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

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Congress returns this week from its week-long Independence Day recess. Upon its return, the House will remain in session through Friday, July 31, 2009, and the Senate will remain in session through Friday, August 4, 2009, at which times the two chambers expect to begin their respective August recesses.

Appropriations bills will continue to dominate the immigration- and refugee-legislative agenda during this period. The full House has yet to take up two of the four appropriations bills that fund the nation's immigration- and refugee-related functions, and the full Senate yet to take up any of the four measures. In addition, jockeying will likely intensify in the coming weeks on comprehensive immigration reform.

This Week's Hearings

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

- The Rise of the Mexican Drug Cartels and U.S. National Security. The House Oversight and Government Reform Committee has scheduled a hearing for this week on the rise of the Mexican drug cartels and U.S. national security; and
- Oversight of the U.S. Coast Guard. A Senate Commerce panel has scheduled an oversight hearing examining the operations of the U.S. Coast Guard.

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This Week's Hearings (continued)

House

House Committee to Hold Hearing on the Rise of Mexican Drug Cartels and U.S. National Security:

The House Committee on Oversight and Government Reform has scheduled a hearing for this week on the rise of Mexican drug cartels and U.S. national security. This week's hearing is scheduled for 10:00 am on Thursday, July 9, 2009, in Room 2154 of the Rayburn House Office Building.

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

- Alan Bersin, Assistant Secretary, Office of International Affairs, Department of Homeland Security;
- R. Gil Kerlikowske, Director, Office of National Drug Control Policy, Executive Office of the President;
- Lanny Breuer, Assistant Attorney General, Criminal Division, Department of Justice; and
- Kumar Kibble, Deputy Director, Office of Investigations and Jayson Ahern, Acting Commissioner, Customs and Border Protection, Department of Homeland Security. ☼

Senate

Senate Panel to Hold Oversight Hearing on the U.S. Coast Guard:

The Senate Commerce, Science, and Transportation Subcommittee on Science and Transportation Oversight has scheduled an oversight hearing for this week on the U.S. Coast Guard. The hearing is scheduled for 10:00 am on Tuesday, July 7, 2009, in Room SR-253 Russell Senate Office Building.

Anticipated Witnesses. The list witnesses for this week's hearing had not been released at the time of this writing. However, it is anticipated that U.S. Coast Guard Commandant Admiral Thad W. Allen will testify.

Immigration-Related Issues. The U.S. Coast Guard is responsible for a wide variety of functions, including protecting the U.S. maritime border. However, because of its broad mandate, alien smuggling is expected to come up will not likely be the dominant issue discussed in the hearing.

The U.S. Coast Guard has for years supported enactment of a set of provisions that would give it enhanced authority to combat alien smuggling encountered on the High Seas and in U.S. waters. The most recent version of its proposals are embodied in a draft bill titled, the "Maritime Law Enforcement Enhancement Act of 2009".⁸³⁶ It would --

- Penalties. provide for a sentence ranging from up to 20 years imprisonment to life imprisonment for any person who attempts to, conspires to, or actually transports, harbors, or conceals an alien on board a vessel if that alien is attempting to enter the United States unlawfully;
- Seizure and Forfeiture of Property. authorize the Secretary of Homeland Security to seize for forfeiture any real or personal property used or intended to be used to facilitate alien smuggling;
- Extraterritorial Jurisdiction. provide extraterritorial jurisdiction for alien smuggling offenses;
- Claim of Failure to Comply with International Law. provide that the failure of the United States to comply with international law shall not be the basis for defense of a person charged with alien smuggling;
- Maritime Law Enforcement Penalties. amend Section 2237(b) of title 18, United States Code, to make failure to heave to, obstruction of boarding, or providing false information to the U.S. Coast Guard while committing an act of alien smuggling a criminal offense punishable by sentences ranging from up to 10 years to life imprisonment, and to provide that prison sentences may be imposed consecutively in the case of multiple offenses; and
- Sentencing Guidelines. require the United States Sentencing Commission to review and, if appropriate, amend existing sentencing guidelines "to provide adequate penalties for persons convicted of knowingly transporting, harboring, or concealing an alien on board a vessel ... or of criminal failure to heave to, obstruction of boarding, or provision of false information" to the U.S. Coast Guard.

While the Coast Guard has been seeking support on Capitol Hill for its draft Maritime Law Enforcement Enhancement Act of 2009, it is unclear whether of the Obama Administra-

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⁸³⁶ [Click Here](#) to see a copy of the June 5, 2009, 2:05 pm version of the draft "Maritime Law Enforcement Enhancement Act of 2009"

This Week's Hearings (continued)

tion formally supports the provisions and whether it will continue to press for its enactment.

Previous Testimony. This week's hearing will not be the first time that Admiral Allen has testified before a congressional committee during the 111th Congress. One such appearance occurred on June 11, 2009, before the House Homeland Security Subcommittee on Border, Maritime, and Global Counterterrorism. In that testimony, Admiral Allen said, "alien migrant smuggling presents a persistent threat to the security of our Nation. Human smugglers are following the lead of Drug Trafficking Organizations (DTO) and are using more aggressive and dangerous tactics including the use of go-fast vessels to evade Coast Guard interdiction assets. As efforts continue to increase security at the land border, I am concerned smugglers will shift to maritime vectors, where the unique operating environment and current legal constraints make consequence delivery more difficult. I am grateful for Congress' ongoing consideration of the Maritime Alien Smuggling Law Enforcement Act (MASLEA) to address the shortfalls in current statute and provide the U.S. Government with appropriate law enforcement and prosecutorial tools that are uniquely tailored to the maritime environment in which this crime occurs."

In addition to expressing support for enhanced authorities, Admiral Allen talked about the role and mission of the U.S. Coast Guard in protecting the United States maritime borders and expressed support for the Administration's fiscal year 2010 budget proposal for the Coast Guard. He said that "[f]ull support for the President's FY 2010 budget request is an important step forward. Our ability to optimize our broad spectrum of authorities, capabilities and partnerships remains critical to effectively allocating resources across the Coast Guard's broad mission portfolio." He said, further, that "[a]s our Nation faces the challenges of a global economy, the environmental impacts of climate change, piracy, and the long-term struggle against radical extremism; the Coast Guard must be equipped to conduct preparedness and response operations across a broad spectrum of potential risks, threats and hazards. The men and women of the Coast Guard perform with courage, sacrifice and dignity and are eager and prepared to answer the Nation's call now and into the future."⁸³⁷ ☀ ◇

⁸³⁷ [Click Here](#) to see the complete text of the prepared testimony of U.S. Coast Guard Commandant Thad W. Allen at the June 11, 2009, House Homeland Security Subcommittee on Border, Maritime, and Global Counterterrorism hearing on the fiscal year 2010 budget for the Department of Homeland Security's ICE, CBP, and the U.S. Coast Guard

This Week's Markups

At the time of this writing, at least four committee actions that have implications for immigration- or refugee-related matters were likely to occur 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 Resettlement. The House Appropriations Subcommittee on Labor, Health and Human Services, Education, and Related Agencies has scheduled a markup for this week of the Fiscal Year 2010 Labor, Health and Human Services, Education, and Related Agencies Appropriations Bill;
- FY '10 Appropriations for Refugee Admissions and Overseas Refugee Assistance. The Senate Appropriations Subcommittee on State, Foreign Operations, and Related Programs this week could markup the Fiscal Year 2010 State, Foreign Operations, and Related Programs Appropriations Bill;
- 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; and
- Coast Guard Authorization. The Senate Commerce Subcommittee on Science and Transportation Oversight has scheduled a markup of a bill authorizing funding for the U.S. Coast Guard for fiscal years 2010 and 2011.

House

House Appropriations Panel to Mark Up Bill Funding Refugee Resettlement, Unaccompanied Alien Children, and Assisting Trafficking and Torture Victims:

The House Appropriations Subcommittee on Labor, Health and Human Services, Education, and Related Agencies has scheduled a markup for this week of the appropriations bill that funds the nation's refugee resettlement, trafficking victims assistance, and torture victims assistance programs. This week's markup will take place in connection with the yet-to-be-introduced Fiscal Year 2010 Labor, Health and Human Services, Education, and Related Agencies Appropriations Bill. The markup is scheduled for 9:00 am on Friday, July 10, 2009, in Room 2358-C of the Rayburn House Office Building.

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

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

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

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

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 the Office of Refugee Resettlement. The submission 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 resettlement-related budget proposals are:

- Funding for the Office of Refugee Resettlement. The Administration's budget submission proposes an FY '10 appropriation of \$740.7 MILLION for ORR. This would represent an increase of \$107.3 MILLION over the fiscal year 2009 appropriation for ORR. Within the appropriation, the Administration has requested to increase funding for ORR's resettlement activities by \$54.7 MILLION. It has requested to increase funding for the Division for Unaccompanied Alien Children (DUCS) by \$53 MILLION.

- Refugee Admissions Ceiling for Fiscal Year 2010. The Administration's budget documents indicate that the Administration's FY '10 budget would accommodate 80,000 refugee admissions in fiscal year 2010, which the documents note would be the same number that was planned for in fiscal year 2009.⁸³⁸
- Special Immigrant Iraqi and Afghan Arrivals. The Administration's budget documents indicate that the Administration's FY '10 budget plans for 29,000 Special Immigrant arrivals from Iraq and Afghanistan in fiscal year 2010. This would be more than double the 12,000 such arrivals that the Administration estimates for fiscal year 2009.⁸³⁸
- Domestic Refugee Assistance. The Administration's budget-submission proposes an FY '10 appropriation of \$740.7 MILLION for ORR. This would represent an increase of \$107.3 MILLION over the fiscal year 2009 appropriation for ORR. Within the appropriation, the Administration has requested to increase funding for ORR's resettlement activities by \$54.7 MILLION and to increase funding for the Division for Unaccompanied Alien Children (DUCS) by \$53 MILLION.

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

1. ORR's Resettlement Activities. The Administration would appropriate \$544.4 MILLION for ORR's resettlement activities in fiscal year 2010. This includes four programs: Transition & Medical Assistance, Social Services, Preventive Health, and Targeted Assistance. This is \$54.7 MILLION, or 11.2 percent, more than the amount appropriated in fiscal year 2009 for these services.
2. Unaccompanied Alien Children. The Administration's fiscal year 2010 budget submission proposes \$175.6 MILLION for ORR's Unaccompanied Alien Children program. This would be \$52.4 MILLION, or 44 percent, more than the amount appropriated for this purpose in fiscal year 2009.

The Administration justifies the increase in funding by noting new mandates contained in P.L. 110-457, the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008.⁸³⁹

⁸³⁸ 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](#)

⁸³⁹ See page 259 of the [Department of Health and Human Services Fiscal Year 2010 Administration for Children and Families Justification of Estimates for Appropriations Committees](#)

3. Torture Victims Assistance. The Administration’s fiscal year 2010 budget submission requests \$10.8 MILLION to provide support for services to torture victims. This is the same amount that was appropriated in fiscal year 2009 to assist torture victims.
4. Trafficking Victims Assistance. The Administration’s fiscal year 2010 budget submission requests \$9.8 MILLION to assist trafficking victims. This is the same amount that was appropriated in fiscal year 2009 to assist trafficking victims.

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

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

- Greater Use of the Voluntary Agency Matching Grant Program. The pro-refugee advocacy community proposes greater use of the Voluntary Agency Matching Grant program, which leverages private sector contributions with federal dollars to help refugees and others who are eligible for the program reach self sufficiency without reliance on welfare programs. Approximately 25,000 refugees, asylees, and parolees were served by this program in fiscal year 2007. The pro-refugee advocacy community recommends that 57,000 persons be served by the program in fiscal year 2010. This accounts for approximately \$75 MILLION of difference between the Administration’s submission and the advocacy community’s proposal.
- Emergency Housing Assistance. The pro-refugee advocacy community is seeking funding to assist refugees who have lost their jobs or are in danger of losing their jobs with their housing needs. The community is fearful that, in the current economic climate, a number of refugees will fall into a cycle of homelessness and poverty. This accounts for approximately \$30 MILLION of difference between the Administration’s submission and the advocacy community’s proposal.

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

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

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

Millions of Dollars

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

RCUSA has recommended an appropriation of \$949 MILLION for the Department of Health and Human Services Office of Refugee Resettlement (ORR) in fiscal year 2010.⁸⁴⁰ This is \$208.3 MILLION, or 28.2 percent, more than the Administration is requesting for fiscal year 2010.

With regard to funding for ORR, most of the difference between the advocacy community’s recommendations and

- Services for Special Immigrant Iraqis. The pro-refugee advocacy community assumes the admission of a number of Iraqis and Afghan special immigrants who helped the United States government during the conflict in Iraq and Afghanistan, all of whom are eligible for ORR services. RCUSA estimates that the cost of providing services to these individuals will be approximately \$68 MILLION.

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

1. Trafficking and Torture Victim Assistance. The pro-refugee advocacy community recommends more spending on trafficking victim assistance and torture victim assistance compared to the Administration’s request for those programs. This would increase spending in each of those programs from the approximately \$20.6 MILLION requested by the Administration (and provided in fiscal year 2009) to \$35 MILLION in fiscal year 2010.

⁸⁴⁰ RCUSA predicates its recommended level of fiscal year 2010 appropriations for the Office of Refugee Resettlement on 80,000 refugee admissions. It would recommend higher amounts of appropriations for ORR under scenarios where the number of refugee admissions is higher than 80,000

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

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

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

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

Millions of Dollars

Outlook. At the time of this writing, no draft of the Fiscal Year 2010 Labor, Health and Human Services, Education, and Related Agencies Appropriations bill was available. Consequently, it is not possible to predict how much will be in the measure for the Office of Refugee Resettlement. ☀

Senate

Full Senate Appropriations Committee to Markup Bill Appropriating FY '10 Funds for Refugee Admissions and Overseas Refugee Assistance: The full Senate Committee on Appropriations this week could markup its version of the bill that appropriates funds for refugee admissions and overseas refugee assistance. Should it occur, 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. While it had not been officially scheduled at the time of this writing, it is anticipated that the markup will occur sometime on Thursday, July 9, 2009, in Room SD-106 of the Dirksen Senate Office Building.

Background on the Migration and Refugee Assistance Account. The Senate 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 2009.⁸⁴¹

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.

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 2009.⁸⁴²
- 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 2010.⁸⁴³

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

⁸⁴¹ 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.

⁸⁴² 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](#)

⁸⁴³ 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 ⁸⁴⁴	\$ 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 MRA⁸⁴⁵	\$ 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 2009 and the amount that the Administration has asked for in supplemental fiscal year 2009 MRA funding.

⁸⁴⁴ 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.

⁸⁴⁵ 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

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.⁸⁴⁶
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 MRA⁸⁴⁵	\$ 1,284.5	\$ 1,480.4	\$ 2,050

Millions of Dollars

Outlook. The Senate Appropriations Subcommittee on State, Foreign Operations, and Related Programs has not yet marked up its version of the Fiscal Year 2010 State, Foreign Operations, and Related Programs Appropriations Bill. It is unclear whether it will formally do so prior to this week’s full Committee markup. At the time of this writing, no word had leaked about the specific level of appropriations that will be in the bill for the Migration and Refugee Assistance or the Emergency Refugee and Migration Assistance accounts. ☀

Senate Appropriations Panels to Markup Bill Funding Immigration Court System: The Senate Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies and the full Senate Committee on Appropriations this week are scheduled to markup their

⁸⁴⁶ 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.

respective versions 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.⁸⁴⁷

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](#),⁸⁴⁸ 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

⁸⁴⁷ 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

⁸⁴⁸ 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. ☼

Senate Panel to Markup Bill Authorizing Funding for the U.S. Coast Guard: The Senate Commerce, Science, and Transportation Committee has scheduled a markup for this week of legislation reauthorizing funding for the U.S. Coast Guard. This week’s markup is expected to occur in connection with [S. 1194](#), the Coast Guard Authorization Act for Fiscal Years 2010 and 2011. The markup is scheduled for 2:00 pm on Wednesday, July 8, 2009, in Room SR-253 of the Russell Senate Office Building.

Summary of Immigration- and Refugee-Related Provisions. As introduced, S. 1194 does not contain any immigration- or refugee-related provisions.

Potential Immigration-Related Amendments. It is not possible at the time of this writing to predict whether there will be any immigration- or refugee-related amendments offered to S. 1194 during this week’s markup.

The U.S. Coast Guard has for years supported enactment of a set of provisions that would give it enhanced authority to combat alien smuggling encountered on the High Seas and in U.S. waters. It is possible that either the Coast Guard or one of its supporters on the Committee could offer one or more amendments drawn from those provisions.

The most recent version of the U.S. Coast Guard’s enhanced authority proposals are embodied in a draft bill titled, the “Maritime Law Enforcement Enhancement Act of 2009”.⁸⁴⁹ It would --

- Penalties. provide for a sentence ranging from up to 20 years imprisonment to life imprisonment for any person who attempts to, conspires to, or actually transports, harbors, or conceals an alien on board a vessel if that alien is attempting to enter the United States unlawfully;
- Seizure and Forfeiture of Property. authorize the Secretary of Homeland Security to seize for forfeiture any real or personal property used or intended to be used to facilitate alien smuggling;
- Extraterritorial Jurisdiction. provide extraterritorial jurisdiction for alien smuggling offenses;
- Claim of Failure to Comply with International Law. provide that the failure of the United States to comply

with international law shall not be the basis for defense of a person charged with alien smuggling;

- Maritime Law Enforcement Penalties. amend Section 2237(b) of title 18, United States Code, to make failure to heave to, obstruction of boarding, or providing false information to the U.S. Coast Guard while committing an act of alien smuggling a criminal offense punishable by sentences ranging from up to 10 years to life imprisonment, and to provide that prison sentences may be imposed consecutively in the case of multiple offenses; and
- Sentencing Guidelines. require the United States Sentencing Commission to review and, if appropriate, amend existing sentencing guidelines “to provide adequate penalties for persons convicted of knowingly transporting, harboring, or concealing an alien on board a vessel ... or of criminal failure to heave to, obstruction of boarding, or provision of false information” to the U.S. Coast Guard.

While the Coast Guard has sought support on Capitol Hill for its draft “Maritime Law Enforcement Enhancement Act of 2009”, it is unclear whether of the Obama Administration formally supports the provisions and whether the Coast Guard will continue to press for enactment of them.

The U.S. Coast Guard’s aggressive push earlier this year for enhanced authority resulted in House passage of [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 would help combat the crime of alien smuggling.

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 similar provisions be taken up by the Senate.⁸⁵⁰ ☼

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

⁸⁴⁹ [Click Here](#) to see a copy of the June 5, 2009, 2:05 pm version of the draft “Maritime Law Enforcement Enhancement Act of 2009”

⁸⁵⁰ 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

am on Thursday, July 6, 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.⁸⁵¹

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) may 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](#),⁸⁵² anyone who “provides, or attempts or conspires to provide, material support or resources to the perpetrator of an act of international terrorism, or to a family member or other person associated with such perpetrator, with the intent to facilitate, reward, or encourage that act or other acts of international terrorism” would be subject to up to 25 years of imprisonment.

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. ☀ ◇

⁸⁵¹ 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

⁸⁵² 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

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;
- [FY '10 Funding for Immigration Services, Immigration Enforcement, and Border Security](#). The full Senate is expected to take up its version of the Fiscal Year 2010 Homeland Security Appropriations Bill; and
- [UFY '10 Appropriations for Refugee Admissions and Overseas Refugee Assistance](#). The full House of Representatives is expected to take up the Fiscal Year 2010 State, Foreign Operations, and Related Programs Appropriations Bill.

House

House to Take Up Bill Appropriating FY '10 Funds for Refugee Admissions and Overseas Refugee Assistance: The House of Representative this week is scheduled to take up the fiscal year 2010 appropriations bill that funds refugee admissions and overseas refugee assistance. This week's House floor action is set to occur in connection with [H.R. 3081](#), the Fiscal Year 2010 State, Foreign Operations, and Related Programs Appropriations Bill.⁸⁵³ House floor action is tentatively scheduled for Friday, July 10, 2009.

Parliamentary Situation. At the time of this writing, the parliamentary situation that will govern House floor consideration of H.R. 3081 was not yet known. After the chaos of the last several weeks, 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 and forced many votes on the Fiscal Year 2010 Homeland Security Appropriations Bill, it is likely that, at a minimum, the House Committee on Rules will first, impose a deadline for Members to pre-file floor amendments that they wish to offer to H.R. 3081. Moreover, at the time of this writing, it seems likely that the House Committee on Rules will report a fairly restrictive rule permitting a relatively few amendments to be offered to the measure on the House floor.

⁸⁵³ [H. Rept. 111-187, June 26, 2009](#)

Legislative History. The following is a brief legislative history of H.R. 3081:

- House Committee Actions.
 1. On June 17, 2009, the House Appropriations Subcommittee on State, Foreign Operations, and Related Programs marked up its version of H.R. 3081, forwarding the measure to the full Committee on Appropriations.⁸⁵⁴
 2. On June 23, 2009, the full House Committee on Appropriations held a markup session, ordering that H.R. 3081 be reported to the full House of Representatives as an original measure.⁸⁵⁵
 3. On June 26, 2009, the full House Committee on Appropriations formally reported H.R. 3081 to the full House of Representatives.

Summary of Immigration- and Refugee-Related Provisions. As reported by the House Committee on Appropriations, H.R. 3081 contains substantial increases in funding for Migration and Refugee Assistance (MRA) and International Disaster Assistance (IDA), relative to appropriations for those accounts during the regular fiscal year 2009 appropriations cycle. However, when supplemental fiscal year 2009 appropriations spending is taken into account, the Committee-approved measure would actually appropriate less in fiscal year 2010 for the MRA account than the total amount that was appropriated for that account in fiscal year 2009.

The following is a summary of the refugee-related provisions in the House Appropriations Committee-reported version of H.R. 3081:⁸⁵⁶

- Funding for Refugee Admissions and Overseas Assistance to Refugees. H.R. 3081 would appropriate \$1.480 BILLION for the Department of State's Migration and Refugee Assistance (MRA) account. This would represent a decrease of \$190.6 MILLION below the amount that has been appropriated for MRA in fiscal

year 2009.⁸⁵⁷ and the same amount as was requested by the Administration in its fiscal year 2010 budget request.

- Funding for Emergency Refugee and Migration Assistance. H.R. 3081 would appropriate \$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 and the same amount that was appropriated for ERMA in fiscal year 2009.
- International Disaster Assistance. H.R. 3081 would appropriate \$830 MILLION in FY '10 for the International Disaster Assistance account (IDA). This would be \$10 MILLION above the amount appropriated for IDA in fiscal year 2009⁸⁵⁸ and \$50 MILLION below the amount that the Administration requested for FY '10.

The chart that follows compares refugee-related funding in H.R. 3081 with fiscal year 2009 funding and the Administration's fiscal year 2010 budget submission:

Comparison of Fiscal Year 2009 and 2010 Funding for MRA, ERMA, and IDA

ITEM	'09 Actual	'10 OMB	'10 House	'10 RCUSA
MRA ⁸⁵⁷	\$ 1,670.6	\$ 1,480	\$ 1,480	\$ 2,050
ERMA ⁸⁵⁸	\$ 40	\$ 75	\$ 75	\$ 200
IDA	\$ 820	\$ 880	\$ 830	\$ 1,120

Millions of Dollars

Views of the Advocacy Community. The pro-refugee advocacy community, represented by Refugee Council USA (RCUSA), the nation's leading coalition of refugee resettlement, human rights, and humanitarian organizations, expressed cautious praise for the Obama Administration's FY '10 budget for the Department of State's MRA account. Nonetheless, it has urged appropriators to provide substantially more funds for the Department's MRA, ERMA, and IDA accounts than the Administration requested.⁸⁵⁹

⁸⁵⁴ See Page 678 of [June 22, 2009, edition of the Weekly Legislative Update](#) for a detailed report on the June 17, 2009, House Appropriations Subcommittee on State, Foreign Operations, and Related Programs markup of H.R. 3081

⁸⁵⁵ See Pages 700-702 of the [June 29, 2009, edition of the Weekly Legislative Update](#) for a detailed report on the June 23, 2009, House Appropriations Committee markup of H.R. 3081

⁸⁵⁶ See Pages 724-725 of the [June 29, 2009, edition of the Weekly Legislative Update](#) for extended excerpts from H. Rept. 111-187, the committee report accompanying H.R. 3081

⁸⁵⁷ The fiscal year 2009 level of appropriations for the MRA account includes \$931 MILLION that was appropriated in the regular appropriations bill and total of \$740 MILLION that has been appropriated so far in fiscal year 2009 in supplemental appropriations bills

⁸⁵⁸ The fiscal year 2009 level of appropriation includes \$350 MILLION that was appropriated in the regular appropriation bill and a total of \$470 MILLION that was appropriated so far in fiscal year 2009 in supplemental appropriations bills

⁸⁵⁹ [Click Here](#) to see a backgrounder prepared by RCUSA in which it expresses its views on the proper level of fiscal year 2010 funding for the MRA, ERMA, and IDA accounts

- **MRA Account.** RCUSA has asked Congress to appropriate \$2.05 BILLION for the MRA account in fiscal year 2010. That is \$570 MILLION more than H.R. 3081 would appropriate and the Administration requested for fiscal year 2010. It is \$379.4 MILLION more than the amount that has been appropriated so far in fiscal year 2009 for the account.

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 has recommended \$251.5 MILLION more for refugee admissions in fiscal year 2010 than the Administration requested, enough to accommodate at least 45,000 more refugee Admissions than the Administration is planning for.⁸⁶⁰
 2. **Overseas Refugee Assistance.** Second, RCUSA has recommended \$302 MILLION more for overseas assistance to refugees than the Administration has requested.
- **ERMA Account.** RCUSA has asked Congress to appropriate \$200 MILLION for the ERMA account in fiscal year 2010. That is \$125 MILLION more than H.R. 3081 would appropriate and the Administration requested for fiscal year 2010. It is \$160 MILLION more than the amount that has Emergency Refugee and Migration Assistance (ERMA) 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 amount has been appropriated so far in fiscal year 2009 for the account.
 - **IDA Account.** RCUSA has asked Congress to appropriate \$1.12 BILLION for the Agency for International Development's IDA account in fiscal year 2010. That is \$290 MILLION more than H.R. 3081 would appropriate and \$240 MILLION more than Administration requested for fiscal year 2010. It is \$300 MILLION more than the amount that has been appropriated so far in fiscal year 2009 for the account.

Potential Immigration- and Refugee-Related Floor Amendments. The State, Foreign Operations, and Related Agencies Appropriations Bill has not usually drawn a great number of immigration- or refugee-related amendments. Nonetheless, it was not possible at the time of this writing to

⁸⁶⁰ *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.*

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. ☼

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, July 7, 2009.

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.

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.

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. ☼

Senate

Senate to Take Up FY '10 Bill Appropriating Funds for Immigration Services, Immigration Enforcement, and Border Security: The Senate this week is expected 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 the Senate version of H.R. 2892, the Fiscal Year 2010 Homeland Security Appropriations Bill. The Senate Committee on Appropriations reported the measure to the full Senate as [S. 1298](#).⁸⁶¹ However, as a technical matter, floor

⁸⁶¹ [S. Rept. 111-31](#), June 18, 2009

action will on H.R. 2892. Senate floor action is scheduled to begin sometime after 10:00 am on Tuesday, July 7, 2009.

Parliamentary Situation. At the time of this writing, a unanimous consent agreement was in place providing that the Senate may proceed to consideration of H.R. 2892 after the conclusion of Morning Business on Tuesday, July 7, 2009, and that the bill will be floor managed by Senator Patty Murray (D-WA). However, no unanimous consent agreement is in place governing the amendment process or any other aspect of the Senate's consideration of measure.

Senate Democratic Leaders are to attempt to negotiate an agreement between Democrats and Republicans on the amendments that can be offered to the bill and a time certain for a final vote on it. However, at the time of this writing, no such agreement was either in place or in sight.

Legislative History. The following is a brief legislative history of H.R. 2892/S. 1298:

- House Committee Actions.

1. On June 8, 2009, the House Appropriations Subcommittee on Homeland Security marked up its version of H.R. 2892, forwarding the measure to the full House Committee on Appropriations.⁸⁶²
2. On June 12, 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.⁸⁶³
3. On June 16, 2009, the full House Committee on Appropriations formally reported H.R. 2892 to the House of Representatives.

- House Floor Actions.

1. On June 24, 2009, the full House of Representatives took up H.R. 2892, passing it by a vote of 389-37.⁸⁶⁴

⁸⁶² See Pages 634-641 of [June 15, 2009, edition of the Weekly Legislative Update](#) for a detailed report on the June 8, 2009, House Appropriations Subcommittee on Homeland Security markup of the fiscal year 2010 Homeland Security Appropriations bill

⁸⁶³ See Pages 634-641 of [June 15, 2009, edition of the Weekly Legislative Update](#) for a detailed report on the June 12, 2009, full House Appropriations Committee markup of the fiscal year 2010 Homeland Security Appropriations bill

⁸⁶⁴ [House Roll Call No. 450, June 24, 2009](#)

- Senate Committee Actions.

1. On June 17, 2009, the Senate Appropriations Subcommittee on Homeland Security marked up its version of S. 1298, forwarding the measure to the full Senate Committee on Appropriations.
2. On June 18, 2009, the full Senate Committee on Appropriations held a markup session, ordering that S. 1298 be reported to the full Senate.⁸⁶⁵

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 U.S. 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.⁸⁶⁶ and \$120.5 MILLION more than the Administration requested for fiscal year 2010.
- Funding for Immigration and Customs Enforcement. \$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

⁸⁶⁵ See Pages 673-678 of the [June 22, 2009, 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

⁸⁶⁶ 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)

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. This is \$22 MILLION above the amount requested by the Administration.

Legislative Riders and Limitations. S. 1298 contains the following immigration-related legislative riders:

- 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.

Among the many immigration-related amendments that could be offered to the Homeland Security Appropriations bill this week on the Senate floor are the following:

- HATCH RELIGIOUS WORKER VISAS.--Senator Orrin Hatch (R-UT) may offer an amendment that would extend the Special Immigrant Non-Minister Religious Worker Visa through September 20, 2013.
- MENENDEZ WIDOWS & ORPHANS.--Senator Bob Menendez (D-NJ) may offer an amendment based on [S. 1247](#), a bill he has introduced that 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.
- E-VERIFY SYSTEM.--Various senators may offer a variety of amendments relating to E-Verify. Among the potential e-verify amendments are those that would:
 1. PERMANENT EXTENSION OF E-VERIFY.--Permanently extend authorization for E-Verify.
 2. SESSIONS MANDATORY CONTRACTOR USE OF E-VERIFY.--Senate Judiciary Committee Ranking Republican Jeff Sessions (R-AL) may offer an amendment that would require all federal contractors and subcontractors to use the E-Verify system to verify the work eligibility of their employees.
 3. MANDATORY ECONOMIC STIMULUS RECIPIENT USE OF E-VERIFY.--Require entities that receive funds from the Economic Stimulus Bill

to use the E-Verify system to verify the work eligibility of their employees.

- GUANTANAMO BAY DETAINEES.--An amendment could be offered precluding the admission to the United States of detainees currently being held by the United States at the detention facility on Guantanamo Bay, Cuba.
- 287(G) PROGRAM.--Amendment could be offered increasing funding for the 287(g) Program.
- SANCTUARY CITIES.--Amendments could be offered to deny or reduce funding for cities that have "sanctuary" policies that limit or preclude local or state law enforcement personnel from cooperating with Department of Homeland Security enforcement personnel.
- BORDER FENCING.--Amendments could be offered to increase funding and/or mandates with regard to the construction of fencing along the U.S. border with Mexico.
- IN-STATE TUITION.--Amendments could be offered to prohibit states from offering in-state tuition rates to persons who are not lawfully present in the United States.
- FUNDING FOR DETENTION BEDS.--Amendments could be offered to increase funding in the bill for detention.

Outlook. At the time of this writing, no unanimous consent agreement limiting amendments to the Fiscal Year 2010 Homeland Security Appropriations bill was in place. Accordingly it is difficult to predict how long the Senate will have the measure under consideration or what amendments will be offered.

What does seem certain, however, is that there will be numerous votes in the Senate on immigration-related amendments to the measure ☀ ◇

This Week's Conference Activity

No measures containing significant immigration- or refugee-related provisions are currently the subject of a House-Senate conference committee. ◇

This Week's Executive Activity

There are no executive branch activities planned for this week that are expected to have significant impact on immigration- or refugee-related legislation. ◇

Organization of the 111th Congress

Senate

Election of Al Franken Could Have Significant Impact on Course of Immigration Legislation in the Senate:

Nearly eight months after the voting ended, the Minnesota Supreme Court last week held that Democrat Al Franken defeated Senator Norm Coleman (R-NM) by 312 votes in the 2008 Minnesota Senate race. The state's Supreme Court handed down its decision on Tuesday, June 30, 2009. On that same day, Governor Tom Pawlenty (R-MN) and Secretary of State Mark Ritchie (D-MN) signed an election certificate certifying Senator-Elect Franken as the winner of what was one of the closest and longest contested United States Senate races since 1913, when Congress ratified the 17th Amendment to the United States Constitution providing for the direct election of United States senators. He is expected to be sworn into office on Tuesday, July 7, 2009.



Conventional wisdom holds that the election of Senator-Elect Franken could significantly impact the course of immigration- and refugee-related legislation in the United States Senate in at least three ways:

- Reliable Pro-Immigrant and Pro-Refugee Vote. Senator-Elect Franken's election to the U.S. Senate will likely add a reliable pro-immigrant and pro-refugee vote to the chamber, replacing a senator who was not a reliable vote in favor of pro-immigrant and pro-refugee causes.
- Assignment to the Judiciary Committee. Senator-Elect Franken could well be assigned to the Senate Judiciary Committee and its Immigration Subcommittee, both of which will have a key role in shaping immigration and refugee-related legislation that could come before the Senate during the 111th Congress.
- Sixtieth Democratic Senator. Once sworn in, Senator Franken will become the 60th Democrat in the U.S. Senate, giving his party three-fifths of the senators who are sworn, the number needed to overcome a filibuster.

The three articles that follow will assess the impact that the impending swearing in of Senator-Elect Al Franken on the course of immigration- and refugee-related legislation in the Senate during the 111th Congress. ☀

Senator Franken Likely to be a Reliable Pro-Immigrant and Pro-Refugee Vote in the Senate:

By all indications, Senator Al Franken is likely to amass a strong voting record in support of the positions of the pro-immigrant and pro-refugee advocacy communities during his time in the United States Senate. If that turns out to be the case, he will be significantly more supportive of the two communities' positions than was his predecessor, Senator

Norm Coleman (R-MN), who he defeated in one of the closest Senate elections since the advent in 1913 of the direct election of United States Senators. Former Senator Coleman opposed the pro-immigrant and pro-refugee advocacy communities more often than not, supporting their position on key contested immigration- and refugee-related votes only about one-third of the time during his Senate career.

During his 2008 campaign, Senator Franken touted the need for comprehensive immigration reform. He complained that illegal immigration was caused, in part, by the 1986 Simpson-Mazolli bill. He said that the documentation that the Simpson-Mazolli bill requires workers to provide in order for them to work legally in the United States is easily forged and that fact has led to there being more than 10 million undocumented immigrants in the United States. He also blamed illegal immigration on economic and trade policies.

Senator Franken expressed support during his campaign for comprehensive immigration reform, saying that "[t]he best way to deal with illegal immigration is to enforce – actually enforce – the law at the worksite." He declared that "[n]o wall is high enough to keep people from coming over it – or under it – if there are jobs waiting on the other side."

Franken offered a multi-part prescription during his campaign for solving the nation's immigration problems. He said that --

- employers who disregard the law should be actually punished – with fines and, if necessary, incarceration;
- worker identification should be truly tamper-proof using biometrics, but executed in a manner that safeguards civil liberties and privacy; and
- that rather than deporting 10-12 million undocumented immigrants currently residing in the United States, thereby breaking up families, we should look to bring them out of the shadows and put them on a path to citizenship, providing that they have been working, have paid taxes, have not committed any crimes since coming to this country, speak, or are learning to speak, English, and pay a nominal fine.

With regard to legalization, Senator Franken said during his campaign, "I don't believe it's practical to deport the 10-12 million undocumented immigrants currently residing in the United States. And I don't believe in breaking up families. Instead, we should look to bring them out of the shadows and put them on a path to citizenship, providing that they have been working, have paid taxes, have not committed any crimes since coming to this country, speak, or are learning to speak, English, and pay a nominal fine."

Senator Franken indicated during his campaign that he didn't believe that those currently are in the process of becoming citizens should be disadvantaged by immigration reforms.

Franken expressed support during his campaign for guest worker programs for seasonal jobs. He said that "[l]ast year, we saw crops go un-harvested in the Northwest because of the stalemate on immigration reform." At the same time, though, he expressed concerns about guest worker programs, saying that he was "leery of guest worker programs that would create a permanent underclass of exploited workers or drive down the wages of American workers."

Senator Franken also said during his campaign that he would work in the Senate "to improve economic conditions in Mexico, which we've tried and failed to do with NAFTA, could help reduce the incentive many have to attempt to enter the United States illegally." ☀

Sixty Democratic Senators No "Silver Bullet" for Pro-Immigrant and Pro-Refugee Legislation:

Much has been made in recent days of the fact that the swearing-in of Senator-Elect Al Franken will make him the 60th member of the Senate Democratic Caucus. Some political pundits have asserted that this means that Senate Democrats will now have the requisite number of votes needed to overcome a filibuster and that, as a result, Democrats will be now be able to move controversial legislation through the Senate, including comprehensive immigration reform legislation.

In reality, however, while Franken will likely be a reliable pro-immigrant vote to the Senate, his election far from ensures that the pro-immigrant advocacy community will be able to amass the 60 votes that would be necessary to prevent or overcome a filibuster led by immigration restrictionists of important and controversial immigration-related legislation.

Immigration Voting Patterns in the Senate. An analysis of the immigration voting records of veteran senators and the positions taken by victorious and appointed freshmen senators who have been sworn into office since the November 2008 election shows that with the impending swearing-in of election of Senator Franken, there are now 42 senators who can be expected to either always vote in support of the pro-immigrant advocacy community's positions on key contested immigration-related votes, to consistently vote that way, or who likely will more often than not in favor of the community's positions on such occasions.⁸⁶⁷

The analysis also shows that there are 37 senators who can be expected to either always, consistently, or more often than not vote in opposition to the pro-immigrant advocacy community's positions on key contested immigration-related votes, and there that are another 21 senators who either have no clear voting pattern on immigration matters or whose views on immigration matters are not known in sufficient

⁸⁶⁷ [Click Here](#) to see a summary of the *Analysis of Voting Patterns for Senators in the 111th Congress on Key Immigration Matters*, prepared by the U.S. Conference of Catholic Bishops Office of Government Relations

detail to make a reliable prediction on how they would vote on a key contested immigration-related matter.

This means, for example, that in order for the pro-immigrant advocacy community's position to prevail on a matter that requires the votes of 60 senators, it would have to hold onto the votes of all 42 senators who have pro-immigrant voting records and then either win the votes of 18 of the 21 senators who have no clear voting record on immigration matters or otherwise amass at least 18 votes from a combination of the 21 senators who have no clear voting record and the 37 senators who always or usually vote against the positions of the pro-immigrant advocacy community.

As difficult a task as this might seem on paper, it could prove to be even more difficult in reality; it will not always be easy to win the votes of all 42 of the senators who always or usually vote with the pro-immigrant advocacy community on key contested immigration votes. The voting analysis shows that 18 of those 42 senators only vote in favor of the pro-immigrant advocacy community's position more often than not. This constitutes more than 42 percent of the pro-immigrant vote in the Senate. Winning each of their votes on some of the thorny issues that are under the umbrella that is comprehensive immigration reform will not always be easy, particularly during a time when the economy is in crisis and when the progressive community (including organized labor and privacy advocates) is divided on key issues such as guest worker programs and employment verification procedures. ☼

Senator-Elect Franken to Sit on Senate Judiciary Committee and, Possibly, its Subcommittee on Immigration:

Reports indicate that Senator-Elect Al Franken (D-MN), who will be sworn into office on Tuesday, July 7, 2009, will be assigned to the Senate Committee on the Judiciary. He reportedly will occupy the seat currently being held by Senator Ron Wyden (D-OR), who was temporarily assigned to the Judiciary Committee while the dispute over the 2008 Minnesota Senate race was being resolved. It is unclear at the time of this writing whether Senator Franken will take over each of Senator Wyden's Judiciary Committee subcommittee assignments, as well. However, committee insiders indicate that he is likely to do so, given the disruption that would occur if subcommittee assignments had to be shifted. Should Senator Franken, indeed, take over Senator Wyden's subcommittee assignments, that would make him a member of the Senate Judiciary Subcommittee on Immigration, Refugees, and Border Security, the Subcommittee that is expected to play a key role in writing comprehensive immigration reform legislation should the Senate take up such a measure during the 111th Congress.

Tumultuous Period for the Committee. The swearing-in of Senator Franken and his impending assignment to the Senate Committee on the Judiciary will close a rather tumultuous period for the Committee. Since the 111th Congress convened in January of 2009, the Committee has --

- lost Senator Edward M. Kennedy (D-MA), its longest-serving senator, a former chairman of the committee, and a senator who for three decades has been the leading United States senator on immigration matters. Senator Kennedy resigned from the Committee in order to concentrate on health care issues;
- lost Senator Joseph R. Biden (D-DE), its second longest-serving senator and a former chairman of the Committee. Senator Biden resigned from the Senate in order to become Vice President of the United States;
- seen its Ranking Republican, Senator Arlen Specter (D-PA) leave the Republican party and become a Democrat, requiring him to relinquish his GOP leadership position on the Committee;
- named Senator Jeff Sessions (R-AL) to replace Senator Specter as Ranking Republican on the Committee, thus placing one of the leading immigration restrictionists in Congress (not to mention one of the most polarizing GOP senators) in the most important GOP position relating to immigration and refugee matters;
- added Senator Specter to the Committee on the Democratic side of the aisle, making him the most junior member of the Committee and leaving him without a Committee leadership position;
- seated Senator Ron Wyden (D-OR) as a temporary member of the Committee while awaiting a resolution of 2008 Minnesota Senate race; and
- added Senator Franken to the Democratic side of the Committee, replacing Senator Wyden.

Resolution Necessary Electing Franken to Committees. In order for Senator Franken to formally become a member of any Senate committee, he will have to be elected to those assignments by the full Senate, an act that usually is a pro forma formality. There was no word at the time of this writing when the Senate will take up a resolution electing Senator Franken to his committee assignments.

Party Ratio on the Committee. The party ratio on the Senate Judiciary Committee is expected to remain at 12-Democrats-to-7-Republicans.

Committee Rosters. The charts that follow list what can be projected about the rosters of the Senate Committee on the Judiciary its immigration subcommittee as a result of the impending appointment of Senator Franken to the Judiciary Committee. Senators projected to be vacating positions as a result of the impending new assignments are denoted with a ~~stricken through line~~. Senators who are new to the Committee or Subcommittee for the 111th Congress are marked with an asterisk (*):

**Projected Membership of the
 Senate Committee on the Judiciary
 111th Congress**

Democrats (12)	Republicans (7)
Leahy (D-VT)	Sessions (R-AL)
Kohl (D-WI)	Hatch (R-UT)
Feinstein (D-CA)	Grassley (R-IA)
Feingold (D-WI)	Kyl (R-AZ)
Schumer (D-NY)	Graham (R-SC)
Durbin (D-IL)	Cornyn (R-TX)
Cardin (D-MD)	Coburn (R-OK)
*Whitehouse (D-RI)	
*Klobuchar (D-MN)	
*Kaufman (D-DE)	
*Wyden (D-OR)	
Specter (D-PA)	
*Franken (D-MN)	

**Projected Membership of the
 Senate Judiciary Immigration Subcommittee
 111th Congress**

Democrats (6)	Republicans (4)
Schumer (D-NY)	Cornyn (R-TX)
Leahy (D-VT)	Grassley (R-IA)
Feinstein (D-CA)	Kyl (R-AZ)
Durbin (D-IL)	Sessions (R-AL)
*Whitehouse (D-RI)	
*Wyden (D-OR)	
*Franken (D-MN)	

☼ ◇

Last Week's Legislative Activity

Last Week's Hearings

With Congress in a week-long recess, no hearings occurred last week at which significant immigration- or refugee-related matters were examined.

Last Week's Markups

With Congress in a week-long recess, no markups occurred last week on measures having implications for immigration- or refugee-related law or policy.

Last Week's Floor Actions

With Congress in a week-long recess, no floor actions occurred last week on measures having implications for immigration- or refugee-related law or policy.

Last Week's Conference Committee Actions

With Congress in recess, no conference committee actions occurred last week on measures having implications for immigration- or refugee-related law or policy. ◇

Last Week's Executive Activity

ICE Serves Nearly 700 Employers with I-9 Audit Notices of Inspection:

The Department of Homeland Security's Immigration and Customs Enforcement component (ICE) last week announced that it was launching a new audit initiative by issuing Notices of Inspection (NOIs) to 652 businesses nationwide. The notices alert business owners that ICE will be inspecting their hiring records to determine whether or not they are complying with employment eligibility verification laws and regulations. In a July 1, 2009, press release, ICE asserted that "[i]nspections are one of the most powerful tools the federal government has to enforce employment and immigration laws. This new initiative illustrates ICE's increased focus on holding employers accountable for their hiring practices and efforts to ensure a legal workforce." Furthermore, it said that the I-9 inspection effort it was undertaking "is a first step in ICE's long-term strategy to address and deter illegal employment."

The ICE press release explained that employers are required to complete and retain a Form I-9 for each individual they hire for employment in the United States. This form requires employers to review and record the individual's identity document(s) and determine whether the document(s) reasonably appear to be genuine and related to the individual.

The press release explained, further, that "[t]he 652 businesses being presented with a NOI today for a Form I-9 audit have been selected for inspection as a result of leads and information obtained through other investigative means." ICE did not release the names and locations of the businesses served with the notices. ☼ ◇

Recently Introduced Legislation

No bills were introduced last week. ◇

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 Preparing to Introduce House Version of Health Care Reform Bill:** The Chairs of the House Committee on Ways and Means, House Committee on Education and Labor, and House Committee on Energy and Commerce have been working closely with the House Democratic Leadership to produce a draft health care reform bill that could be introduced as soon as this week.

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, 2009.⁸⁶⁸

As reported by the Senate Committee on the Judiciary, S. 327 contains four provisions that would 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.⁸⁶⁹

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

⁸⁶⁸ 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

⁸⁶⁹ 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.

predecessor agency, the Immigration and Naturalization 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.⁸⁷⁰
- 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.⁸⁷¹

Senate

Immediate Implementation of Mandatory Contractor E-Verify Rule: Senate Judiciary Committee Ranking Republican Jeff Sessions (R-AL) is planning to

⁸⁷⁰ 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.

⁸⁷¹ 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

introduce legislation soon that would immediately implement the oft-delayed Bush- era rule requiring all federal contractors to use the E-Verify System.

Secure and Safe Detention and Asylum Act: Senate Homeland Security and Governmental Affairs Committee Chairman Joseph Lieberman (I-CT) is planning to introduce a new version of [U.S. 3114U](#), the “Secure and Safe Detention and Asylum Act”, which he introduced in the 110th Congress.⁸⁷²

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.⁸⁷³

It was unclear at the time of this writing to what degree the bill that Chairman Kerry is planning to introduce will replicate the refugee admissions reform provisions in the House-passed version of H.R. 2410. ◇

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

****Treatment of Legal Immigrants Likely to be an Issue in Forthcoming House Debate on Health Care Reform:** The Chairs of the House Committee on Ways and Means, House Committee on Education and Labor,

⁸⁷² 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

⁸⁷³ 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

and House Committee on Energy and Commerce have been working closely with the House Democratic Leadership to produce a draft health care reform bill that could be introduced as soon as this week.

The draft bill contains a number of provisions relating to immigrants and aliens and will likely set off a debate on the treatment of legal aliens under health care reform.

****House Appropriations Schedules Full Committee Markup of Bill Appropriating FY ’10 Funds for Refugee Resettlement:** The House Committee on Appropriations will markup its last regular fiscal year 2010 immigration- or refugee-related appropriations bill on Tuesday, July 14, 2009. On that date, it will markup the Fiscal Year 2010 Labor, Health and Human Services, Education, and Related Agencies Appropriations Bill. That measure funds the nation’s refugee resettlement, trafficking victim assistance, torture victim assistance, and unaccompanied alien children programs.

The House Appropriations Subcommittee on Labor, Health and Human Services, Education, and Related Agencies Subcommittee is scheduled to markup its version of the measure at 9:00 am on Friday, July 10, 2009.

****House on Track to Complete Action on the Four Immigration- and Refugee-Related Appropriations Measures:** The House of Representatives is on track to complete its consideration of the four regular fiscal year 2010 appropriations 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.

Late last May, the House Committee on Appropriations released an ambitious schedule for considering the measures, calling for Subcommittee consideration of the first of them beginning in early June, 2009, culminating in House floor action on the final of the four measures mid July, 2009.

The House of Representatives already has passed two of the four measures: the Fiscal Year 2010 Homeland Security Appropriations Bill, which funds the federal government’s immigration services, immigration enforcement, and border security activities; and the Fiscal Year 2010 Commerce, Justice, Science, and Related Agencies Appropriations Bill, which funds the nation’s immigration court system and federal reimbursement for reimbursements to states for the incarceration of criminal aliens.

The full House of Representatives is scheduled to take up a third immigration- or refugee-related appropriations bill this week: the Fiscal Year 2010 State, Foreign Operations, and Related Programs Appropriations Bill, which funds the

federal government's refugee admissions and overseas refugee assistance activities.

The final immigration-related appropriations bill that the House must take up is the Fiscal Year 2010 Labor, Health and Human Services, and Education, and Related Agencies Appropriations Bill, which funds the federal government's refugee resettlement activities, as well as the federal government's activities relating to the care and treatment of unaccompanied alien children. The House Appropriations Subcommittee on Labor, Health and Human Services, Education, and Related Agencies is scheduled to markup that measure this week and full committee action next week, with floor consideration taking place as soon as next week but more likely in the week that follows.

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 ⁸⁷⁴	6/04/09	6/09/09	6/16/09
Homeland Security ⁸⁷⁵	6/08/09	6/12/09	6/19/09
Labor, HHS, Education ⁸⁷⁶	7/10/09	7/14/09	7/24/09
State, Foreign Operations ⁸⁷⁷	6/17/09	6/24/09	7/09/09

⁸⁷⁴ *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)*

⁸⁷⁵ *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)*

⁸⁷⁶ *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)*

⁸⁷⁷ *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 (PRM) and administered through the Migration and Refugee*

Senate

****Senate Judiciary Panel to Hold Late July Hearing on Biometric-Based Immigration-Related Employment Verification Systems:** The Senate Judiciary Subcommittee on Immigration, Refugees, and Border Security plans to hold a hearing in late July on biometric-based immigration-related employment verification systems. The Subcommittee has set aside the afternoon of Wednesday, July 22, 2009, for the hearing on employment verification systems. At the time of this writing, no witnesses for the hearing had been publicly identified.

****Senate Judiciary Panel to Hold Late July Hearing on Employment-Based Immigration:** The Senate Judiciary Subcommittee on Immigration, Refugees, and Border Security plans to hold a hearing in late July on how best to structure our employment-based immigration system for the future. The Subcommittee has set aside the morning of Wednesday, July 29, 2009, for the hearing on the future of the nation's employment-based immigration system. At the time of this writing, no witnesses for the hearing had been publicly identified.

****House-Passed Immigration Measures are Awaiting Consideration by the Senate:** The following measures containing significant immigration- or refugee-related provisions have been passed by the House of Representatives and are awaiting consideration in the Senate:

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

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.

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 that are included in H.R. 1029 when it takes up [S. 1194](#), the Coast Guard Authorization Act for Fiscal Years 2010

and 2011. The Committee is scheduled to markup the measure at 2:00 pm on Wednesday, July 8, 2009.⁸⁷⁸

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

Following House passage of the measure, it was referred to the Senate Committee on Foreign Relations. Senate Foreign Relations Committee Chairman John F. Kerry (D-MA) is working on a version of the bill of his own that he expects to introduce in the coming weeks.⁸⁷⁹

- **Fiscal Year 2010 Appropriations for Immigration Services and Enforcement.** The House of Representatives has passed [H.R. 2892](#), its version of the Fiscal Year 2010 Homeland Security Appropriations Bill, which contains among its many provisions those that fund the Department of Homeland Security's immigration services, immigration enforcement, and border security operations. Included in the House-passed measure is a two year-long authorization of the controversial E-Verify program; an appropriation of \$162 MILLION for the E-Verify program; an appropriation of \$25 MILLION for REAL ID Act implementation; only half of the funds requested by the Obama Administration to directly fund refugee and asylum adjudications; permission for the Department of Homeland Security to charge Temporary Protected Status (TPS) applicants for fingerprinting and biometric information needs, notwithstanding the statutory limitation of \$50 on the amount a TPS applicant can be charged; and a slight cut in the Obama Administration's fiscal year 2010 requests CBP, ICE, and USCIS.⁸⁸⁰

The full Senate is tentatively scheduled to take up its version of H.R. 2892 beginning on Tuesday, July 7, 2009.⁸⁸¹

⁸⁷⁸ 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

⁸⁷⁹ 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

⁸⁸⁰ See Pages 703-707 of this week's edition of the [Weekly Legislative Update](#) for a detailed report on the full House of Representatives' consideration of H.R. 2892

⁸⁸¹ See Pages 673-678 of the [June 22, 2009, edition of the Weekly Legislative Update](#) for a detailed report on the Senate Appropriations Committee-reported version of H.R. 2892

- **Fiscal Year 2010 Appropriations for Immigration Court System.** The House of Representatives has passed [H.R. 2847](#), the Fiscal Year 2010 Commerce, Justice, Science, and Related Agencies Appropriations Bill (C-J-S Appropriations Bill), which funds the immigration court system, as well as a grant program that reimburses states for the cost they incur in incarcerating criminal aliens. Included in the bill is a substantial increase in spending for 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.⁸⁸²

The Senate Committee on Appropriations has approved the [Senate version of H.R. 2847](#), reporting it to the full Senate.⁸⁸³ The Senate could take up the measure at any time after it returns from Congress' week-long Independence Day recess.⁸⁸⁴

****Senate 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:

- **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.

The bill has been hotlined. Reports indicate that S. 327 has been cleared by the Senate Democratic cloakroom. However, those reports indicate that it has not yet been cleared by the Senate Republican cloakroom. It is anticipated that once the bill has been cleared by both the

⁸⁸² See Pages 681-682 of the [June 22, 2009, edition of the Weekly Legislative Update](#) for a detailed report on the full House of Representatives' consideration of H.R. 2847

⁸⁸³ [S. Rept. 111-34](#), June 25, 2009

⁸⁸⁴ See Pages 702-703 of this week's edition of the [Weekly Legislative Update](#) for a detailed report on the June 25, 2009, Senate Appropriations Committee markup of H.R. 2847

Democratic and Republican cloakrooms, the Senate will take it up by unanimous consent.⁸⁸⁵ ◇

Next Week's Edition ...

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

- Seating of Senator-Elect Al Franken. Next week's Weekly Legislative Update will report on the implications for immigration-related legislation of the seating of Senator-Elect Al Franken, who is set to be sworn-in on Tuesday, July 7, 2009.
- Fiscal Year 2010 Appropriations for Immigration Services and Enforcement. Next week's Weekly Legislative Update will report on this week's expected Senate floor action on the [Senate version of H.R. 2892](#), the Fiscal Year 2010 Homeland Security Appropriations bill, which currently is scheduled to begin on Tuesday, July 7, 2009.
- Fiscal Year 2010 Appropriations for Refugee Admissions and Assistance. Next week's Weekly Legislative Update will --
 1. House Floor Action. preview upcoming House floor action on [H.R. 3081](#), the Fiscal Year 2010 State, Foreign Operations, and Related Programs Appropriation Bill, which the full House of Representatives has tentatively scheduled for Thursday, July 9, 2009; and
 2. Senate Committee Action. preview upcoming Senate Appropriations Committee action on the yet-to-be-introduced Senate version of the Fiscal Year 2010 State, Foreign Operations, and Related Programs Appropriation Bill, which the full Senate Committee on Appropriations could markup as soon as Thursday, July 9, 2009
- Fiscal Year 2010 Appropriations for Refugee Admissions and Overseas Refugee Admissions and Assistance. Next week's Weekly Legislative Update will preview upcoming House floor action on [H.R. 3081](#), the Fiscal Year 2010 State, Foreign Operations, and Related Programs Appropriation Bill, which the full House of Representatives has tentatively scheduled for Thursday, July 9, 2009
- Material Support to Terrorists. Next week's Weekly Legislative Update will preview next week's scheduled Senate Judiciary Committee markup of [S. 417](#), the State Secrets Protection Act, at which Senator Jon Kyl (R-AZ) may offer an amendment on material support to terrorists. The markup is scheduled for Thursday, July 9, 2009.
- Fiscal Year 2010 Appropriations for Refugee Resettlement, Trafficking Victim Assistance and Unaccompanied Alien Children. Next week's Weekly Legislative Update will --
 1. Subcommittee Markup. report on any refugee-related provisions acted on during this week's expected House Appropriations Subcommittee on Labor, Health and Human Services, Education, and Related Agencies markup of the yet-to-be-introduced FY '10 Labor, Health and Human Services, Education, and Related Agencies Appropriations Bill. The Subcommittee markup is scheduled for Friday, July 10, 2009.
 2. Full Committee Markup. preview action in the full House Committee on Appropriations on the yet-to-be-introduced FY '10 Labor, Health and Human Services, Education, and Related Agencies Appropriations Bill. The full Committee markup is scheduled for Tuesday, July 14, 2009.
- U.S. Coast Guard and Alien Smuggling. Next week's Weekly Legislative Update will report on any alien smuggling matters that are dealt with in either the Senate Commerce Committee's markup of the Coast Guard Authorization bill or on its Subcommittee oversight hearing on the U.. Coast Guard.
- Senate Confirmation of the Nominee to Head USCIS. Next week's Weekly Legislative Update will preview any action in the Senate Committee on the Judiciary 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. The Committee will likely hold an executive business meeting (the Committee's term for a markup) for Thursday, July 16, 2009. However, it has not indicated whether the Mayorkas nomination will be placed on the Committee's calendar for that week.
- Immigrants and Health Care Reform. Next week's Weekly Legislative Update will preview the likely immigration-related issues that will come up as the House and Senate prepare to consider legislation to reform the nation's health care system. ◇

⁸⁸⁵ 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

No item this week

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