on May 21, 2009, by a vote of 86-3.⁸¹¹

• Conference Actions.

1. On June 12, 2009, House and Senate conferees agreed to the conference report accompanying H.R. 2346.⁸¹²
2. On June 16, 2009, the House approved the conference report by a vote of 226-202.⁸¹³
3. On June 18, 2009, the Senate approved the conference report by a vote of 91-5.⁸¹⁴

Summary of Immigration- and Refugee-Related Provisions. As cleared for the President, H.R. 2346 contains the following immigration- and refugee-related provisions:

- Overseas Refugee Assistance. \$390 MILLION for the Department of State's Migration and Refugee Assistance (MRA) account, to remain available until expended. Section 1114(a) of the measure provides that \$119 MILLION of the funds "may be made available to the United Nations Relief and Works Agency for activities in the West Bank and Gaza."

The explanatory language in the conference report explains that the amount is \$57 MILLION above the Administration's revised request and that it is intended "to respond to urgent humanitarian requirements for refugees and internally displaced persons (IDPs) in the

⁸⁰² [House Roll Call No. 348](#), June 16, 2009

⁸⁰³ [Senate Roll Call No. 210](#), June 18, 2009

⁸⁰⁴ See Pages 473-475 of the [May 11, 2009, edition of the Weekly Legislative Update](#) for a detailed report on the House Appropriations Committee action on H.R. 2346

⁸⁰⁵ [H. Rept. 111-149](#), June 12, 2009

⁸⁰⁶ [House Roll Call No. 265](#), May 14, 2009

⁸⁰⁷ See Pages 519-521 of the [May 18, 2009, edition of the Weekly Legislative Update](#) for a detailed report on House floor consideration of H.R. 2346

⁸⁰⁸ See Page 515 of the [May 18, 2009, edition of the Weekly Legislative Update](#) for a detailed report on the Senate Appropriations Committee action on S. 1054

⁸⁰⁹ [S. Rept. 111-20](#), May 14, 2009

⁸¹⁰ See Pages 516-518 of the [May 18, 2009, edition of the Weekly Legislative Update](#) for a detailed report on the Senate Appropriations Committee action on S. 1054

⁸¹¹ [Senate Roll Call No. 202](#), May 21, 2009

⁸¹² [H. Rept. 111-151](#), June 12, 2009

⁸¹³ [House Roll Call No. 348](#), June 16, 2009

⁸¹⁴ [Senate Roll Call No. 210](#), June 18, 2009

Middle East, South and Central Asia, including Pakistan and Sri Lanka, Southeast Asia, Africa, Colombia and other refugees and IDPs around the world.”

The joint explanatory language in the conference report also requires the Department of State to report to Congress within 45 days after the date of enactment of the measure regarding the United Nations Relief and Works Agency’s (UNRWA) operations.

- International Disaster Assistance. \$270 MILLION for International Disaster Assistance, to be available until expended.

The joint explanatory language in the conference agreement explains that the amount provided is \$40 MILLION above the Administration’s revised request.

The joint explanatory language in the conference agreement specifies “that not less than \$55,000,000 of the International Disaster Assistance provided in the bill is intended to meet the growing needs of internally displaced persons in Pakistan” and that “[t]he balance of funds is available 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.”

The joint explanatory language also expresses the conferees desire that funds be used to provide humanitarian assistance to displaced persons in Sri Lanka.

- Funding for the Office of Refugee Resettlement. \$82 MILLION for the Department of Health and Human Services Administration for Children and Families for Refugee and Entrant Assistance, to remain available through September 30, 2011. The legislative language provides that the funds are to be used “for necessary expenses for unaccompanied alien children as authorized by section 462 of the Homeland Security Act of 2002 and section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 1008”.

The joint explanatory language in the conference report explains that “[t]he conferees intend that these funds be used for the care and custody of unaccompanied alien children, to allow the Office of Refugee Resettlement to implement the provisions of Public Law 110-457, the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPPRA) of 2008.” The explanatory language directed the Department of Health and Human Services, in conjunction with the Department of Homeland Security, “to provide a briefing to the Committees on Appropriations no later than July 3, 2009 on the increased costs in fiscal year 2010 associated with implementing the TVPPRA.”

- ESF Funds for Refugees and Internally Displaced Persons. several references to the provision of assistance to refugees or internally displaced persons using Economic Support Funds. This includes mandates or directives to –

1. Burmese Refugees. spend \$3 MILLION for Burmese refugees, migrants in Thailand, and internally displaced persons;
2. Iraqis. use ESF funds to assist Iraqi Christians, religious minorities in Iraq, and other displaced and refugee populations in Iraq.

House Floor Consideration of the Conference Report. No immigration- or refugee-related matters were discussed during the House floor debate on the conference report.

The full House of Representatives acted in dramatic fashion, taking up the measure before it was clear whether or not there were sufficient votes to pass it.

All but five House Republicans voted against the conference agreement. The reason that was most articulated by House Republicans for opposing the agreement was that it includes funding for the International Monetary Fund (IMF), which they object to. In order to prevail, the House Democratic Leadership needed to flip the votes of at least 18 of the 51 House Democrats who voted against the measure when it first came up for a vote in the House of Representatives on May 14, 2009. Most of these 51 House Democrats voted against the bill because they oppose additional funding for the wars in Iraq and/or Afghanistan. In the end, the House Democratic Leadership was able to muster a sufficient number of Democratic votes to approve the conference agreement, approving it by a vote of 226-202.⁸¹⁵

Senate Floor Consideration of the Conference Report. No immigration- or refugee-related matters were discussed during the Senate floor debate on the conference report.

Next Steps. Now that Congress has cleared the conference report accompanying H.R. 2346, the next step in the legislative process is the President’s consideration of the measure. The White House received the bill on Friday, June 19, 2009. President Obama is expected to sign the measure in the coming days. ☀

House Passes Bill Appropriating FY ’10 Funds for the Immigration Court System: The House of Representatives last week passed the fiscal year 2010 appropriations bill that funds the immigration court system. Included in the bill is a substantial increase in spending for

⁸¹⁵ [Click Here](#) to see video of the June 16, 2009, House floor debate on the conference report accompanying H.R. 2346, the Supplemental Appropriations Act, 2009

the Executive Office for Immigration Review (EOIR); increased funding for legal orientation presentations to detained aliens; and continued funding for the State Criminal Alien Assistance Program (SCAAP), which the Obama Administration has proposed ending. Last week's action occurred in connection with [H.R. 2847](#), the Fiscal Year 2010 Commerce, Justice, Science, and Related Agencies Appropriations Bill (C-J-S Appropriations Bill).⁸¹⁶ The House took it up on Tuesday, June 16, 2009, passing it on Thursday, June 18, 2009, by a vote of 259-157.⁸¹⁷

Legislative History. The following is a brief legislative history of H.R. 2847:

• House Committee Actions.

1. On June 4, 2009, the House Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies marked up its version of H.R. 2847, forwarding the measure to the full Committee on Appropriations.⁸¹⁸
2. On June 9, 2009, the full House Committee on Appropriations held a markup session, ordering that the bill be reported to the full House of Representatives as an original measure.⁸¹⁹⁸¹⁸
3. On June 12, 2009, the full House Committee on Appropriations formally reported H.R. 2847 to the House of Representatives.

• House Floor Actions.

1. On June 16, 2009, the full House of Representatives took up H.R. 2847, passing it on June 18, 2009, by a vote of 259-157.⁸²⁰

Summary of Immigration- and Refugee-Related Provisions. As passed by the House, H.R. 2847 contains the following immigration-related provisions:

- Executive Office for Immigration Review. The House-passed version H.R. 2847 would appropriate \$296.685 MILLION for the Department of Justice's Administrative Review and Appeals section. The bulk of those funds are for EOIR. This is the same amount requested by the Administration and approximately \$30.685 MILLION, or 11.2 percent, above the fiscal year 2009 appropriation.

The committee report accompanying H.R. 2847 includes the following directives on EOIR's spending:

1. Personnel and Infrastructure Increases. The committee report notes that the bill includes \$24.253 MILLION for personnel and infrastructure investments needed to efficiently process an increasing immigration adjudication caseload. Of this total, \$10.250 MILLION is for the eWorld document management system to improve EOIR's ability to store, distribute and archive its files.
 2. Legal Orientation Program (LOP). The bill includes \$6.5 MILLION, an increase of \$2.5 MILLION, for the continued implementation and expansion of the LOP. EOIR is encouraged to seek alien-specific detention costs and duration of detention data from ICE in order to develop a more accurate estimate of the LOP's cost savings to the government.
- U.S. Marshall's Service. The committee report accompanying H.R. 2847 notes that the measure includes \$114.345 MILLION to the U.S. Marshall's Service for new personnel, infrastructure, information technology and other items necessary "to address the enormous workload generated by increased enforcement activity in other agencies and bureaus. The Committee hopes that this investment will at least partially alleviate the pressure on other Marshals programs, such as fugitive apprehension, now that more dedicated personnel will be available to handle the immigration-related caseload."

- State Criminal Alien Assistance Program. The committee report accompanying H.R. 2847 notes that the measure includes \$400 MILLION for the State Criminal Alien Assistance Program (SCAAP), a program for which the Obama Administration proposed zero funding. This is the same amount appropriated for SCAAP in fiscal year 2009.⁸²¹

⁸¹⁶ [H. Rept. 111-149](#), June 12, 2009

⁸¹⁷ [House Roll Call No. 408](#), June 18, 2009

⁸¹⁸ See Pages 603-604 of the [June 8, 2009, 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 H.R. 2847

⁸¹⁹ See Pages 641-642 of the [June 15, 2009, edition of the Weekly Legislative Update](#) for a report on the June 9, 2009, full House Appropriations Committee markup of H.R. 2847.

⁸²⁰ [House Roll Call No. 408](#), June 18, 2009

⁸²¹ As reported by the House Committee on Appropriations, H.R. 2847 would have appropriated \$300 MILLION for the State Criminal Alien Assistance Program (SCAAP). That amount was increased to \$400 MILLION by a floor amendment that was offered by House Appropriations Subcommittee on Commerce, Justice, science, and Related Agencies Chairman Alan Mollohan (D-WV), which the House agreed to by a voice vote

Committee Directives. In addition to its provisions that appropriate or earmark funding for immigration-related functions and activities, the committee report accompanying H.R. 2847 contains a number of immigration-related policy directives. Among them are the following:

- Executive Office for Immigration Review. With regard to the Executive Office for Immigration Review—
 1. Competency Standards. The committee report accompanying H.R. 2847 directs EOIR to report to the House and Senate Committees on Appropriations within 30 days of the enactment of this Act on the status of its efforts to develop a competency bench book that judges can use to evaluate the competency of persons appearing in immigration court. The committee report directs that EOIR's report also address the steps the Department of Justice has taken to provide safeguards for the rights of aliens judged to be mentally incompetent, as required by 8 U.S.C. 1229a(b)(3).
 2. Fraud Program. The committee report accompanying H.R. 2847 urges EOIR to set written standards and criteria for use in judging potentially fraudulent evidence and testimony provided to an immigration court. It notes that “[t]he lack of such standards encourages an ad hoc approach to fraud enforcement that may result in inconsistent or inaccurate determinations.”

Floor Consideration and Immigration-Refugee-Related Floor Amendments. Numerous amendments were offered to H.R. 2847 during House consideration of the measure. However, the House Committee on Rules ultimately precluded most of the immigration-related amendments that Members sought to offer to the bill from being offered. In the end, only one immigration-related amendment was offered to H.R. 2847 during the full House of Representatives' consideration of the measure:

- MOLLOHAN INCREASED SCAAP FUNDING AMENDMENT.—House Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies Chairman Alan Mollohan (D-WV) offered an amendment that would have increased funding for the State Criminal Alien Assistance Program (SCAAP) by \$100 MILLION. The amendment would offset that reduces funding for the Justice Department's justice information sharing technology unified financial management system by \$21 million and reduces funds for the state and local enforcement assistance program by \$79 million. The amendment then increases funding for the state criminal alien assistance program by \$100 million.

The House agreed to the Mollohan Amendment by a voice vote.

Next Steps. Now that the House of Representatives has passed H.R. 2847, the next step in the legislative process is for the measure to be sent to the Senate for its consideration. The Senate Committee on Appropriations and its Subcommittee on Commerce, Justice, Science, and Related Agencies are expected to markup their respective versions of the measure this week. ☀

Senate Confirms Nomination of Eric P. Schwartz to Head State Department Refugee Bureau: The Senate last week confirmed the nomination of Eric P. Schwartz to be Assistant Secretary of State for Population, Refugees, and Migration (PRM).

President Barack Obama nominated Mr. Schwartz to be Assistant Secretary of State for Population, Refugees, and Migration (PRM) on April 23, 2009. The Senate Committee on Foreign Relations held a hearing on the Schwartz nomination on June 3, 2009.⁸²² On Tuesday, June 16, 2009, the Senate Committee on Foreign Relations approved the Schwartz nomination, reporting it to the full Senate.

Background on Eric Schwartz. According to materials released by the White House, Mr. Schwartz was, at the time, Executive Director of the Connect U.S. Fund, a foundation/NGO initiative focused on foreign and international affairs, and Visiting Lecturer of Public and International Affairs at the Woodrow Wilson School at Princeton University.

Between 2005 and 2007, Mr. Schwartz served as United Nations Deputy Special Envoy for Tsunami Recovery, working to promote coordination, accountability to donors and beneficiaries, and best practices in the recovery effort. Prior to that, he served as lead expert on conflict prevention and reconstruction for the Congressionally mandated Task Force on United Nations Reform, and as a Senior Fellow at the Council on Foreign Relations.

Between 1993 and 2001, Schwartz served at the National Security Council (NSC), ultimately as Special Assistant to the President for National Security Affairs and Senior Director for Multilateral and Humanitarian Affairs. For eight years, he was the NSC official responsible for refugee issues, and managed Administration policy responses on the rescue of Kurdish refugees from Northern Iraq, the resettlement of Vietnamese boat people, and safe haven for Haitian refugees and Kosovars. Prior to that, he served at the House Foreign

⁸²² See Pages 597-601 of the [June 8, 2009, edition of the Weekly Legislative Update](#) for a detailed report on 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

Affairs Subcommittee on Asian and Pacific Affairs, where he was responsible for most of the Committee's work on Asian refugee issues, including Vietnamese boat people, Laotian refugees and the U.S. immigration issues relating to the transfer of sovereignty in Hong Kong.

PRM Jurisdiction Over Refugee Assistance and Admissions. The Department of State operates several programs and utilizes several accounts that assist in the protection of refugees. The Department operates these programs through its [Bureau of Population, Refugees, and Migration](#) (PRM), which has primary responsibility for formulating policies on population, refugees, and migration, and for administering U.S. refugee assistance and admissions programs. PRM is headed by an Assistant Secretary of State, who is appointed by the President, with the advice and consent of the U.S. Senate.

Through PRM, the Department of State works in close conjunction with international organizations, such as the [United Nations High Commission for Refugees](#) (UNHCR), to provide life-sustaining assistance to refugees in countries of asylum. The Department also works closely with international organizations, nongovernmental organizations (NGOs), and the United States [Department of Homeland Security](#) (DHS) to admit a relatively small number of refugees into the United States through its Refugee Admissions Program.

In addition to having jurisdiction over some aspects of U.S. policy toward refugees, the Department of State, through its [Bureau of Consular Affairs](#) (BCA), is involved in the processing and adjudication of visa requests.

PRM operates two accounts that assist refugees. The first of these is the Migration and Refugee Assistance (MRA) account, which the Department of State uses to fund the federal government's refugee admissions and overseas refugee assistance programs. The second is the Emergency Refugee Migration Assistance (ERMA) account, a no-year account that holds funds that the President can draw down from in order to meet emergency refugee needs.

Two other Federal departments also play a major role in refugee protection. The [Department of Health and Human Services](#), through its [Office of Refugee Resettlement](#) (ORR), provides resettlement assistance to refugees once they have arrived in the United States. And the Department of Homeland Security, through its U.S. Citizenship and Immigration Services Bureau (ORR), interviews and adjudicates refugee applicants once they have been identified.

Senate Floor Consideration. The Senate took up the Schwartz nomination on Friday, June 19, 2009, confirming it by unanimous consent. ☀

Last Week's Conference Committee Actions

There are no bills currently pending in conference that have significant immigration- or refugee-related provisions. ◇

Last Week's Executive Activity

President Obama Comments on Immigration Reform at Prayer Breakfast: President Barack Obama last week commented on immigration reform during a Hispanic prayer meeting. The President's comments were made on Friday, June 19, 2009, during an address to the Esperanza National Hispanic Prayer Breakfast and Conference.

With regard to immigration, the President said that it was a fundamental element of America's character. More specifically, he said, "[t]he American people believe in immigration, but they also believe that we can't tolerate a situation where people come to the United States in violation of the law, nor can we tolerate employers who exploit undocumented workers in order to drive down wages. That's why we're taking steps to strengthen border security, and we must build on those efforts. We must also clarify the status of millions who are here illegally, many who have put down roots. For those who wish to become citizens, we should require them to pay a penalty and pay taxes, learn English, go to the back of the line behind those who played by the rules. That is the fair, practical, and promising way forward, and that's what I'm committed to passing as President of the United States."

The President went on to say that "[w]e must never forget that time and again, the promise of America has been renewed by immigrants who make their story part of the American story. We see it in every state of our country. We see it in our families and in our neighborhoods. As President, I've been honored to see it demonstrated by the men and women who wear the uniform of the United States."

President Obama told the assembled audience about a naturalization ceremony he participated in last May, saying that "[l]ast month, I had the honor of welcoming a group of our service members as citizens for the very first time. In that crowd, there were faces from every corner of the world. And one man from Nicaragua -- Jonathan Zapata -- had waited his whole life to serve our country even though he was not yet a citizen. 'By serving in the military,' he said, 'I can also give back to the United States.' He's done so in Afghanistan, and he even helped man the 400,000th aircraft landing aboard the USS Kitty Hawk."

President Obama told the audience that Jonathan's story is not unique. He said that Jonathan "is part of a proud legacy of service. For generations, Hispanic Americans have served with great commitment and valor, and there are now nearly 150,000 Hispanic Americans serving under our flag." ☼ ◇

Recently Introduced Legislation

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

House

Control of Illegal Immigration

- **Poland and the Visa Waiver Program:** Representative Michael "Mike" Quigley (D-IL) has introduced [H.R. 2954](#), a bill to amend the Immigration and Nationality Act to extend the authority of the Secretary of Homeland Security to waive certain requirements under the visa waiver program for an additional 2 years.

As introduced, H.R. 2954 would amend the Immigration and Nationality Act to extend the authority of the Secretary of Homeland Security to waive certain requirements under the visa waiver program for an additional 2 years.

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

Senate

Control of Illegal Immigration

- **Fiscal Year 2010 Homeland Security Appropriations Bill:** Senator Harry Reid (D-NV) has introduced [S. 1298](#), an original bill making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2010.

As reported by the Senate Committee on Appropriations, S. 1298 would appropriate funds for the Department of Homeland Security for fiscal year 2010.

Family-Based Immigration System

- **Immigration Relief for Widows, Widowers, and Orphans of U.S. Citizens:** Senator Robert Menendez (D-NJ) has introduced [S. 1247](#), a bill to amend the Immigration and Nationality Act to promote family unity, and for other purposes.

As introduced, S. 1247 would allow widows, widowers and orphans of sponsoring US citizens, refugees and other legal immigrants to continue their applications through the legal immigration system despite the death of their sponsoring relative.

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

Members Working on Violence Against Women Technical Corrections Bill:

Representative Debbie Wasserman Schultz (D-FL) and Ted Poe (R-TX) are working on a measure that could contain several changes in law that would expand protections for aliens who are victims of domestic violence and sex trafficking. While no text was available at the time of this writing, the measure reportedly will be closely patterned after provisions in [S. 327](#), the "Improving Assistance to Domestic and Sexual Violence Victims Act of 2009", a measure that the Senate Committee on the Judiciary approved on May 7, 2009.⁸²³

As reported by the Senate Committee on the Judiciary, S. 327 contains four provisions that would amend the Immigration and Nationality Act, the Trafficking Victims Protection Act of 2000, and the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 to expand protections for aliens who are victims of domestic violence and sex trafficking.

More specifically—

- **Extension of T Nonimmigrant Status.** Section 114 of S. 327 would amend section 214(o)(7) of the Immigration and Nationality Act to allow an alien to apply for an extension of her T nonimmigrant visa retroactively after the expiration of the visa.⁸²⁴

Advocates contend that the provision is necessary because a number of aliens who received T visas were unable to adjust their status in a timely way because it took the Department of Homeland Security (and its predecessor agency, the Immigration and Naturalization

⁸²³ See Pages 475-477 of the [May 11, 2009, edition of the Weekly Legislative Update](#) for a detailed report on the Senate Judiciary Committee's markup of S. 327

⁸²⁴ The T nonimmigrant visa is available for up to 5,000 victims of "severe forms of trafficking" per year. Severe forms of trafficking include: the use of force, fraud, or coercion for sex trafficking and/or involuntary servitude, peonage, debt bondage, or slavery.

Service) eight years to issue regulations providing for adjustment of status of T visa holder.

- **T and U Nonimmigrant Protections.** Section 115 would amend section 107(b)(1)(E)(i)(II)(aa) of the Trafficking Victims Protection Act of 2000 to permit U visa victims to get work authorization while their case is being adjudicated if they can show prima facie evidence that they meet the qualifications of the visa. This would lower the standard in current law, which currently requires them show bona fide evidence.
- **U Nonimmigrant Adjustment of Status.** Section 116 would amend Section 245(m)(3) of the Immigration and Nationality Act to permit an unmarried sibling (under the age of 18) of a U visa holder to adjust her status along with the victim.⁸²⁵
- **Housing Assistance for Qualified Aliens.** Section 117 would amend Section 214 of the Housing and Community Development Act of 1980 to permit alien victims of domestic violence to remain eligible for public housing if the perpetrators of violence against them have been evicted from or otherwise have left public housing.

Secure American through Verification and Enforcement Act: Representative Heath Shuler (D-NC) is planning to introduce a new version of [H.R. 4088](#), the "Secure America Through Verification and Enforcement Act of 2007" or "SAVE Act", which he introduced in the 110th Congress. The measure was strongly supported during the 110th Congress by the immigration restrictionist advocacy community and vociferously opposed by the pro-immigrant advocacy community. It generated 157 House cosponsors and was the object of a discharge petition that secured 190 signatures.⁸²⁶

Senate

Secure and Safe Detention and Asylum Act: Senate Homeland Security and Governmental Affairs Committee Chairman Joseph Lieberman (I-CT) is planning to introduce a

⁸²⁵ *The U nonimmigrant visa is available for up to 10,000 victims of specific crimes per year who cooperate in the investigation or prosecution of the persons charged with the criminal activity. Crimes covered include: rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution; sexual exploitation, female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.*

⁸²⁶ *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 110th Congress' H.R. 4088*

new version of [S. 3114](#), the "Secure and Safe Detention and Asylum Act", which he introduced in the 110th Congress.⁸²⁷

Foreign Relations Authorization Bill: Senate Foreign Relations Committee Chairman John F. Kerry (D-MA) is working on the Senate version of the Foreign Relations Authorization Act, which he reportedly plans to introduce shortly after Congress returns from its week-long Independence Day recess.

The House of Representatives passed [H.R. 2410](#), the House version of Foreign Relations Authorization Act, Fiscal Years 2010 and 2011, on Wednesday, June 10, 2009. As passed by the House, the measure contains among its many provisions numerous provisions making reforms to the United States refugee admissions process.⁸²⁸ ◇

Over the Horizon ...

The following is a listing of several immigration- or refugee-related items that have either not yet been scheduled for action in Congress or on which it is anticipated that some Congressional will occur within the next several weeks.

Items added to this listing since the previous edition of the Weekly Legislative Update and items on the listing which have substantially changed since the last Weekly Legislative Update was issued are marked with a double asterisk (**).

House

House Appropriations Schedules Markups of Bill Appropriating FY '10 Funds for Refugee Resettlement:

The House Appropriations Committee has scheduled two markups in July of the bill that appropriates funds for the nation's refugee resettlement, trafficking victim assistance, torture victim assistance, and unaccompanied alien children programs. At the time of this writing, the House Appropriations Subcommittee on Labor, Health and Human Services, Education, and Related Agencies Subcommittee was scheduled to markup the fiscal year 2010 Labor, Health and Human Services, Education, and Related Agencies Appropriations Bill on Wednesday, July 8, 2009. The full Committee on Appropriations is scheduled to markup the measure on Tuesday, July 14, 2009.

⁸²⁷ *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 110th Congress' S. 3114*

⁸²⁸ *See Pages 642-650 of the [June 15, 2009, edition of the Weekly Legislative Update](#) for a detailed report on the refugee-related provision that are included in the House-passed version of H.R. 2410*

House Schedules Committee and Floor Action on the Four Immigration- and Refugee-Related Appropriations Measures: The House Committee on Appropriations has released a timetable for House consideration of each of the 12 regular fiscal year 2010 appropriations bills, including the four bills that fund the nation’s immigration services, immigration enforcement, border security, refugee admissions, refugee assistance, refugee resettlement, and immigration court-related agencies, functions, programs, and activities of the federal government.

The timetable released by the Appropriations Committee is ambitious. If it is followed, the House would complete action on all 12 of the regular appropriations bills before Congress leaves Washington for its month-long August recess.

The chart that follows displays the projected dates for House actions on the four fiscal year 2010 immigration- and refugee-related fiscal appropriations bills:

House Appropriations Committee Timetable for Considering FY ’10 Immigration- and Refugee-Related Appropriations Bills

FY ’10 Appropriations Bill	Sub Markup	Full Markup	House Floor
Commerce/Justice/Science ⁸²⁹	6/04/09	6/09/09	6/16/09
Homeland Security ⁸³⁰	6/08/09	6/12/09	6/19/09
Labor, HHS, Education ⁸³¹	7/08/09	7/14/09	7/15/09
State, Foreign Operations ⁸³²	6/17/09	6/24/09	7/09/09

⁸²⁹ *The Commerce, Justice, Science, and Related Agencies appropriations bill includes appropriations for the Department of Justice, including the Department’s Executive Office for Immigration Review (EOIR), Office of Special Counsel (OSC), Office of Immigration Litigation (OIL), and Bureau of Prisons (BOP)*

⁸³⁰ *The Homeland Security appropriations bill includes appropriations for the Department of Homeland Security, including its Directorate for Border and Transportation Security (BTS), which is the parent directorate for three immigration-related bureaus: the Bureaus of Citizenship and Immigration Services (CIS), Customs and Border Protection (CPB), and Immigration and Customs Enforcement (ICE)*

⁸³¹ *The Labor, Health and Human Services, Education, and Related Agencies appropriations bill includes appropriations for the Department of Health and Human Services, including the’ refugee resettlement, trafficking victims assistance, torture victim assistance, and unaccompanied alien children programs, which are operated by the Department’s Office of Refugee Resettlement (ORR)*

⁸³² *The State, Foreign Operations, and Related Programs bill includes appropriations for the Department of State’s refugee admissions and overseas refugee assistance programs, which are operated by the Bureau of Population, Refugees, and Migration*

Senate

House-Passed Immigration Measures Awaiting Consideration by the full Senate: The following measures containing significant immigration- or refugee-related provisions have been approved by various Senate committees and are awaiting consideration by the full Senate:

- Increased Penalties for Alien Smuggling. The House of Representatives has passed [H.R. 1029](#), the “Alien Smuggling and Terrorism Prevention Act of 2009”, which would increase penalties for alien smuggling and make other changes in immigration law that the bill’s proponents contend will help combat the crime of alien smuggling.

The measure has been referred to the Senate Committee on the Judiciary. The Senate Committee on Commerce, Science, and Transportation may also address the issues in this bill as it takes up legislation to reauthorize the Coast Guard.

While there was no organized opposition to H.R. 1029 during House consideration of the measure, several pro-immigrant and pro-refugee advocacy organizations expressed concerns about the potential impact that the measure would have on good Samaritans and refugees. Those concerns were expressed behind the scenes in the House but are expected to be voiced more vociferously should the Senate take up the measure.⁸³³

- Reforms to the Refugee Admissions Process. The House of Representatives has passed with [H.R. 2410](#), the Foreign Relations Authorization Act, Fiscal Years 2010 and 2011, which contains among its many provisions numerous provisions making reforms to the United States refugee admissions process.⁸³⁴

The measure has been referred to the Senate Committee on Foreign Relations.

Committee-Approved Immigration Measures are Awaiting Consideration by the Full Senate: The following measures containing significant immigration- or refugee-related provisions have been approved by various committees and are awaiting consideration by the full Senate:

(PRM) and administered through the Migration and Refugee Assistance (MRA) and Emergency Refugee and Migration Assistance (ERMA) accounts

⁸³³ See Page 383 of the [April 20, 2009, edition of the Weekly Legislative Update](#) for a detailed report on the full House of Representatives’ consideration of H.R. 1029

⁸³⁴ See Pages 642-650 of the [June 15, 2009, edition of the Weekly Legislative Update](#) for a detailed report on the refugee-related provision that are included in the House-passed version of H.R. 2410

- Eased Visa Requirements for Victims of Domestic Violence. The Senate Committee on the Judiciary has approved [S. 327](#), the “Improving Assistance to Domestic and Sexual Violence Victims Act of 2009”, which contains four provisions that would amend the Immigration and Nationality Act, the Trafficking Victims Protection Act of 2000, and the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 to expand protections for aliens who are victims of domestic violence and sex trafficking.

Insiders expect that S. 327 will be hotlined in the coming days and, if it is cleared by the Democratic and Republican Cloakrooms, taken up by the full Senate by unanimous consent.⁸³⁵

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. ◇

Next Week's Edition ...

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

- Obama Meeting with Congressional Immigration Stakeholders. Next week's Weekly Legislative Update will report on this week's meeting between President Barack Obama and House and Senate stakeholders on comprehensive immigration reform.
- Fiscal Year 2009 Supplemental Funding for Refugees. Next week's Weekly Legislative Update will report on the President's signing of H.R. 2346, the fiscal year 2009 war supplemental appropriations bill, which Congress cleared for the President's consideration last week.
- Fiscal Year 2010 Appropriations for Immigration Services and Enforcement. Next week's Weekly Legislative Update will report on --
 1. Senate Floor Action. This week's Senate floor action on the Fiscal Year 2010 Homeland Security Appropriations bill, should the Senate, as expected, take up the measure; and

2. House Floor Action. This week's House floor action on the Fiscal Year 2010 Homeland Security Appropriations bill, should the House, as expected, take up the measure.

- Fiscal Year 2010 Appropriations for the Immigration Court System. Next week's Weekly Legislative Update will report on -

1. House Floor Action. This week's expected House floor action on the Fiscal Year 2010 Commerce, Justice, Science, and Related Agencies Appropriations Bill;
2. Senate Appropriations Subcommittee Action. This week's expected markup in the Senate Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies of the Fiscal Year 2010 Commerce, Justice, Science, and Related Agencies Appropriations Bill; and
3. Senate Appropriations Committee Action. This week's expected markup in the full Senate Committee on Appropriations of the Fiscal Year 2010 Commerce, Justice, Science, and Related Agencies Appropriations Bill.

- Fiscal Year 2010 Appropriations for Refugee Admissions and Assistance. Next week's Weekly Legislative Update will report on any action that occurs on the Fiscal Year 2010 State, Foreign Operations, and Related Programs Appropriation Bill, which the full House Committee on Appropriations is scheduled 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.

- Confirmation Hearing. Next week's Weekly Legislative Update will report on this week's Senate Judiciary Committee hearing on the nomination of 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 component. ◇

⁸³⁵ See Pages 475-477 of the [May 11, 2009, edition of the Weekly Legislative Update](#) for a detailed report on the Senate Judiciary Committee's markup of S. 327

Appendix

**Immigration-Related Excerpts from Senate Appropriations Report on FY '10 Homeland Security Appropriations Bill
June 18, 2009**U.S. CITIZENSHIP AND IMMIGRATION SERVICES

E-VERIFY

The Committee recommends \$118,500,000 for the E-verify program. The \$6,500,000, 7 positions, and 4 FTE above the request are for additional system enhancements, an identity assurance tool, and additional capacity to investigate fraudulent use of identity documents.

The Committee strongly supports E-Verify and the effort the Department is performing to improve E-Verify's ability to automatically verify those who are work authorized, detect identity fraud, and detect system misuse and discrimination. E-Verify is both an essential tool for employers committed to maintaining a legal workforce and a key deterrent to illegal immigration. The requested program increase and the additional funds recommended by the Committee will promote monitoring and compliance activities and IT-related business initiatives geared toward improved system use.

The Committee notes that USCIS has significantly enhanced E-Verify over the last few years, resulting in decreasing tentative non-confirmation rates while implementing continuous improvements. According to an independent evaluation of E-Verify, 96.1 percent of all cases queried through E-Verify were automatically verified, in the first instance, as work authorized. The 96.1 percent figure (based on data from the third quarter of fiscal year 2008) represents a significant improvement over earlier evaluation results; the automatic verification rate improved from 83 percent in 2002 to 94.7 percent in 2007. Of the remaining 3.9 percent of queries with an initial mismatch, only 0.37 percent of those were later confirmed to be work authorized. The initial mismatch could have been due to data error or someone not notifying the Social Security Administration [SSA] of name change, et cetera. The majority of remaining queries that were not automatically verified indicate that the program is doing what it is intended to do: detect unauthorized workers trying to work unlawfully.

The Committee is aware that there is a common misconception that an initial mismatch indicates a program or database error. An initial mismatch instead indicates either: (1) a discrepancy between the information an employee has provided and information in government records; (2) that an employee has failed to update their information with SSA or DHS (such as a name change after marriage); or (3) an individual without work authorization has submitted fraudulent information. These individuals are afforded the opportunity to contest the finding by contacting SSA or DHS to resolve the discrepancy; however, as indicated, less than half of one percent of all individuals run through the program successfully contest an initial mismatch. Remaining queries receive a "Final Non-Confirmation" in the system to inform an employer that they are not work authorized. This data indicates the program's success in quickly verifying the status of those who are work authorized and detecting those ineligible for employment.

Given the concerns by some of the general public with E-Verify, the Committee urges USCIS to continue to work to enhance the system to further improve performance, to continue its public outreach and education campaign, and to perform a new, independent evaluation of the system during the first quarter of fiscal year 2010.

The bill also includes a general provision extending the E-Verify program for 3 years, as requested.

PROPOSED NEW FEES

The budget proposed \$206,000,000 in new appropriated resources to cover the costs associated with performing international programs such as asylum, refugee, and humanitarian parole, as well as funding the costs of military naturalizations. The Committee supports appropriations to support those men and women serving this Nation in the military and has included \$5,000,000, as requested, for military naturalizations. The Committee does not include the other requested funds and supports the existing method used to cover the costs for those activities. Therefore, the Committee directs the Department to submit a reprogramming within 30 days after the date of enactment of this act, to reflect the continuation of these activities as fee funded.

IMMIGRANT INTEGRATION

The Committee recommends an additional \$1,200,000, the same level as provided in fiscal year 2009, for citizenship education and immigrant integration grants. The Committee notes that the current year grant applications are still being evaluated and that the 2009 funds have yet to be awarded. The Committee does not recommend the \$10,000,000 requested in the budget for a new immigrant integration activity. The Committee notes that the Office of Citizenship Services has long provided admirable services to assist those individuals seeking to become U.S. citizens or otherwise legally adjust their status and will have \$6,400,000 of carry forward balances to continue these efforts. This makes a total of \$7,600,000 available for immigrant services and integration grants.

DRIVER'S LICENSE SECURITY HUB

The Committee supports the development of a Driver's License Security hub to assist State motor vehicle offices and other drivers' license issuing entities to produce secure drivers licenses and notes that Congress provided \$50,000,000, as requested, in fiscal year 2009 for this purpose. Due to the fact that these funds remain unobligated and the Department continues to review plans for development of the hub, the Committee provides no new funding for this activity. The Committee strongly encourages the Department to deliver its plan for the hub and anticipates receiving the development plan this year.

FBI BACKGROUND CHECK BACKLOG

The Committee is pleased to note that the multiyear FBI name check backlog has been eliminated. As of April 30, 2009, there were only 32 cases, out of 1,645 pending, which were more than 30 days old, compared to over 327,000 pending cases on April 1, 2008. The Committee expects USCIS to report to the Committee in the event that there are indications that the backlog is returning.

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

SOUTHWEST BORDER ENFORCEMENT INITIATIVE

The budget proposes a new Southwest Border Enforcement Initiative of \$70,000,000, 349 positions, and 176 FTE, to enhance current efforts to identify criminal activities and eliminate vulnerabilities that pose a threat to our Nation's borders. This effort is acutely focused on our Southwest border with Mexico where the level of drug cartel violence has increased substantially since the Government of Mexico began to aggressively combat the drug trafficking organizations threatening Mexico and the Americas. More than 7,200 individuals have been killed in Mexico and the U.S. Deputy Attorney General testified on March 25, 2009, that drug cartels have become the number one organized crime threat in America. The Department of Justice's December 2008 'National Drug Threat Assessment, 2009' stated that these cartels have infiltrated 230 cities across the country. In support of the Mexican Government's actions and to respond to this violence and prevent its spilling over into the United States, the administration has taken significant steps to send additional personnel and resources both to the Southwest border as well as the Government of Mexico. The Department of Homeland Security redirected \$184,000,000 in existing resources to send more Border Patrol agents and other security personnel to conduct outbound examinations of vehicle and containers to stem the smuggling of weapons and cash which support the cartels. Additionally, the conference report accompanying the 'Supplemental Appropriations Act, 2009' provides \$55,000,000 to ICE and \$40,000,000 to CBP in new funding to support these efforts.

These funds will be used to increase enforcement at ICE's Border Enforcement Security Task Forces [BESTs] targeting human, contraband, weapons, and bulk cash smuggling as well as investigations related to benefit fraud, money laundering, and identity theft, with a focus on terrorist groups, criminal aliens, and gangs. They will also be used to hire more criminal investigators within the Office of International Affairs and significantly expand Office of Intelligence operations with 90 new Intelligence Officers to support the BESTs, the Border Field Intelligence Groups, and the Border Violence Intelligence Cell at the El Paso Intelligence Center.

The Committee recommends an additional \$45,000,000, 230 positions, and 119 FTE, above the request to further build upon this effort. Specifically, \$20,000,000 is for additional support to the Southwest border and seaport BESTs. An additional \$20,000,000 is for support for counter-proliferation and gang investigations. These funds would be focused on expanding 'Operation Armas Cruzadas' which focuses on identifying and disrupting illicit trans-border activities which support weapons smuggling networks, both across the border with Mexico as well as global weapons smuggling networks. The funding for gang investigations would be directed at disrupting and dismantling transnational street gangs, encountered in the course of ICE

investigations, which distribute drugs in the U.S. supplied by Mexican drug trafficking organizations. Gangs such as MS-13, Latin Kings, Suren.AE6os, and 18th Street potentially put at peril the lives of U.S. citizens. Finally, \$5,000,000 is provided to augment bulk cash smuggling investigations and will provide enhanced training, investigations, and interdiction operations. Bulk cash illicitly crossing the border is laundered and supports a wide network of terrorists, narcotics smugglers, and human traffickers involved in transporting aliens into the United States illegally, abetting child sex tourism, and human slavery. These funds will also assist DHS in implementing its part of the President's multi-agency 'National Strategy to Reduce Drug Trafficking and Flow of Bulk Cash and Weapons across the Southwest Border' announced on June 5, 2009.

The Committee is aware that the Department of Justice's [DOJ] 'Operation Gunrunner' complements in many ways ICE's 'Operation Armas Cruzadas'. The use of ballistics technology and other methods to trace crime guns can assist in weapons smuggling investigations and tracking. The Committee urges ICE to work with DOJ on these investigations and to consider using the National Ballistics Information Network in this effort.

ICE ENFORCEMENT PRIORITIES

Over the past 2 years, Congress has emphasized that ICE has multiple immigration enforcement priorities. Among the priorities identified by Congress are conducting worksite enforcement investigations and identifying foreign-born individuals who have been convicted of crimes and sentenced to imprisonment and removing those individuals once they have been judged deportable by the immigration court system.

Enforcement of customs laws, using immigration and customs authorities, is also an ICE enforcement priority. As the Director of the ICE Office of Investigations, stated in testimony before the House Homeland Security Appropriations Subcommittee on April 2, 2009, 'ICE's experience in the investigation of the conduct of border crime reveals that the criminal organizations who exploit our immigration and trade systems do so for one reason: profit. Each day, these organizations smuggle contraband, people, and goods--whatever the market will bear. Thus, while immigration enforcement is a key component of ICE's mission, we cannot and do not establish enforcement priorities in a stove-piped fashion. Instead, we target the organizations who exploit our legitimate trade, travel, and financial systems with all our enforcement.' The Director concluded by stating, 'ICE has designed programs and initiatives to address the Nation's national security and public safety concerns. Applying both our immigration and customs authorities, which target the illicit flow of people, goods, and money, ICE can effectively address all types of cross border criminal activity, which makes our homeland safer for everyone, citizens and immigrants alike.' Just as CBP must stop the entry into the United States of contraband people and goods, while also facilitating the flow of legitimate trade and commerce, so ICE must also maintain a balance of enforcing immigration and customs laws while also protecting the country by removing those individuals who are here illegally.

MANAGEMENT AND ADMINISTRATION--IMPROVED INTEGRITY OVERSIGHT

Over the last 3 years, ICE has hired over 5,100 new personnel, a 17 percent increase since fiscal year 2006. In order to support long-term border security efforts and avoid fraud, the Committee believes it is important to keep in front of any possible increase in workforce fraud by hiring additional agents who will investigate cases of fraud and other illegal activities. The Office of Professional Responsibility [OPR] investigates all Inspector General-referred allegations of criminal misconduct by ICE and CBP employees. ICE and CBP have sensitive missions, including preventing the flow of drugs, dangerous goods, and illegal immigrants into the country, and sensitive technology and weapons out of it. To ensure the continued integrity of the workforce, growth in ICE staffing should be matched by commensurate growth in OPR. The Committee recommends a total of \$94,104,000 and 462 FTE to perform workforce integrity investigations and training, detention facility inspections, ICE field office management inspections, and physical security management inspections. This is an increase of \$14,988,000 and 33 FTE over the fiscal year 2009 level, and \$2,100,000 and 4 FTE over the request. This will provide for \$80,837,000 to conduct integrity investigations, including additional funds for ICE to expand its OPR presence along the Southwest border.

LAW ENFORCEMENT SUPPORT CENTER

Included in the amount recommended by the Committee is a total of \$34,990,000, 316 positions, and 316 FTE, as requested in the budget, to assist in responding to increased requests for assistance from State and local law enforcement officers. The Committee notes that during fiscal year 2009 ICE aggressively took steps to fill the large number of staffing vacancies at the Law Enforcement Support Center [LESC] by upgrading staff position types and pay. The Committee urges ICE to maintain a robust LESC staffing level and to alert the Committee if large staffing vacancy rates return.

OFFICE OF STATE AND LOCAL GOVERNMENT COORDINATION

The Committee recommends \$168,103,000, 125 positions, and 105 FTE, an increase of \$11,600,000, 40 positions, and 20 FTE, as requested, for the Office of State and Local Government Coordination. Included in this amount is funding for increased training and information technology assistance for participants in the 287(g) program.

The Committee notes that the 287(g) program is a voluntary, not mandatory, program through which communities which chose to join enter into discussions with ICE to determine the proper fit for the individual community and ICE. The Committee also intends that the appropriate accountability and training standards are adhered to by participating communities and has provided sufficient resources, as requested in the budget, to ensure that these standards are met.

FORENSICS DOCUMENT LAB

The Committee recommends \$14,357,000, 80 positions, and 77 FTE, as requested, for the Forensics Document Lab [FDL]. The FDL provides forensic document analysis and operations support services to combat travel and identity document fraud. Included in this amount is funding for additional staffing and equipment to support the Southwest Border Initiative.

DATA CENTER MIGRATION

As part of the Department-wide effort to assign data center migration funding to the component agencies which will be migrating, the Committee recommends \$23,850,000, 4 positions, and 4 FTE, in new funding to support ICE's portion of this activity in fiscal year 2010, \$10,000,000 below the request. The funds are reduced as not all of the proposed activities would be accomplished in fiscal year 2010.

INVESTIGATIONS--WORKSITE ENFORCEMENT

Worksite enforcement must remain an immigration enforcement priority activity for ICE and the Department as a whole. The Committee is pleased that through fiscal year 2008, ICE continued to aggressively conduct worksite enforcement actions and achieve increases in both criminal and administrative arrests. The new worksite enforcement guidelines issued by the Secretary state that, 'The prospect for employment in the United States continues to be one of the leading causes of illegal immigration, creating a market for criminal smuggling organizations who exploit people willing to pay high fees and take great risks to enter the United States without detection.' The Committee said much the same thing in its report accompanying the Senate version of the fiscal year 2009 bill when it said, 'By turning off the spigot of cheap labor and taking action against unscrupulous employers who exploit illegal aliens, we can begin to stem the tide of illegal immigration.'

The Department's guidance goes on to state that, 'the administrative arrest of the illegal workforce under ICE's existing immigration authorities continues to be an integral aspect of the overall ICE worksite enforcement strategy.' The Committee notes that the Secretary has promised to continue worksite enforcement actions against both employers and employees, and has requested a slight increase in the budget for this activity. The Committee recommends a total of \$138,778,000 for worksite enforcement. The \$10,000,000 above the request is for 100 positions, 50 FTE, for forensic auditors to increase targeting of criminal employers and critical infrastructure locations. The Committee will pay careful attention to the implementation of this new guidance and requests quarterly briefings on worksite enforcement activities in general and specifically on how these funds are being used.

VISA SECURITY PROGRAM

The Visa Security Program, mandated in section 428 of the Homeland Security Act of 2002 (Pubic Law 107-296), extends the border overseas to prevent terrorists and other criminals from receiving U.S. visas. The Office of International Affairs has developed a 5-year expansion plan which includes a prioritized expansion to the 32 highest-risk visa issuing posts. According to the plan, the program will cover approximately 75 percent of the highest risk visa activity posts by 2013. The Committee recommends a total of \$30,186,000, 71 positions, and 67 FTE for the Visa Security Program, as requested.

OFFICE OF INVESTIGATIONS--MISSION SUPPORT STAFFING

The Committee is aware that under the ICE Office of Investigations [OI] workforce template, OI has a current deficit of 805 mission support positions. A negative consequence of not having additional support personnel requires agents to perform administrative functions, taking time away from investigation of transnational and border crime. The budget request begins to narrow this gap, and the additional funds provided by the Committee ensure that mission support positions are also filled. The

Committee urges inclusion of additional funding in the fiscal year 2011 budget request to further close this gap in support staffing.

ICE INTELLIGENCE

The Committee is pleased with the manner in which the Office of Intelligence has expanded and staffed its Field Intelligence Groups. These groups are anticipated to meet or exceed their optimal 50 percent staffing levels for intelligence research specialists and program analysts. As noted above, ICE's BEST teams along the borders and at the seaports make great use of these specialists and the personnel increases funded in this bill will help to ensure that the BESTs are used to their greatest capacity. The Committee directs ICE to provide an Intelligence staffing briefing no later than 60 days after the date of enactment of this act.

DETENTION AND REMOVAL--CUSTODY OPERATIONS (BEDS)

Maintaining an adequate number of detention beds is critical to ensuring the integrity of our detention and removal system while at the same time preventing a return to the ill-advised 'catch and release' policy. We must ensure that all illegal aliens apprehended are removed from this country as expeditiously as possible. The Committee is pleased to note that in fiscal year 2008, ICE removed a total of 347,184 illegal aliens compared with 240,665 in fiscal year 2004. This clearly demonstrates that the additional resources the Congress has provided above the President's requests the past 5 fiscal years for securing our borders is having an impact.

The Congress took the lead and added funding for additional detention beds above the President's request the past 5 fiscal years. The request includes \$36,200,000 to annualize the beds added by Congress in fiscal year 2009 and to fully support a detention bed level of 33,400.

Bill language is included directing that a detention bed level of 33,400 beds shall be maintained throughout fiscal year 2010.

DETENTION AND REMOVAL--ALTERNATIVES TO DETENTION

National security and public safety are ICE's first priorities. To that end, ICE detains all illegal aliens who pose a threat to community safety or national security, as well as those required to be detained under the Nation's immigration laws. The Alternatives to Detention [ATD] program was created to enable ICE to maintain current detention levels and to monitor aliens who are likely to comply, without detention, with immigration proceedings. An excellent example of a population for consideration for the use of ATD is families with children. ATD is composed of two primary programs, electronic monitoring and intensive supervision appearance. The Committee recommends a total of \$63,913,000, 171 positions, and 172 FTE, as requested in the budget. The Committee encourages ICE to prioritize enrollment of families with children in this program, to continue to use intensive supervision, and directs ICE to brief the Committee semiannually on the program beginning no later than 60 days after the date of enactment of this act.

The Committee is aware that increased interior immigration enforcement has resulted in families being separated. The Committee directs the Department to analyze and report on the feasibility of establishing procedures to ensure that data can be collected and documented for the purposes of submitting a quarterly report to the Committee which tracks the number of deportation, exclusion, and removal orders sought and obtained by ICE that involve verified alien parents of a U.S. citizen child. The report should also provide a break down by district in which the removal order was issued; by type of order (deportation, exclusion, removal, expedited removal, and others); by agency issuing the order; by the number of cases in each category in which ICE has successfully removed the verified alien parent; and by number of cases in each category in which ICE has not removed the verified alien parent. The analysis and report on the feasibility of establishing procedures to ensure that data can be collected and documented for reporting purposes shall be submitted not later than December 15, 2009.

DETENTION AND REMOVAL--TRANSPORTATION AND REMOVAL

Included in the amount recommended by the Committee is \$281,878,000, as proposed in the budget, for all ICE-related transportation and removal activities.

DETENTION AND REMOVAL--FUGITIVE OPERATIONS

Included in the amount recommended by the Committee is \$229,682,000, 677 positions, and 677 FTE, as proposed in the budget. The National Fugitive Operations Program is responsible for reducing the fugitive alien population in the United

States. As of May 2009, ICE estimates that there are approximately 549,408 immigration fugitives in the United States, a decrease of over 83,318 since October 2006. ICE works to reduce the population of these fugitives from the law through the use of Fugitive Operations teams. All 104 Fugitive Operations teams are operational and conducting enforcement operations.

DETENTION AND REMOVAL--CRIMINAL ALIEN PROGRAM

Included in the amount recommended by the Committee is \$192,539,000, 935 positions, and 932 FTE, as proposed in the budget. ICE is funded for 126 Criminal Alien Program teams and in fiscal year 2008 it charged over 210,000 aliens in jails.

SECURE COMMUNITIES

The Committee recommends \$195,589,000, 552 positions, and 512 FTE, as requested, \$45,589,000, 92 positions, and 46 FTE above the fiscal year 2009 level. Congress initiated this program in fiscal year 2008 and has provided total new funding of \$350,000,000 in the past 2 years. The Committee is pleased that the administration has embraced this program as one of many tools at its disposal to identify and remove illegal aliens, including criminal aliens, and otherwise enforce our Nation's existing immigration laws. With these additional funds, Secure Communities plans to expand coverage by at least 50 counties during fiscal year 2010 to establish biometric identification of arrested criminal aliens in over 140 counties. Secure Communities' threat-based deployment schedule prioritizes those counties with the highest threat criminal alien populations first, consisting primarily of counties in major metropolitan areas throughout the country as well as all counties along the southwest border. In fiscal years 2007 and 2008, 216,439 criminal aliens were removed after being incarcerated. Secure Communities estimates that after deploying to these counties, ICE will cover over 50 percent of the Nation's criminal alien population. The Department anticipates that, with continued funding, including redeployment of existing resources, it will establish biometric identification of arrested criminal aliens in all counties that are willing and technically able to participate by the end of fiscal year 2012.

The Committee has included bill language ensuring that all illegal aliens encountered when enforcing our immigration laws are apprehended. The Committee also directs ICE to provide quarterly briefings on progress being made in implementing the Secure Communities program. The briefings shall include Secure Communities' impact on removals reporting at the the level of detail of the quarterly detention and removals report. The first briefing should occur no later than 45 days after the date of enactment of this act.

UNACCOMPANIED ALIEN CHILDREN

The Committee notes the request includes no additional funding for ICE's role in caring for and transporting unaccompanied alien children [UAC] to Office of Refugee Resettlement custody upon their apprehension by ICE personnel. The conference report accompanying the 'Supplemental Appropriations Act, 2009', includes \$11,800,000 for ICE for this purpose based upon estimated increased UAC requirements resulting from the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (Public Law 110-457). While the Committee includes no increased funding for this activity for fiscal year 2010, the Committee directs ICE to report not later than March 31, 2010, on the actual fiscal year 2009, and estimated fiscal year 2010, costs of care and transportation of UACs.

DETENTION AND REMOVAL REPORTING

The Committee continues to request ICE to submit a quarterly report to the Committee which compares the number of deportation, exclusion, and removal orders sought and obtained by ICE. The report should be broken down: by district in which the removal order was issued; by type of order (deportation, exclusion, removal, expedited removal, and others); by agency issuing the order; by the number of cases in each category in which ICE has successfully removed the alien; and by the number of cases in each category in which ICE has not removed the alien. The first fiscal year 2010 quarterly report is to be submitted no later than January 15, 2010.

U.S. CUSTOMS AND BORDER PROTECTION

COMMITTEE RECOMMENDATIONS

The Committee recommends \$8,075,649,000 for salaries and expenses of U.S. Customs and Border Protection [CBP] for fiscal year 2010, including \$3,226,000 from the Harbor Maintenance Trust Fund. Included in this amount is a decrease of \$432,959,000 in termination of one-time costs, and an increase of \$412,246,000 in annualizations of prior year funding, the fiscal year 2009 pay raise, and the fiscal year 2010 pay raise. The Committee includes bill language making available up to \$150,000 for payment for rental space for preclearance operations; and \$1,000,000 for payments to informants. The Committee

also includes bill language placing a \$35,000 annual limit on overtime paid to any employee, and making \$1,700,000 available until expended for the Global Advanced Passenger Information/Passenger Name Record program.

COMBATING SOUTHBOUND SMUGGLING

Seizure data over the past 2 fiscal years demonstrate an increasing threat for weapons and currency smuggling outbound to Mexico. In fiscal year 2007, CBP initiated 353 southwest seizures totaling \$13,700,000 in currency and 316 weapons. In fiscal year 2008, there were 450 outbound currency seizures totaling \$12,500,000 and 257 weapons seizures. The President's budget request included a total of \$45,834,000 and 254 positions for new border security personnel and technology to further address this threat. This is an increase of \$26,132,000 and 125 positions over last year's level and includes 65 new CBP officers, 44 Border Patrol agents, and 16 support staff. It also expands CBP's license plate reader program to 58 outbound lanes on the Southwest border, to begin providing readers to all 110 outbound traffic lanes on the Southwest border.

The Committee is pleased the budget proposes to expand CBP southbound border enforcement efforts to combat the smuggling of firearms and currency to Mexico, which in turn fuels the drug cartel violence and the pressure to increase smuggling of illegal drugs and aliens into this country. The Committee recommends \$40,000,000, \$13,868,000 above the amount requested in the budget, for this activity. The increase above the request will provide CBP with an additional 114 CBP positions to provide CBP with greater flexibility to expand southbound operations. The Committee also recommends an additional \$40,000,000 to competitively procure additional non-intrusive inspection equipment. Of these funds, \$20,000,000 shall be for equipment to be used by the Border Patrol in support of checkpoint operations and \$20,000,000 shall be for equipment to be used by the Office of Field Operations at locations along the Southwest border. Prior to the obligation of these additional funds, the Committee directs the Secretary to submit an expenditure plan to the Committees on Appropriations not later than 60 days after the date of enactment.

The Committee is pleased with the greatly enhanced working relationship that has been developed with the Government of Mexico and its border and customs law enforcement agencies as our two countries jointly battle the scourge of drug-related violence. The Committee encourages CBP and the other DHS components to explore and implement ways to expand on this relationship.

BORDER PATROL AGENTS

Since Congress began increasing the size of the Border Patrol by funding the hiring of 500 new agents in the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005 (Public Law 109-13), a total of 9,200 new Border Patrol agents, and attendant support positions, will have been funded and hired through the end of fiscal year 2009. The Congress strongly supports the Border Patrol mission of securing our borders and fully funds the fiscal year 2010 request.

Included in the amount recommended by the Committee for 'Border Security and Control' is a total of \$3,525,008,000, 22,800 positions, and 22,774 FTE, \$20,000,000 above the request. The amount above the request is for non-intrusive inspection equipment for use by the Border Patrol in doing southbound enforcement discussed earlier in this section. This is an increase of \$98,553,000 over the fiscal year 2009 level. These funds provide the full funding necessary for 20,063 Border Patrol agents and the attendant support positions, as compared with 12,349 agents on board at the beginning of fiscal year 2007.

BORDER PATROL AGENTS ON THE NORTHERN BORDER

As of April 25, 2009, there were 1,525 Border Patrol agents assigned to the Northern border. The Chief of the Border Patrol, working with the Northern border sector chiefs, has developed a staffing plan to increase the agents on the Northern border by the end of fiscal year 2010 to 2,212 Border Patrol agents. The Committee has been assured that this increase is attainable and will represent a 700 percent increase in manpower from pre-2001 staffing levels. The Border Patrol will continue to use the Border Patrol Agent Intern Program, fully funded relocations, the Voluntary Relocation Program, and the reinstatement of prior agents to meet this goal.

The Committee is aware of the continued difficulty the Border Patrol is experiencing in recruiting agents to transfer to the Northern border. Agents have experienced difficulties selling houses on the Southern border and, in certain more remote Northern locations, there is a lack of infrastructure to support agents with young families. The Committee directs CBP and the Office of the Border Patrol to develop a strategy to address these issues and brief the Committee on its findings and requirements no later than 60 days after the date of enactment of this act.

MISSION SUPPORT PERSONNEL

Operation Jump Start was a 2-year effort which involved the deployment of 6,000 National Guardsmen and women on the Southwest border to perform Border Patrol support activities while additional Border Patrol agents were hired. This permitted more Border Patrol agents to actually patrol the border. As discussed above, while the agent hiring targets will be met this year, CBP failed to aggressively hire mission support personnel during the same timeframe. Jump Start ended July 15, 2008, and with the loss of the National Guard's support, many agents have reverted to performing mission support activities. Congress has provided the resources to hire mission support personnel and the Committee directs CBP in the strongest terms possible to hire these individuals so that the Border Patrol agents can return to their proper role of securing the border.

CONDUCT AND INTEGRITY OVERSIGHT

Over the last 4 years, CBP has hired over 14,000 new personnel, a 33 percent increase since fiscal year 2006. The Committee notes that CBP conducted a total of 606 internal affairs investigations in fiscal year 2007. That number jumped to 992 investigations the following fiscal year. To date this fiscal year, CBP has conducted 682 investigations. With a workforce of over 56,000 employees, of whom 40,000 are sworn law enforcement agents, 720 current and former employees have been arrested for criminal misconduct since October 1, 2006. Of these, 46 individuals have been arrested for mission critical corruption charges. In order to support long-term border security efforts and prevent internal fraud, the Committee believes it is important to keep in front of any possible increase in workforce fraud by hiring additional agents who will investigate cases of fraud and other illegal activities and to improve training. The Committee recommends a total of \$20,742,000 and 76 FTE to train officers and agents and expand integrity investigations. This is an increase of \$1,561,000, and 2 FTE over the fiscal year 2009 level, and \$500,000 and 2 FTE over the request. With these additional funds, a total of 93 CBP personnel will be on-board and involved in conduct and integrity oversight by the end of fiscal year 2010.

AIR AND MARINE STAFFING

Included in the amount recommended by the Committee is a total of \$309,629,000, 2,015 positions, and 1,943 FTE. This represents an increase of \$19,115,000, 144 positions, and 72 FTE, above the fiscal year 2009 level, as requested in the budget. This includes 88 additional law enforcement and 56 support personnel at our Northern, coastal, and Southeast/Caribbean borders and builds on the Congress's multi-year effort to add resources to protect our land and marine borders.

WESTERN HEMISPHERE TRAVEL INITIATIVE

The Western Hemisphere Travel Initiative [WHTI] became fully operational on June 1, 2009. In order to ensure that progress continues to be made on this program, the Committee recommends a total of \$144,936,000 and 294 positions, as requested in the budget. This is an increase above the fiscal year 2009 level of \$20,900,000, 89 positions, and 45 FTE. The Committee directs the Office of Policy to provide semiannual briefings on the status of WHTI implementation beginning no later than 30 days after the date of enactment of this act.

DATA CENTER MIGRATION

As part of the Department-wide effort to assign data center migration funding to the component agencies which will be migrating, the Committee provides \$33,650,000, in new funding to support CBP's portion of this activity in fiscal year 2010, \$5,000,000 less than the request. The funds are reduced as not all of the proposed activities would be accomplished in fiscal year 2010.

UNACCOMPANIED ALIEN CHILDREN

The Committee notes the request includes no additional funding for CBP's role in caring for and transporting unaccompanied alien children [UACs] to Office of Refugee Resettlement custody upon their apprehension by CBP officers or agents. The conference report accompanying the 'Supplemental Appropriations Act, 2009' included \$6,200,000 for CBP for this purpose based upon estimated increased UAC requirements resulting from the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (Public Law 110-457). While the Committee provides no additional funding for this activity for fiscal year 2010, the Committee directs CBP to report not later than March 31, 2010, on the actual fiscal year 2009, and estimated fiscal year 2010, costs of care and transportation of UACs. ◇

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