



United States Conference of Catholic Bishops Government Relations

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

Monday, October 12, 2009

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As has been the case for the last several weeks, work on health care reform and on the 12 regular appropriations bills that fund the operations of the federal government will dominate this week's legislative agenda on Capitol Hill. Most of this week's in-front-of-the-camera work on immigration- and refugee-related matters takes place in the context of those two issues.

This Week's Hearings

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

This Week's Markups

At the time of this writing, two markups having implications for immigration- or refugee-related matters are scheduled to occur this week in Congress. One of the markups is taking place in the House and the other is occurring in the Senate:

- **Health Care Reform Bill.** The Senate Committee on Finance is expected this week to complete its consideration of health care reform legislation.

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This Week's Hearings (continued)

- **House Judiciary Committee Immigration Bills.** The House Committee on the Judiciary is expected to continue a markup that it started a month ago of two immigration-related bills:
 1. [H.R. 42](#), the "Commission on Wartime Relocation and Internment of Latin Americans of Japanese Descent Act; and
 2. [H.R. 1425](#), the "Wartime Treatment Study Act".

House

House Judiciary Committee Could Markup Two Immigration Measures This Week:

The House Committee on the Judiciary has scheduled a markup session for this week, during which it is expected to markup two immigration-related bills that were approved prior to the August recess by the House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law. This week's markup is scheduled for 10:15 am on Wednesday, October 14, 2009, in Room 2141 of the



Rayburn House Office Building.

The Subcommittee approved H.R. 42 during a markup that occurred on Thursday, July 23, 2009, and Friday, July 24, 2009.¹⁶³⁴ It approved H.R. 1425 in a markup that occurred on Friday, July 31, 2009.¹⁶³⁵

Summary of Immigration- and Refugee-Related Appropriations Provisions. The following summarizes the immigration- or refugee-related provisions of each bill --

- **Commission on Wartime Relocation and Internment Bill.** As approved by the House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, H.R. 42 would establish a

Commission on Wartime Relocation and Internment of Latin Americans of Japanese descent, which would be directed to extend the study of the Commission on Wartime Relocation and Internment of Civilians to investigate U.S. relocation, internment and deportation to Axis countries of Latin Americans of Japanese descent held in U.S. custody from December 1941 through February 1948.

The measure would require the Commission to recommend appropriate remedies to Congress, and it would terminate the commission 90 days after submission of its report to Congress.

The Subcommittee approved H.R. 42 on Friday, July 24, 2009, by a vote of 7-2, after a contentious debate, during which Subcommittee Ranking Republican Steve King offered four amendments. Each of the King amendments were rejected on party-line votes.

- **Commission on Wartime Treatment of European Americans and Jewish Refugees.** As approved by the House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, H.R. 1425 would establish two commissions:
 1. **The Commission on Wartime Treatment of European Americans** would be charged with reviewing U.S. government wartime treatment of European Americans and European Latin Americans. More specifically, the Commission would be required to review--
 - A. government actions with respect to European Americans and European Latin Americans pursuant to United States laws and directives, including the Alien Enemies Acts, Presidential Proclamations 2526, 2527, 2655, 2662, 2685, Executive Orders 9066 and 9095, and related directives pursuant to these and other pertinent laws, proclamations, or executive orders;

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¹⁶³⁴ See Pages 849-850 of the [July 27, 2009, edition of the Weekly Legislative Update](#) for an analysis of the immigration-related provisions in H.R. 42, which was approved by the House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law during two days of markup beginning on July 23, 2009

¹⁶³⁵ See Pages 883-884 of the [August 3, 2009, edition of the Weekly Legislative Update](#) for an analysis of the immigration-related provisions in H.R. 1425, which was approved by the House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law during its July 31, 2009, markup

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This Week's Markups (continued)

- B. registration requirements, travel and property restrictions, internment, and forced abandonment of property;
- C. participation by European Americans in the U.S. Armed Forces; and
- D. appropriate remedies, including public education programs and the creation of a comprehensive online database by the National Archives and Records Administration of documents related to the government's wartime treatment of European Americans and European Latin Americans during World War II.

As amended during the course of the Subcommittee markup, H.R. 1425 would require that the selection of the members of the European American Commission should be made so as to ensure the members can fairly review the facts and discharge the duties of the commission without bias. The measure also was amended during the markup to clarify that the European American Commission should include two members with professional expertise relating to the treatment of Italian-Americans and two members with professional expertise relating to the treatment of German-Americans.

2. **The Commission on Wartime Treatment of Jewish Refugees** would be charged with reviewing the U.S. government's refusal to allow entry into the United States of Jewish and other refugees fleeing persecution or genocide in Europe during World War II. It would direct the Commission to include reviews of--

- A. the rationale for such refusal, its perceived benefit, and its impact on refugees; and
- B. federal refugee policy concerning those fleeing persecution or genocide.

As amended during the Subcommittee markup, the measure would require that the membership of the Jewish Refugee Commission should include two members with professional expertise relating to the treatment of Jewish refugees.

The Subcommittee approved H.R. 1425 on Friday, July 31, 2009, by a vote of 9-1, after considering several amendments to the measure. ☀

Senate

Senate Finance Committee Hopes to Complete Consideration of Health Care Reform Bill Containing Immigrant Restrictions:

The Senate Committee on Finance has scheduled a vote for Tuesday, October 13, 2009, to complete its consideration of health care reform legislation.



The Committee engaged in two weeks of markup sessions, the last of which ended in the wee hours of the morning on Friday, October 2, 2009. It paused its consideration of

the bill after that markup session in order to give the Congressional Budget Office (CBO) time to score the bill that it had preliminarily approved. The CBO released its score of the measure on Wednesday, October 8, 2009, paving the way for next week's final markup session.

The measure that the Senate Finance Committee is poised to give its final approval to would reform the health insurance industry, place mandates on individuals to purchase insurance, and place restrictions on immigrants' access to health insurance.

Even while the Committee contemplates giving its final approval to the measure, the Senate Democratic Leadership is working to produce a version of the bill that it at one point hoped to put before the full Senate beginning as soon as Tuesday, October 13. There is no word, however, on whether that ambitious floor schedule will be adhered to.

Jurisdiction. The Senate Committee on Finance shares jurisdiction over health with the Senate Committee on Health, Education, Labor, and Pensions (HELP).

The Finance Committee has specific jurisdiction over health programs under the Social Security Act and health programs financed by a specific tax or trust fund. In addition, it has jurisdiction over revenue measures, generally.

The Health, Education, Labor, and Pensions Committee has jurisdiction over the nation's health care programs.

On July 15, 2009, the Senate Committee on Health, Education, Labor, and Pensions approved a bill that it eventually introduced as [S. 1679](#), the "Affordable Health Choices Act" to the full Senate. That bill eventually will be merged with the measure being marked up this week by the Senate Committee on Finance.

Background. The Senate Committee on Finance held seven markup sessions last week, during which it considered more than 100 amendments to a Baucus Chairman's Mark. The Committee completed its consideration of amendments to the

measure in the wee hours of the morning on Friday, October 2, 2009. Four immigration-related amendments were offered to the measure in Committee. Each sought to further restrict immigrants' access to health insurance products. Each amendment was defeated on a party-line vote.

Following the Committee's completion of its consideration of amendments on October 2, it Committee forwarded the product to the Congressional Budget Office (CBO) so it could "score" the measure and determine if it is deficit-neutral or it would add to the budget deficit.

Senate Finance Committee Chairman Max Baucus (D-MT) intends that this week's markup session take place only after the CBO has completed its scoring of the measure. He further intends that the markup this week be limited to either a single up-or-down vote on approving the health care reform package as it was completed on Friday, October 5, 2009, or approving it with whatever modifications are needed to ensure that the package is deficit neutral.

Summary of Immigration- and Refugee-Related Provisions. On Wednesday, September 16, 2009, Chairman Baucus released both a [brief summary](#) and a [detailed summary](#) his Chairman's Mark of the Senate Finance Committee health care reform bill.

A study of the two summaries shows that the Chairman's Mark contains a number of restrictions on both legal and illegal immigrants' access to health insurance.¹⁶³⁶ More specifically, the bill would:

- **Health Insurance Mandate.** mandate that legal immigrants (along with U.S. citizens) either purchase health insurance or be subject to a tax penalty;
- **Treatment of Illegal Immigrants Under Mandate.** exempt illegal immigrants from the mandate to purchase health insurance;
- **Illegal Immigrants and Health Insurance Exchanges.** bar illegal immigrants from purchasing health insurance in state or federal health insurance exchanges;
- **Health Insurance Exchanges and Mixed Families.** permit illegal immigrants to purchase health insurance in the exchanges for their U.S. citizen or LPR children;
- **Legal Immigrants and Affordability Credits.** permit legal immigrants to receive affordability tax credits to help them pay for health insurance without regard to the

five-year waiting period under the law for Medicaid and the Children's Health Insurance Program (CHIP);

- **Illegal Immigrants and Affordability Credits.** bar illegal immigrants from receiving affordability tax credits to help them purchase health insurance;
- **Legal Immigrants with Expiring Immigration Status.** bar legal residents from receiving affordability tax credits to help them purchase health insurance if their legal status will expire within a year;
- **Calculation of the Federal Poverty Level.** exempt illegal immigrants from the calculation of the Federal Poverty Level for the purposes of the bill; and
- **Citizenship and Immigration Status Verification.** impose an immigration status verification regime on all persons --- citizens and noncitizens, alike -- seeking to purchase health insurance.

Outlook. The Committee is expected to approve the health care reform bill during this week's markup session.

The only question in doubt concerning the markup at the time of this writing is whether any senators will cross party lines in the vote. Senator Jay Rockefeller (D-WV) has been quoted in the past as saying he opposes the measure. And Senator Olympia J. Snowe (R-ME) has been quoted saying she is undecided.

From a broader perspective, big issues, such as the measure's cost, whether the bill will contain a public option, how abortion will be treated, what the manner and amount of subsidies for lower-income Americans to help them purchase insurance will be, how immigrant access to health insurance and health care will be restricted, and what the reimbursement rates under the Medicare program will be cast a large shadow over the ultimate fate of the measure. ☼ ◇

This Week's Floor Activity

At the time of this writing, one measure containing immigration- or refugee-related provisions is scheduled for floor action this week. A second one could come up if the Democratic Leadership decides to bring it to the House or Senate floor:

- **Appropriations for the Immigration Courts, Alternatives to Detention, and State Criminal Alien Assistance Program.** The full Senate is expected this week to complete its consideration of the Fiscal Year 2010 Commerce, Justice, Science, and Related Agencies Appropriations Bill.

¹⁶³⁶ *The Chairman did not release (and at the time of this writing had not yet released) actual legislative language for his bill. And so it is entirely possible that there are immigrant- and immigration-related provisions in the legislative text of the bill that are not described in the two summaries.*

- **FY '10 Funding for Immigration Services, Immigration Enforcement, and Border Security.** The full House and or Senate could take up the conference report accompanying H.R. 2892, the Fiscal Year 2010 Homeland Security Appropriations Bill.

Bicameral

House and Senate Could Take Up Conference Agreement on FY '10 Homeland Security



Appropriations Bill: The House of Representatives could vote as soon as Friday, October 16, 2009, on an agreement that resolves the differing provisions in the [House-passed](#) and [Senate-passed](#) versions of H.R. 2892, the Fiscal Year 2010 Homeland Security Appropriations Act.¹⁶³⁷

The agreement was approved by House and Senate conferees on Wednesday, October 7, 2009. While the conference report accompanying the Homeland Security Appropriations Act had not yet been filed at the time of this writing, reports and summaries indicate that the agreement strips from the measure almost all of the controversial immigration policy provisions that were contained in the Senate-passed version of the measure. At the same time, reports and summaries indicate that the agreement contains a three year-long extension of the E-Verify Program and three year-long extensions of three expiring immigration visa programs.

In addition to reaching agreement on the immigration enforcement and visa provisions that were in the Senate-passed version of the Homeland Security Appropriations bill, the conferees also agreed to restrict the immigration rights of Guantanamo detainees, providing that such individuals will be ineligible for any immigration benefits and may only be brought to the United States for the purposes of trying them in U.S. courts.

Last week's conference action readies the bill for consideration by the full House and Senate. However, the path by which that happens may prove to be complicated.

There is much controversy in the House of Representatives over the issue of whether Guantanamo detainees should be permitted into the United States for trial. This controversy complicates the outlook for moving the conference agreement through the House and Senate. Nearly 90 House Democrats voted in favor of a motion to instruct the conferees on the bill to bar bringing Guantanamo detainees into the United States for that or any other purpose. Many of the Democrats who

voted in favor of the motion represent moderate-to-conservative congressional districts. The House Democratic Leadership is concerned that it may not be able to win the votes of a number of these Democrats if House Republicans seek to send the conference agreement on the Homeland Security funding bill back to the conference committee to resolve that issue in their favor.

As the week begins, House Democratic Leaders anticipated bringing the agreement before the House first. However, Democratic Leaders have at least three options for moving the agreement. They could bring it up in the House first and take their chances that they have the votes to pass it. They could bring it before the Senate first and then hope that the specter of a DHS shut-down convinces a sufficient number of Members of the House later to vote for it. Or they could attach it to another measure, thereby precluding House Republicans from offering a motion to recommit the conference agreement to the conference committee. ☀

House

Apart from the possible consideration of the conference report accompanying the Fiscal Year 2010 Homeland Security Appropriations Act, the House is not expected to consider any other measures that contain significant immigration- or refugee-related provisions.

Senate

Senate to Vote on Proposal Requiring the Census Bureau to Ask About Immigration Status During 2010 Decennial Census:



The full Senate this week is expected to resume its consideration of the fiscal year 2010 appropriations bill that funds the nation's immigration court system and reimburses states for the costs they bear in incarcerating criminal aliens.

When it does so, the Senate will be faced with a vote on an amendment offered by Senator David Vitter (R-LA) that would force the Census Bureau to inquire about the immigration status of every person in the United States as part of its 2010 decennial census. It also could be faced with votes on making the E-Verify program permanent and statutorily requiring all federal contractors to use the program. This week's Senate floor action is expected to begin at 3:00 pm on Tuesday, October 13, 2009, in connection with the [Senate Appropriations Committee-reported version of H.R. 2847](#), the Fiscal Year 2010 Commerce, Justice, Science, and Related Agencies Appropriations Bill.¹⁶³⁸

The Committee-approved measure would significantly increase funding for the Executive Office for Immigration

¹⁶³⁷ See Pages 1060-1062, as well as Pages 1072-1076 of this week's edition of the Weekly Legislative Update for a detailed analysis of key immigration-related provisions in the conference report accompanying H.R. 2892

¹⁶³⁸ [S. Rept. 111-34](#), June 25, 2009

Review (EOIR) and maintain funding for the State Criminal Alien Assistance Program (SCAAP), a program that the Obama Administration sought to terminate.

Parliamentary Situation. The Senate will vote at 5:30 pm on Tuesday, October 13, 2009, on a motion to invoke cloture on H.R. 2847. If cloture is invoked, debate on the measure will be limited and only amendments that are germane to the bill can be considered. In order to invoke cloture, 60 senators have to vote in favor of the motion.

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

- **House Committee Actions.**

1. On June 4, 2009, the House Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies marked up its version of H.R. 2847, forwarding the measure to the full Committee on Appropriations.¹⁶³⁹
2. On June 9, 2009, the full House Committee on Appropriations held a markup session, ordering that the bill be reported to the full House of Representatives as an original measure.
3. On June 12, 2009, the full House Committee on Appropriations formally reported H.R. 2847 to the House of Representatives.

- **House Floor Actions.**

1. On June 16, 2009, the full House of Representatives took up H.R. 2847, passing it on June 18, 2009, by a vote of 259-157.

- **Senate Committee Actions.**

1. On June 24, 2009, the Senate Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies marked up its version of H.R. 2847, forwarding the measure to the full Committee on Appropriations.

¹⁶³⁹ See Pages 603-604 of the [June 8, 2009, edition of the Weekly Legislative Update](#) for a summary of the June 4, 2009, House Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies markup of H.R. 2847

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

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

2. On June 25, 2009, the full Senate Committee on Appropriations held a markup session, ordering that the bill be reported to the full Senate as an original measure.
3. On June 25, 2009, the full Senate Committee on Appropriations formally reported its version of H.R. 2847 to the full Senate.

Summary of Immigration- and Refugee-Related Provisions. As reported by the Senate Committee on Appropriations, the Senate version of H.R. 2847 contains the following immigration- and refugee-related provisions:

- **Executive Office for Immigration Review.** The Senate Appropriations Committee-reported version of H.R. 2847 would appropriate \$300.685 MILLION for the Department of Justice's Administrative Review and Appeals section. The bulk of those funds are for the Executive Office for Immigration Review (EOIR). This is the same amount requested by the Administration and approximately \$30.685 MILLION, or 11.2 percent, above the fiscal year 2009 appropriation.

Of the amount that the Senate bill would appropriate for EOIR, \$4 MILLION would be transferred from the Examinations Fee account and the remainder would be directly appropriated.

The committee report accompanying the Senate Appropriations Committee-reported version of H.R. 2847 contains a number of directives with regard to EOIR. They include the following—

1. **Personnel and Infrastructure Increases.** The Committee recommendation includes \$24.253 MILLION for personnel and infrastructure investments needed to efficiently process an increasing immigration adjudication caseload. Of this total, \$10.250 MILLION is for the eWorld document management system to improve EOIR's ability to store, distribute and archive its files.
2. **Legal Orientation Program (LOP).** The bill includes \$6.5 MILLION, an increase of \$2.5 MILLION, for the continued implementation and expansion of the LOP. The Committee report notes that the amount in the bill includes \$2 MILLION "for Legal Orientation Programs for custodians of unaccompanied alien children to address the custodian's responsibility for the child's appearance at all immigration proceedings, and to protect the child from mistreatment, exploitation, and trafficking.
- **State Criminal Alien Assistance Program.** The committee report accompanying the Senate Appropriations Committee-reported version of H.R.

2847 notes that the measure includes \$228 MILLION for the State Criminal Alien Assistance Program (SCAAP), a program for which the Obama Administration proposed zero funding. This would be a cut of \$172 MILLION in the amount appropriated for SCAAP in fiscal year 2009.

- **U.S. Marshall's Service.** The committee report accompanying the Senate Appropriations Committee-reported version of H.R. 2847 notes that the Committee "strongly supports the U.S. Marshal Service increase in funding for immigration enforcement." In justifying the increase in funding, the committee report stated that "[i]n the past, the U.S. Marshals Service was forced to divert resources from fugitive apprehension to address this growing, problem."

Committee Consideration and Amendments. The Subcommittee took up H.R. 2847 on Wednesday, June 24, 2009 and the Committee took up the measure on Thursday, June 25, 2009. No immigration-related amendments were offered to the measure during either the Subcommittee's or full Committee's consideration of the measure.

Upcoming Floor Debate and Amendments. As previously noted, the Senate will take up at least one immigration-related amendment when it resumes its consideration of H.R. 2847, and at least three other immigration-related amendments are waiting in the wings:

- **VITTER/BENNETT CENSUS & IMMIGRATION STATUS AMENDMENT.** Senators David Vitter (R-LA) and Robert F. Bennett (R-UT) have offered an amendment (Senate Amendment Number 2847) to H.R. 2847 providing that no funds may be used for the collection of census data that does not include questions regarding United States citizenship and immigration status.¹⁶⁴⁰

The Vitter/Bennett Census and Immigration Status amendment could be voted on as soon as October 13.

- **ENSIGN INCREASED FUNDING FOR SCAAP AMENDMENT.** Senator John Ensign (R-NV) is planning to offer an amendment (Senate Amendment Number 2648) that would increase funding in the bill for the State Criminal Alien Assistance Program (SCAAP).¹⁶⁴¹
- **HUTCHISON INCREASED FUNDING FOR SCAAP AMENDMENT.** Senator Kay Bailey Hutchison (R-TX) is planning to offer an amendment (Senate Amendment Number 2666) that would

appropriate an additional \$172 MILLION for the State Criminal Alien Assistance Program (SCAAP), which would bring the fiscal year 2010 appropriation up to the amount appropriated for the program in fiscal year 2009.¹⁶⁴²

- **SESSIONS PERMANENT EXTENSION OF AND MANDATORY CONTRACTOR USE OF E-VERIFY AMENDMENT.** Senate Judiciary Committee Ranking Republican Jeff Sessions (R-AL) is planning to offer an amendment (Senate Amendment Number 2665) that would permanently extend the E-Verify program and make its use mandatory for federal contractors.¹⁶⁴³

Senate Floor Consideration Thus Far. The Senate took up H.R. 2847 beginning on Monday, October 5, 2009. It had it under consideration off-and-on throughout the week.

The following summarizes the immigration-related amendments to H.R. 2847 that the Senate took action on last week:

- **VITTER SANCTUARY AMENDMENT.** On Wednesday, October 7, 2009, Senator David Vitter (D-LA) offered Senate Amendment Number 2630 to H.R. 2847, the Fiscal Year 2010 Commerce, Justice, Science, and Related Agencies Appropriations Bill.¹⁶⁴⁴ The amendment would have to barred Community Oriented Policing Services (COPS) funding to jurisdictions that have a "sanctuary" policy barring local law enforcement personnel from communicating with Department of Homeland Security enforcement personnel.

The Senate tabled (killed) the Vitter Sanctuary Amendment by a vote of 61-38.¹⁶⁴⁵

Administration's Views. On Monday, October 5, 2009, the White House released a Statement of Administration Policy (SAP) on H.R. 2847.¹⁶⁴⁶ The SAP did not address any of the immigration-related provisions in the Senate Appropriations Committee-approved version of the measure.

¹⁶⁴² [Click Here](#) to see the text of the Hutchison SCAAP Amendment

¹⁶⁴³ [Click Here](#) to see the text of the Sessions E-Verify Amendment

¹⁶⁴⁴ [Click Here](#) to see the text of the Vitter Sanctuary Amendment

¹⁶⁴⁵ [Senate Roll Call No. 316](#), October 7, 2009

¹⁶⁴⁶ [Click Here](#) to see the text of the Obama Administration's Statement of Administration Policy on Senate Appropriations Committee-reported version of H.R. 2847, the Fiscal Year 2010 Commerce, Justice, Science, and Related Agencies Appropriations Bill

¹⁶⁴⁰ [Click Here](#) to see the text of the Vitter/Bennett Census and Immigration Status Amendment

¹⁶⁴¹ [Click Here](#) to see the text of the Ensign SCAAP Amendment

Outlook. The Senate is expected to pass H.R. 2847 this week. The outlook for the Vitter Census amendment remained uncertain at the time of this writing. ☼ ◇

This Week's Conference Activity

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

This Week's Executive Activity

See next week's issue. ◇

Last Week's Legislative Activity

Last Week's Hearings

There were two hearings last week at which significant immigration- or refugee-related matters were discussed. Both hearings took place in the Senate:

- **Human Rights Violators and Asylum.** A Senate Judiciary Committee panel has scheduled a hearing on human rights violators and asylum.
- **Faith-Based Perspectives on Comprehensive Immigration Reform.** A Senate Judiciary Committee panel has scheduled a hearing on faith-based perspectives on comprehensive immigration reform.

Senate Judiciary Panel Holds Hearing on Human Rights Violators and Asylum:

The Senate Judiciary Subcommittee on Human Rights and the Law held a hearing last week examining human rights violators and asylum.¹⁶⁴⁷



Last week's hearing occurred on Tuesday, October 6, 2009.

Witnesses. The list of witnesses who testified at this week's hearing included the following:

- Lanny A. Breuer, Assistant Attorney General, Criminal Division,¹⁶⁴⁸

¹⁶⁴⁷ [Click Here](#) to see recorded video of the October 6, 2009, Senate Judiciary Subcommittee on Human Rights and the Law hearing on human rights violators and asylum

¹⁶⁴⁸ [Click Here](#) to see the complete text of Lanny A. Breuer's prepared testimony at the October 6, 2009, Senate Judiciary

- John T. Morton, Assistant Secretary of Homeland Security for Immigration and Customs Enforcement;¹⁶⁴⁹
- David T. Donahue, Deputy Assistant Secretary of State for Visa Services, Bureau of Consular Affairs;¹⁶⁵⁰ and
- Arthur M. Cummings II, Executive Assistant Director, National Security Branch, FBI.¹⁶⁵¹ ☼

Opening Statements. The following senators made opening statements at last week's hearing:

- **Chairman Durbin.** Senate Judiciary Subcommittee on Human Rights and the Law Chairman Richard Durbin (D-IL).¹⁶⁵²
- **Chairman Leahy.** Senate Judiciary Committee Chairman Patrick Leahy (D-VT).¹⁶⁵³
- **Ranking Republican Coburn.** Senate Judiciary Subcommittee on Human Rights and the Law Ranking Republican Tom Coburn (R-OK).¹⁶⁵⁴

Subcommittee on Human Rights and the Law hearing on human rights violators and asylum

¹⁶⁴⁹ [Click Here](#) to see the complete text of John T. Morton's prepared testimony at the October 6, 2009, Senate Judiciary Subcommittee on Human Rights and the Law hearing on human rights violators and asylum

¹⁶⁵⁰ [Click Here](#) to see the complete text of David T. Donahue's prepared testimony at the October 6, 2009, Senate Judiciary Subcommittee on Human Rights and the Law hearing on human rights violators and asylum

¹⁶⁵¹ [Click Here](#) to see the complete text of Arthur M. Cummings' prepared testimony at the October 6, 2009, Senate Judiciary Subcommittee on Human Rights and the Law hearing on human rights violators and asylum

¹⁶⁵² [Click Here](#) to see the complete text of the prepared statement by of Senate Judiciary Subcommittee on Human Rights and the Law Chairman Dick Durbin (D-IL) at the October 6, 2009, Subcommittee hearing on human rights violators and asylum

¹⁶⁵³ [Click Here](#) to see the complete text of the prepared opening statement of Senate Judiciary Committee Chairman Patrick Leahy (D-VT) at the October 6, 2009, Senate Judiciary Subcommittee on Human Rights and the Law hearing on human rights violators and asylum

¹⁶⁵⁴ [Click Here](#) to see the complete text of the prepared opening statement of Senate Judiciary Subcommittee on Human Rights and the Law Ranking Republican Tom Coburn (R-OK) at the October 6, 2009, Subcommittee hearing on human rights violators and asylum

Senate Panel Holds Hearing on Faith- Based Perspectives in Comprehensive Immigration Reform:



The Senate Judiciary Subcommittee on Immigration, Refugees, and Border Security held a hearing last week examining faith-based perspectives on comprehensive immigration reform.¹⁶⁵⁵

Last week's hearing occurred on Thursday, October 8, 2009.

Witnesses. The list of witnesses who testified at this week's hearing included the following:

- Samuel Rodriguez, President, National Hispanic Christian Leadership Conference;¹⁶⁵⁶
- Theodore E. McCarrick, Cardinal Archbishop Emeritus, Diocese of Washington;¹⁶⁵⁷
- Michael Gerson, Senior Research Fellow, Institute for Global Engagement, Center on Faith and International Affairs;¹⁶⁵⁸
- Leith Anderson, President, National Association of Evangelicals;¹⁶⁵⁹ and

¹⁶⁵⁵ [Click Here](#) to see recorded video of the October 8, 2009, Senate Judiciary Subcommittee on Immigration, Refugees, and Border Security hearing on faith-based perspectives on comprehensive immigration reform

¹⁶⁵⁶ [Click Here](#) to see the complete text of Reverend Rodriguez's prepared testimony at the October 8, 2009, Senate Judiciary Subcommittee on Immigration, Refugees, and Border Security hearing on faith-based perspectives on comprehensive immigration reform

¹⁶⁵⁷ [Click Here](#) to see the complete text of Cardinal Theodore McCarrick's prepared testimony at the October 8, 2009, Senate Judiciary Subcommittee on Immigration, Refugees, and Border Security hearing on faith-based perspectives on comprehensive immigration reform

¹⁶⁵⁸ [Click Here](#) to see the complete text of Michael Gerson's prepared testimony at the October 8, 2009, Senate Judiciary Subcommittee on Immigration, Refugees, and Border Security hearing on faith-based perspectives on comprehensive immigration reform

¹⁶⁵⁹ [Click Here](#) to see the complete text of Pastor Leith Anderson's prepared testimony at the October 8, 2009, Senate Judiciary Subcommittee on Immigration, Refugees, and Border Security hearing on faith-based perspectives on comprehensive immigration reform

- James Tolle, Senior Pastor, The Church on the Way, Van Nuys, Calif.¹⁶⁶⁰ ☼

Opening Statements. The following senators made opening statements at last week's hearing:

- **Chairman Schumer.** Senate Judiciary Subcommittee on Immigration, Refugees, and Border Security Chairman Charles S. Schumer (D-IL).¹⁶⁶¹
- **Chairman Leahy.** Senate Judiciary Committee Chairman Patrick Leahy (D-VT).¹⁶⁶²
- **Ranking Republican Sessions.** Senate Judiciary Committee Ranking Republican Jeff Sessions (R-AL).¹⁶⁶³
- **Ranking Republican Cornyn.** Senate Judiciary Subcommittee on Immigration, Refugees, and Border Security Ranking Republican John Cornyn (R-TX).¹⁶⁶⁴☼

Last Week's Markups

There was one markup last week of measures containing significant immigration- or refugee-related provisions:

¹⁶⁶⁰ [Click Here](#) to see the complete text of Pastor James Tolle's prepared testimony at the October 8, 2009, Senate Judiciary Subcommittee on Immigration, Refugees, and Border Security hearing on faith-based perspectives on comprehensive immigration reform

¹⁶⁶¹ [Click Here](#) to see the complete text of the prepared statement by of Senate Judiciary Subcommittee on Immigration, Refugees, and Border Security Chairman Charles E. Schumer at the October 8, 2009, Subcommittee hearing on faith- based perspectives on comprehensive immigration reform

¹⁶⁶² [Click Here](#) to see the complete text of the prepared opening statement of Senate Judiciary Committee Chairman Patrick Leahy (D-VT) at the October 8, 2009, Senate Judiciary Subcommittee on Immigration, Refugees, and Border Security hearing on faith-based perspectives on comprehensive immigration reform

¹⁶⁶³ [Click Here](#) to see the complete text of the prepared opening statement of Senate Judiciary Committee Ranking Republican Jeff Sessions (R-AL) at the October 8, 2009, Senate Judiciary Subcommittee on Immigration, Refugees, and Border Security hearing on faith- based perspectives on comprehensive immigration reform

¹⁶⁶⁴ [Click Here](#) to see the complete text of the prepared opening statement of Senate Judiciary Subcommittee on Immigration, Refugees, and Border Security Ranking Republican John Cornyn (R-TX) at the October 8, 2009, Subcommittee hearing on faith- based perspectives on comprehensive immigration reform

- **House Judiciary Committee Immigration Bills.** The House Committee on the Judiciary conducted a markup session where it took up two immigration-related bills:
 1. [H.R. 42](#), the "Commission on Wartime Relocation and Internment of Latin Americans of Japanese Descent Act; and
 2. [H.R. 1425](#), the "Wartime Treatment Study Act".

House Judiciary Starts But Does Not Complete Consideration of Two Immigration Bills: The House Committee on the Judiciary last week began a markup of two immigration-related bills. However, the Committee lost its reporting quorum during the course of the markup and recessed without taking action on the measures.

Last week's markup occurred on Wednesday, October 7, 2009, in connection with [H.R. 42](#), the "Commission on Wartime Relocation and Internment of Latin Americans of Japanese Descent Act; and [H.R. 1425](#), the "Wartime Treatment Study Act".¹⁶⁶⁵

The Committee will resume the markup at 10:15 am on Wednesday, October 15, 2009.

Last Week's Floor Action

Two measures containing immigration- or refugee-related provisions were considered last week by the full House or Senate:

- **Appropriations for the Immigration Courts, Alternatives to Detention, and State Criminal Alien Assistance Program.** The full Senate began consideration of the Fiscal Year 2010 Commerce, Justice, Science, and Related Agencies Appropriations Bill.
- **Honorary Citizenship for Casimir Pulaski.** The House of Representatives took up a measure granting honorary citizenship to Casimir Pulaski.

Senate Rejects Attempt to Bar Funding to Local Governments that Have "Sanctuary" Policies:

The Senate last week rejected a proposal that sought to bar funding to state and local governments that have policies restricting communications between their local law enforcement agencies and Department of Homeland Security enforcement personnel. Last week's Senate action occurred on Wednesday, October 7, 2009, in connection with an amendment offered by Senator David Vitter (R-LA) to the [Senate Appropriations Committee-reported version of H.R.](#)

¹⁶⁶⁵ See Pages 1052-1053 of this week's edition of the Weekly Legislative Update for more information about H.R. 42 and H.R. 1425

[2847](#), the Fiscal Year 2010 Commerce, Justice, Science, and Related Agencies Appropriations Bill.¹⁶⁶⁶

The Vitter amendment would have barred Community Oriented Policing Services (COPS) funding to jurisdictions that have a "sanctuary" policy barring local law enforcement personnel from communicating with Department of Homeland Security enforcement personnel.

The Senate tabled (killed) the Vitter Sanctuary Amendment by a vote of 61-38.¹⁶⁶⁷ The Senate will continue its consideration of H.R. 2847 this week.¹⁶⁶⁸ ☀

House Passes Joint Resolution Conferring Honorary Citizenship to Casimir Pulaski:

The full House of Representatives last week passed a measure conferring posthumous honorary citizenship to Casimir Pulaski, a Polish citizen who fought on behalf of the United States during the Revolutionary War and died while in combat in 1779. Last week's House floor action will take place in connection with [H.J. Res. 26](#), a joint resolution proclaiming Casimir Pulaski to be an honorary citizen of the United States posthumously. The House took up the measure on Wednesday, October 7, 2009, passing it one day later by a vote of 422-0.¹⁶⁶⁹

Legislative History. H.J. Res. 26 was introduced in the House of Representatives on March 2, 2009, by Representative Dennis Kucinich (D-OH). The House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law July 23, 2009, approving it on that day and forwarding it to the full House Committee on the Judiciary.

Summary of Immigration- and Refugee-Related Provisions. H.J. Res. 26 would convey honorary U.S. citizenship on Casimir Pulaski, a Polish citizen who fought on behalf of the U.S. during the Revolutionary War and died in combat in 1779. It is a symbolic bill that does not have any impact on the legal status of surviving family or relatives.

Next Steps. Now that the House has passed H.J. Res 26, the next step in the legislative process is its consideration in the Senate. The measure has been referred to the Senate Committee on the Judiciary. A companion measure, S.J. Res. 12, has already passed the Senate. ☀

¹⁶⁶⁶ [S. Rept. 111-34](#), June 25, 2009

¹⁶⁶⁷ [Senate Roll Call No. 316](#), October 7, 2009

¹⁶⁶⁸ See Pages 1055-1058 of this week's edition of the Weekly Legislative Update for a more complete description of last week's Senate floor action on the Vitter amendment to H.R. 2847, as well as a preview of this week's Senate floor action on the measure

¹⁶⁶⁹ [House Roll Call No. 767](#), October 8, 2009

Last Week's Conference Action

Only one measure containing significant immigration- or refugee-related provisions was acted on last week by conference committees:

- **FY '10 Funding for Immigration Services, Immigration Enforcement, and Border Security.** Conferees met last week and resolved the differing provisions in the House- and Senate-passed versions of H.R. 2892, the Fiscal Year 2010 Homeland Security Appropriations Act.

Conferees Strike Controversial Immigration Enforcement Provisions from Homeland Security Funding Bill While Extending E-Verify and Three Expiring Visa Programs for Three Years:

House and Senate conferees last week reached agreement on how to resolve the differing provisions in the [House-passed](#) and [Senate-passed](#) versions of the fiscal year 2010 Homeland Security Appropriations bill, reportedly stripping from it almost all of the controversial immigration policy provisions that were contained in the Senate-passed version of the bill. Conferees approved the inclusion of a three year-long extension of the E-Verify Program in the measure, and they approved the inclusion of three year extensions of three expiring immigration visa programs. Last week's conference committee action readies the measure for consideration by the full House and Senate. However, the path by which the next steps will occur may prove to be complicated.

The text of the conference agreement was not available at the time of this writing. However, sources close to the conferees and a summary of the conference agreement both indicate that the agreement strips out all of the immigration enforcement policy provisions that the Senate adopted during its consideration of the Homeland Security Appropriations Bill. At the same time, reports indicate that the compromise bill would extend for three years three popular visa programs that are set to expire at the end of the month: the EB-5 Investor Visas Regional Center program, the Special Immigrant Non-Minister Religious Worker Visa program, and the Conrad 30 State J-1 Visa program. The conference agreement also would extend the controversial E-Verify program for three years.

In addition to reaching agreement on the immigration enforcement and visa provisions that were in the Senate-passed version of the measure, the conferees also agreed to restrict the immigration rights of Guantanamo detainees, providing that such individuals will be ineligible for any immigration benefits and may only be brought to the United States for the purposes of trying them in U.S. courts.

The Homeland Security Appropriations Bill funds the immigration enforcement, immigration services, and border security departments, agencies, programs, activities, and functions of federal government. The conference agreement contains numerous provisions funding those activities. The House and Senate passed different versions of the measure over the summer, and those versions contained significant differences on immigration policy provisions, including differences on the E-Verify System, SSA No-Match letters, border fencing, the 287(g) program, and visa programs for investors, religious worker and doctors.

Background. Each year, the Homeland Security Appropriations Act funds the federal government's immigration enforcement, immigration services, and border security departments, agencies, programs, activities, and functions. The measure is supposed to be enacted into law each year by the first day of October, which is the first day of the fiscal year. However, Congress was unable to enact the measure this year by October first.

The inability of Congress to enact the Fiscal Year 2010 Homeland Security Appropriations Act by the first of October this year has made it necessary for Congress to temporarily fold spending for the Department into a stop-gap funding measure, which continues the department's funding through October 31, 2009. Should Congress adopt the conference agreement and President Obama sign the bill into law, the Congress that measure would supersede the provisions in the continuing appropriations resolution.

Resolution of Key Immigration-Related Policy Differences. There were enormous differences between the House- and Senate-passed bills on immigration policy matters. The following lists some of the key differences that existed in the two bills and reports on how those differences have reportedly been settled --

- **The E-Verify System.** The Senate-passed bill sought to extend permanently, require that all federal contractors participate, and permit employers to use the system to verify the immigration status of existing employees; not just new-hires.

The House-passed bill would have extended the program for two years. But it did not contain policy provisions.

The conferees opted to extend the E-Verify program for three years but reportedly rejected the Senate E-Verify policy provisions.

- **SSA No-Match Letters.** The Senate-passed bill would have provided that none of the amounts made available under the Act could be used to implement changes to a Bush era rule describing the process for employers to follow after receiving a "no match" letter in order to qualify for "safe harbor, which the Senate-passed bill.

The House-passed bill did not contain comparable language. The conferees rejected the Senate language.

The conferees reportedly rejected the Senate's SSA No-Match language.

- **Border Fencing.** The Senate-passed bill would have imposed a number of restrictions and mandates on the Administration with regard to fencing being constructed along the U.S. border with Mexico.

The House-passed bill contained no such provisions.

The conferees reportedly rejected the Senate's border fencing language.

- **Investor Visa Regional Centers.** The Senate-passed bill would have extended for three years the EB-5 Investor Visa Regional Centers program. The House-passed bill contained no such provision.

The conferees agreed to the Senate's language on the investor visa regional centers program.

- **Religious Worker Non-Minister Special Immigrant Visa Program.** The Senate-passed bill would have extended for three years the Special Immigrant Non-Minister Religious Worker Visa Program.

The House-passed bill contained no such provision.

The conferees agreed to the Senate's language on the religious worker visa program, with slight modifications.

- **Conrad 30 State J-1 Visa Program.** The Senate-passed bill would have extended for three years the Conrad 30 State J-1 Visa Program.

The House-passed bill contained no such provisions.

The conferees agreed to the Senate's language on the Conrad 30 State J-1 Visa Program.

- **Relief for Widows and Orphans of U.S. Citizens and Permanent Residents.** The Senate-passed bill would have protected widows, widowers and orphans of deceased U.S. citizens and legal permanent residents who are in the family immigration system by allowing widows, widowers and orphans, to immigrate on a family-based visa despite the death of a petitioner. The House-passed bill contained no such provisions.

The conferees agreed to the Senate's language on widows and orphans, with modifications that slightly narrowed its scope.

Resolution of Key Immigration-Related Funding Differences. There were a number of significant differences in the level of funding in the House- and Senate-passed bills

for various immigration- and refugee-related bureaus and programs within the Department. The most prominent difference was found in the area of appropriations for U.S. Citizenship and Immigration Services (USCIS).

The House-passed bill would have appropriated \$2.8 BILLION for USCIS, including \$298 MILLION in directly appropriated funds. However, the Senate-passed bill would have appropriated \$2.639 BILLION for USCIS, including only \$135.7 MILLION in directly appropriated funds.

The conferees agreed to include \$2.726 BILLION for USCIS, including \$224 MILLION in directly appropriated funding for USCIS.

Within the appropriation for USCIS--

- **Refugee and Asylum Adjudications.** The conferees dramatically cut the Administration's request for funding for refugee and asylum adjudications. The Administration had asked for \$206 MILLION for that purpose. The House-passed bill would have appropriated \$100 MILLION for those adjudications. The Senate-passed bill would have appropriated no funds. The conferees agreed to appropriate \$50 MILLION.

- **Immigrant Integration.** The conferees agreed to appropriate \$11 MILLION "to expand immigrant integration and outreach efforts that promote legal paths to US citizenship."

- **Funding for E-Verify.** The conferees agreed to appropriate \$137 MILLION to operate the E-Verify System "and further improve its accuracy and compliance rates."

Next Steps. Last week's Yesterday's conference committee action readies the Fiscal Year 2010 Homeland Security Appropriations Act for consideration by the full House and Senate. However, the path by which those next steps occur may prove to be complicated.

There is much controversy in the House of Representatives over the issue of whether Guantanamo detainees should be permitted into the United States for trial. This controversy complicates the outlook for moving the conference agreement through the House and Senate. Nearly 90 House Democrats voted in favor of a motion to instruct the conferees on the bill to bar bringing Guantanamo detainees into the United States for that or any other purpose. Many of the Democrats who voted in favor of the motion represent moderate-to-conservative congressional districts. The House Democratic Leadership is concerned that it may not be able to win the votes a number of these Democrats if House Republicans seek to send the conference agreement on the Homeland Security funding bill back to the conference committee to resolve that issue in their favor.

The Democratic Leadership has at least three options for moving the conference agreement. They could bring it up in the House first and take their chances that they have the votes to pass it. They could bring it before the Senate first and then hope that the specter of a DHS shut-down convinces a sufficient number of Members to vote for it. Or they could attach it to another measure, thereby precluding House Republicans from offering a motion to recommit the conference agreement to the conference committee. ☼ ◇

Last Week's Executive Activity

DHS Announces Sweeping New Immigration Detention Initiatives: Secretary of Homeland Security Janet Napolitano and U.S. Immigration and Customs Enforcement (ICE) Assistant Secretary John Morton last week announced a sweeping set of new initiatives to reform immigration detention practices. The new practices will be implemented beginning immediately and will take six months to completely implement.

In a press release that the Secretary issued on Tuesday, October 6, 2009, the Secretary asserted that the new initiatives "will improve accountability and safety in our detention facilities as we continue to engage in smart and effective enforcement of our nation's immigration laws." Assistant Secretary Morton added that the initiatives " will establish consistent standards across the country, prioritizing risk, strengthening oversight and increasing efficiency in our immigration detention system."¹⁶⁷⁰

The new immigration detention initiatives are modeled on recommendations contained in a 35 page-long report by Dora Schriro, the just-departed Director of DHS's Office of Detention Policy and Planning.¹⁶⁷¹ In all, the detention reforms address the seven major components of the detention system outlined in the Schriro report. Among the reforms announced by Secretary Napolitano are the following:

- **Centralized Contracts.** To better manage all detainee populations, ICE will centralize all contracts under ICE headquarters' supervision. Currently, the majority of more than 300 active contracts are negotiated and managed by disparate ICE field offices. ICE will also aggressively monitor and enforce contract performance in order to ensure contractors comply with terms and conditions—especially those related to conditions of confinement.

¹⁶⁷⁰ [Click Here](#) to see the text of the October 6, 2009, Department of Homeland Security press release announcing the new immigration detention initiatives

¹⁶⁷¹ [Click Here](#) to see the text of the report titled, *Immigration and Detention Overview and Recommendations*, October 6, 2009

- **Alternatives to Detention.** To advance the effective use of alternatives to detention (ATD), ICE will develop an assessment tool to identify aliens suitable for ATD and will submit a plan to Congress this fall to implement an ATD program nationwide. ICE will continue to work with the Department of Justice to expedite the adjudication of ATD cases to reduce costs.
- **Risk Assessment and Custody Classifications.** To better manage detention operations, ICE will develop a risk assessment and custody classification, which will enable detainees to be placed in an appropriate facility. ICE will pursue detention strategies based on assessed risk and reduce costs by exploring the use of converted hotels, nursing homes and other residential facilities.
- **Management of Special Populations.** To better manage special populations and improve program management, ICE will house non-criminal, non-violent populations, such as newly arriving asylum seekers, at facilities commensurate with risk and expand programs available including legal support services.
- **Detainee Medical Care.** To enhance detainee medical care, ICE will devise and implement a medical classification system that will improve awareness of an individual detainee's medical and mental health conditions from the time the individual first enters detention.
- **On Site Oversight at Contract Facilities.** To ensure accountability and reduce reliance on contractors, ICE will more than double the number of federal personnel providing onsite oversight at the facilities where the majority of detainees are housed. ICE will also accelerate efforts to provide an online search system for attorneys, family members and others to locate detained aliens.

The new initiatives won widespread praise among pro-immigrant advocates and Members of Congress who support due process for immigrants. It drew a derisive response from immigration restrictionists and their allies in Congress. ☼

DHS Rescinds Controversial SSA No-Match Rule:

The Department of Homeland Security last week moved to rescind a controversial 2007 Bush-era Social Security "no-match" rule that would have required employers to terminate workers because of discrepancies in their Social Security records. The Department originally announced its intention to rescind the rule on July 8, 2009.¹⁶⁷² The Administration's July announcement prompted the Senate to adopt an amendment to the H.R. 2892, the Fiscal Year 2010 Homeland

¹⁶⁷² [Click Here](#) to see the complete text of the July 8, 2009, Department of Homeland Security press release announcing the Administration's intention to implement the mandatory federal contractor E-Verify rule and to rescind the SSA No-Match rule

Security Appropriations Act, forbidding the Department from rescinding the rule. However, that provision reportedly has been stripped from the bill in conference. The rescission will take effect Nov. 6, the DHS said.

The George W. Bush Administration proposed the no-match rule in 2007, justifying it by asserting that it would make more effective a law that was enacted in 1986 that bars employers from knowingly employing illegal immigrants.

The rule would have given employees three months to clear up any differences between the Social Security numbers they gave to employers and the numbers in the Social Security Administration database. After that, an employer who failed to fire the worker would be subject to civil fines and criminal prosecution.

The 2007 No-Match Rule was blocked by court order shortly after issuance and has never taken effect. It established procedures that employers could follow if they receive Social Security Administration (SSA) No-Match letters or notices from the Department of Homeland Security that call into question work eligibility information provided by employees.

In announcing its intent to rescind the rule, the Department said, "[t]hese notices most often inform an employer many months or even a year later that an employee's name and Social Security Number provided for a W-2 earnings report do not match SSA records—often due to typographical errors or unreported name changes."

In justifying its decision to repeal the rule, DHS said that "E-Verify addresses data inaccuracies that can result in No-Match letters in a more timely manner and provides a more robust tool for identifying unauthorized individuals and combating illegal employment." ☼ ◇

Recently Introduced Legislation

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

House

Employment-Based Immigration System

- **Dairy and Sheep H-2A Visa Enhancement Act:** Representative Michael Arcuri (D-NY) has introduced H.R. 3744, a bill to amend the Immigration and Nationality Act to provide a special rule for the period of admission of H-2A nonimmigrants employed as dairy workers and shearers.

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

Senate

No bills containing significant immigration- or refugee-related provisions were introduced last week in the Senate. ◇

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 to the Weekly Legislative Update this week or that have substantially changed since the previous edition of the Weekly Legislative Update was issued are marked with a double asterisk (**).

House

****Representative Gutierrez To Unveil Principles In His Comprehensive Immigration Reform Bill:**

Representative Luis V. Gutierrez (D-IL), who chairs the Congressional Hispanic Caucus' Immigration Task Force, is working on a comprehensive immigration reform bill. He is



expected to unveil what he calls "the core principles" that will be included in his bill on Tuesday, October 13, 2009, in front of thousands of pro-immigrant advocates at a rally and prayer vigil that is taking place on the West Lawn of the U.S. Capitol Building. The Congressman will be joined at the vigil by Senator Bob Menendez (D-NJ), Congressional Hispanic Caucus Chair Nydia Velazquez (D-NY), Congressional Asian and Pacific American Caucus Chairman Mike Honda (D-CA), and others.

Representative Gutierrez pledged during a September 17, 2009, National Citizenship Day celebration in Washington, DC to introduce the bill in the coming weeks. However, that timetable seems to have slipped. It was unclear at the time of this writing, however, when he will release the text of the measure.

Upon announcing that he was planning to introduce a comprehensive immigration reform bill, Representative Gutierrez said, "I am overwhelmed by the support of immigrant, faith-based and community-based organizations in urging me to introduce comprehensive immigration legislation. We simply cannot wait any longer for a bill that keeps our families together, protects our workers and allows a pathway to legalization for those who have earned it. Saying immigration is a priority for this Administration or this Congress is not the same as seeing tangible action, and the longer we wait, the more every single piece of legislation we debate will be obstructed by our failure to pass comprehensive reform."

The Congressman went on to say in his September statement that, "[w]e need a bill that says if you come here to hurt our communities, we will not support you; but if you are here to work hard and to make a better life for your family, you will have the opportunity to earn your citizenship. We need a law that says it is un-American for a mother to be torn from her child, and it is unacceptable to undermine our workforce by driving the most vulnerable among us further into the shadows."

Gutierrez asserted in his statement his belief that "the support base for this kind of compassionate and comprehensive legislation is strong and far reaching." He contended that there are sufficient votes to pass such a measure, saying "I have always said that immigration reform will not be easy; but it is time we had a workable plan working its way through Congress that recognizes the vast contributions of immigrants to this country and that honors the American Dream."

It is unclear at the time of this writing when Representative Gutierrez will unveil the text of his bill and how closely it will hue to the provisions in [H.R. 1645](#), comprehensive immigration reform legislation that Gutierrez introduced during the 110th Congress along with Representative Jeff Flake (R-A). That bill was known as the "Security Through Regularized Immigration and a Vibrant Economy Act of 2007" Act, or the STRIVE Act.¹⁶⁷³ ☀

Senate

Chairman Schumer Working on Comprehensive Immigration Reform Bill:

Senate Judiciary Subcommittee on Immigration, Refugees, and Border Security Chairman Charles S. Schumer (D-NY), is working along with Senator Lindsay Graham (R-SC) to write a comprehensive immigration reform bill that he hopes to introduce in the Senate in the coming months.



The Chairman has set a number of goals over the last several months for when he hoped to release the text of

his bill. However, that goal has turned out to be a moving target. Most recently, Chairman Schumer pledged to have a broad outline of a comprehensive immigration reform bill available for inspection sometime in September. However, September has come and gone with no sign of either the text of legislation or a detailed summary of such a measure.

The goal of releasing an outline by the end of September was itself, a retrenchment of an earlier assertion that he made, in which he had pledged to have a comprehensive immigration reform bill ready for introduction by Labor Day. It was, however, in sync with remarks made by President Obama last week and this week, in which the President indicated a bill would be drafted by the end of 2009 and could be taken up by Congress in early 2010.

Principles Embodied in the Schumer Bill. In a June 24, 2009, speech that Chairman Schumer made at the Sixth Annual Immigration and Law Policy Conference sponsored by the Migration and Policy Institute, Chairman Schumer outlined seven principles that would be embodied in his bill:

- Illegal immigration is wrong, and a primary goal of comprehensive immigration reform must be to dramatically curtail future illegal immigration.
- Operational control of our borders--through significant additional increases in infrastructure, technology, and border personnel--must be achieved within a year of enactment of legislation.
- A biometric-based employer verification system—with tough enforcement and auditing—is necessary to significantly diminish the job magnet that attracts illegal aliens to the United States and to provide certainty and simplicity for employers.
- All illegal aliens present in the United States on the date of enactment of our bill must quickly register their presence with the United States Government—and submit to a rigorous process of converting to legal status and earning a path to citizenship—or face imminent deportation.
- Family reunification is a cornerstone value of our immigration system. By dramatically reducing illegal immigration, we can create more room for both family immigration and employment-based immigration.
- We must encourage the world's best and brightest individuals to come to the United States and create the new technologies and businesses that will employ countless American workers, but must discourage businesses from using our immigration laws as a means to obtain temporary and less-expensive foreign labor to replace capable American workers; and finally
- We must create a system that converts the current flow of unskilled illegal immigrants into the United States into a more manageable and controlled flow of legal immigrants who can be absorbed by our economy.

¹⁶⁷³ [Click Here](#) to see the September 17, 2009, press release issued by the office of Representative Luis Gutierrez (D-IL) announcing his impending introduction of comprehensive immigration reform legislation

Additional Details. Since his June 24, 2009, address to the Migration Policy Institute, Chairman Schumer and his staff have revealed a few more details about the effort they are undertaking. Among them are the following:

- His bill will be bipartisan and more than a half-dozen Republican Senators will be involved in drafting it.
- His bill will be more generous to highly skilled immigrant workers than those who are lower skilled
- His bill will be tough on future waves of illegal immigration.
- Disagreements between labor and business interests on the flow of legal foreign workers can be worked out.
- The U.S. should encourage legal immigration and find some kind of path for people now here to find a way to legal citizenship.
- The U.S. has "a shortage maybe of engineers here or Ph.D's in physics, but we probably don't have a shortage of people who can do construction work."

Chairman Kerry Working on 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 previously had hoped to introduce shortly after Congress returns from its week-long Independence Day recess. There is no more recent word as to when he will introduce his bill.

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.¹⁶⁷⁴

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 (**).

Congress Back in Full Swing: Congress is back in full swing following a tumultuous August recess. It is expected to remain in session well into November, if not into December.

The immigration- and refugee-related matters that Congress will likely address during the period between now and the adjournment of the first session include--

- **Health Care Reform.** The fate of legal immigrants, legal nonimmigrants, and undocumented aliens in the health insurance reform debate;
- **The E-Verify System.** The fate of several pending legislative provisions that would extend and revise authorization for the E-Verify System, including Senate-passed proposals to permanently extend the program, require its use by federal contractors, and permit employers to use the system to verify the employment eligibility of existing employees;
- **SSA No-Match Letters.** The fate of a Senate-passed proposal to force the Administration to issue SSA No-Match letters to employers when Social Security Administration data conflicts with tax data;
- **Fencing Between the U.S. and Mexico.** The fate of a Senate-passed provision that would reduce the Administration's flexibility in building fencing between the U.S. and Mexico and authorize the construction of additional fencing between the two countries;
- **Expiring Immigration Programs.** The long-term fate of provisions passed by either the House or Senate to extend the Conrad State 30 J-1 visa program that serves medically underserved communities, the Special Immigrant Non-Minister Religious Worker Visa program, and the EB-5 Investor Visa Regional Centers program; and
- **Refugee Appropriations.** The amount of funding that will be included in the regular appropriations bills for refugee admissions, overseas refugee assistance, and domestic refugee resettlement.

¹⁶⁷⁴ 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

In addition, Congress has slowly begun to resume its consideration of more than a dozen other bills containing significant immigration- or refugee-related provisions that either have been marked up in a subcommittee, marked up in a full committee, or passed by either the House or Senate. Finally, Members and senators may soon begin to bring more clarity to efforts that are underway in both chambers to draft a comprehensive immigration reform bill.

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 action 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 (**).

Bicameral

House and Senate Hope to Clear Compromise FY '10 Homeland Security Appropriations Measure:

The House of Representatives is expected this week to take up a compromise version of H.R. 2892, the Fiscal Year 2010 Homeland Security Appropriations Bill that is reportedly devoid of many of the controversial immigration enforcement policy provisions that were contained in the Senate-passed version of the measure. The House Democratic Leadership has tentatively set Thursday, October 15, 2009, as the day that it will bring the conference agreement on the appropriations bill before the full House of Representatives. There is no word on when the Senate will take up the conference agreement.¹⁶⁷⁵

Should Congress clear the conference agreement on the Homeland Security Appropriations Act, it will wipe a significant number of pending immigration matters off of Congress' legislative agenda. ☀

House

Three Committee-Approved Immigration-Related Measures Await Consideration by the Full House:

The following measures containing significant immigration- or refugee-related provisions have been approved by various House committees and are awaiting consideration by the full House of Representatives:

- **House Committee on Financial Services.** The House Committee on Financial Services has approved [H.R.](#)

[3045](#), the "Section 8 Voucher Reform Act of 2009."¹⁶⁷⁶ The Committee approved the bill after first approving an amendment aimed at ensuring that illegal immigrants not make use of such housing.

The Committee reported the measure to the full House of Representatives on Wednesday, September 30, 2009.¹⁶⁷⁷

- **House Energy and Commerce; House Ways and Means; and House Education and Labor Committees.** The House Committee on Energy and Commerce, House Committee on Ways and Means, and House Committee on Education and Labor have all approved differing versions of [H.R. 3200](#), the "America's Affordable Health Choices Act of 2009". The measure is popularly referred to as the House Health Care Reform Bill.

As approved by each of the three committees, H.R. 3200 would bar both undocumented aliens and most nonimmigrants from receiving health care benefits pursuant to the bill or from having federal funds spent on their behalf under the bill. The bill would, however, include nonimmigrants, undocumented aliens, and legal immigrants in the list of persons who would either have to purchase health insurance or face a tax penalty for not having done so.

At the time of this writing, none of the three committees that have acted on the measure had formally reported the measure to the full House of Representatives.

The House Democratic Leadership is expected to fashion a single bill out of the provisions of the differing versions of H.R. 3200 that have been approved by the House Committee on Energy and Commerce, House Committee on Ways and Means, and House Committee on Education and Labor.

- **House Committee on the Judiciary.** The House Committee on the Judiciary has approved [H.R. 3290](#), the "September 11 Family Humanitarian Relief and Patriotism Act of 2009".

At the time of this writing, the Committee had yet to formally report the measure to the full House. ☀

Four Immigration- or Border Security-Related Measures Await Consideration in House Committees: The following measures containing significant immigration-, refugee-, or border security-related

¹⁶⁷⁶ [H. Rept. 111-277](#), September 30, 2009

¹⁶⁷⁵ See Pages 1060-1062 and Pages 1072-1076 of this week's edition of the Weekly Legislative Update for an analysis of how select immigration-related provisions were settled in the conference agreement accompanying H.R. 2892, the Fiscal Year 2010 Homeland Security Appropriations Act]

¹⁶⁷⁷ See Page 847 of the [July 27, 2009, edition of the Weekly Legislative Update](#) for an analysis of the immigration-related provisions in House Financial Services Committee-approved version of H.R. 3045

provisions have been approved by subcommittees and are awaiting consideration in their full committees:

- **House Committee on the Judiciary.** The House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law has approved two bills that contain significant immigration-related provisions and are awaiting consideration by the full House Committee on the Judiciary:

- [H.R. 42](#), the "Commission on Wartime Relocation and Internment of Latin Americans of Japanese Descent Act; and
- [H.R. 1425](#), the "Wartime Treatment Study Act".

The Subcommittee approved H.R. 42 during a markup that occurred on July 23, 2009, and July 24, 2009.¹⁶⁷⁸ It approved H.R. 1425 in a July 31, 2009, markup.¹⁶⁷⁹

The full House Committee on the Judiciary has scheduled a markup of the two measures for 10:15 am on Wednesday, October 14, 2009, in Room 2141 of the Rayburn House Office Building.

- **House Committee on Homeland Security.** The House Homeland Security Subcommittee on Border, Maritime and Global Counterterrorism has approved two bills containing significant border security provisions:

1. [H.R. 1726](#), the "Border Security Search Accountability Act of 2009", which would require the Secretary of Homeland Security to issue a rule with respect to border security searches of electronic devices; and
2. [H.R. 3239](#), a bill to require the Secretary of Homeland Security, in consultation with the Secretary of State, to submit a report on the effects of the Merida Initiative on the border security of the United States.

The Subcommittee approved both measures during markups that occurred on Wednesday, July 22, 2009, and

¹⁶⁷⁸ See Pages 849-850 of the [July 27, 2009, edition of the Weekly Legislative Update](#) for an analysis of the immigration-related provisions in H.R. 42, which was approved by the House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law during two days of markup beginning on July 23, 2009

¹⁶⁷⁹ See Pages 883-884 of the [August 3, 2009, edition of the Weekly Legislative Update](#) for an analysis of the immigration-related provisions in H.R. 1425, which was approved by the House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law during its July 31, 2009, markup

Friday, July 24, 2009. No full committee markup of the bills had been scheduled at the time of this writing.¹⁶⁸⁰

Senate

Five House-Passed Immigration-Related Measures are Awaiting Consideration by the Full Senate:

The following measures containing significant immigration- or refugee-related provisions have been passed by the House and are awaiting consideration in the Senate:

- **Fiscal Year 2010 Immigration- and Refugee-Related Appropriations Bills.** The House of Representatives has passed three fiscal year 2010 appropriations bills that still await floor consideration in the Senate:

1. **Fiscal Year 2010 Appropriations for Refugee Resettlement and Unaccompanied Alien Children.** The House of Representatives has passed H.R. 3293, the Fiscal Year 2010 Labor, Health and Human Services, Education, and Related Agencies Appropriations Bill (Labor, HHS Appropriations Bill), which funds the federal government's refugee resettlement, trafficking victims assistance, torture victim assistance, and unaccompanied alien child programs.

[The House-passed version of H.R. 3293](#)¹⁶⁸¹ would appropriate \$432,000 less in ORR funding in fiscal year 2010 compared to the total fiscal year 2009 ORR appropriation.¹⁶⁸² The House-passed measure would increase funding for ORR's resettlement activities by of \$50.1 MILLION, or 10 percent, when compared to the amount appropriated for ORR's resettlement activities in fiscal year 2009.¹⁶⁸³

The Senate Committee on Appropriations reported [the Senate Appropriations Committee-approved version of H.R. 3293](#)¹⁶⁸⁴ on August 4, 2009. It

¹⁶⁸⁰ See Page 848 of the [July 27, 2009, edition of the Weekly Legislative Update](#) for an analysis of the immigration-related provisions in H.R. 1726 and H.R. 3239, two bills that were approved by the House Homeland Security Subcommittee on Border, Maritime and Global Counterterrorism during its July 22, 2009, markup session

¹⁶⁸¹ [H. Rept. 111-220](#), July 22, 2009

¹⁶⁸² The total fiscal year 2009 appropriation for ORR was \$715.4 MILLION. This includes \$633.4 MILLION that was appropriated in the regular fiscal year 2009 appropriations process and an additional \$82 MILLION that was appropriated in the fiscal year 2009 war supplemental appropriations bill

¹⁶⁸³ See Pages 850-858 of the [July 27, 2009, edition of the Weekly Legislative Update](#) for an analysis of the immigration- and refugee-related provisions in the House-passed version of H.R. 3293

¹⁶⁸⁴ [S. Rept. 111-66](#), August 4, 2009

would appropriate more funding for refugee resettlement than would the House-passed bill. However, it would not fully fund the Administration's request for ORR.

The Senate could take up the Senate Appropriations Committee-approved version of H.R. 3293 at any time. However, at the time of this writing, there was no word on when that will occur.

2. **Fiscal Year 2010 Appropriations for Refugee Admissions and Overseas Refugee Assistance.** The House of Representatives has passed [H.R. 3081](#), its version the Fiscal Year 2010 State, Foreign Operations, and Related Programs Appropriations Bill, which contains among its many provisions those that fund the federal government's refugee admissions and overseas refugee assistance programs.

Included in the House-passed measure are 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 House-passed 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 2009.¹⁶⁸⁵

The Senate Committee on Appropriations has approved [S. 1434](#), the Senate version of the Fiscal Year 2010 State, Foreign Operations, and Related Programs Appropriations Bill.¹⁶⁸⁶ It would provide substantially more for the MRA account than is contained in the House-passed version of the bill.

The Senate could take up the Senate Appropriations Committee-approved version of H.R. 3081 at any time.¹⁶⁸⁷ However, at the time of this writing, there was no word on when the full Senate will take up the measure.

- **Torture Victims Assistance.** The House of Representatives has passed [H.R. 1511](#), the "Torture Victims Relief Reauthorization Act of 2009", which would fund programs to assist the victims of torture who are resettled in the United States.¹⁶⁸⁸

Following House passage of the measure, it was referred to the Senate Committee on Foreign Relations.

- **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.¹⁶⁸⁹

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 could introduce as soon as late July.¹⁶⁹⁰

- **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.

It was widely believed at the time that the House acted that the Senate Committee on Commerce, Science, and Transportation would address the issues that are included

¹⁶⁸⁸ See Page 858 of the [July 27, 2009, edition of the Weekly Legislative Update](#) for an analysis of the House-passed version of H.R. 1511

¹⁶⁸⁵ [H. Rept. 111-187, June 26, 2009](#)

¹⁶⁸⁶ [S. Rept. 111-44, July 9, 2009](#)

¹⁶⁸⁷ See Pages 772-743 of the [July 13, 2009, edition of the Weekly Legislative Update](#) for an analysis of the House-passed version of the Fiscal Year 2010 State, Foreign Operations, and Related Programs Appropriations Bill

¹⁶⁸⁹ See Pages 642-650 of the [June 15, 2009, edition of the Weekly Legislative Update](#) for a detailed report on the refugee-related provisions in the House-passed version of H.R. 2410, the Foreign Relations Authorization Act, 2010 and 2011

¹⁶⁹⁰ 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

in H.R. 1029 when it took up [S. 1194](#), the Coast Guard Authorization Act for Fiscal Years 2010 and 2011. The Committee marked up the measure on Wednesday, July 8, 2009, however, without including any immigration-related provisions.¹⁶⁹¹ That measure now awaits Senate floor consideration, where the issues embodied in H.R. 1029 could come up. ☀

Four Committee-Approved Immigration-Related 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:

- **Senate Committee on Appropriations.** The Senate Committee on Appropriations has approved three appropriations bills that contain significant immigration- or refugee-related provisions and that await consideration by the full Senate:

1. **Fiscal Year 2010 Appropriations for Refugee Resettlement and Unaccompanied Alien Children.** The Senate Committee on Appropriations has approved its version of H.R. 3293, the Fiscal Year 2010 Labor, Health and Human Services, Education, and Related Agencies Appropriations Bill (Labor, HHS Appropriations Bill), which funds the federal government's refugee resettlement, trafficking victims assistance, torture victim assistance, and unaccompanied alien child programs.

The Senate Appropriations Committee-approved version of the measure would restore much of the cut in funding for the Department of Health and Human Services Office of Refugee Resettlement (ORR) contained in a measure passed last month by the full House of Representatives. However, the Senate Appropriations Committee-approved measure would still cut funding relative to the Administration's request.¹⁶⁹²

The Senate could take up the measure at any time after it returns from its August recess.

2. **Fiscal Year 2010 Appropriations for Refugee Admissions and Overseas Refugee Assistance.**

The Senate Committee on Appropriations has approved [S. 1434](#), the Senate version of the Fiscal Year 2010 State, Foreign Operations, and Related Programs Appropriations Bill,¹⁶⁹³ which contains among its many provisions those that fund the federal government's refugee admissions and overseas refugee assistance programs.

The Senate Appropriations Committee-approved version of the measure would appropriate substantially more for the Migration and Refugee Assistance account than is contained in the House-passed version of the bill.¹⁶⁹⁴

The Senate could take up the measure at any time.

- **Senate Committee on the Judiciary.**
 1. **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.

S. 327 was hotlined during the Summer. Reports indicate that it was cleared by the Senate Democratic cloakroom, however, there were objection voiced in the Senate Republican cloakroom. Those objections precluded the Senate from moving the measure by unanimous consent.

On Thursday, October 1, 2009, the Senate Committee on the Judiciary filed a written report on the measure, complete with minority views.¹⁶⁹⁵ It is unusual for the Senate Committee on the Judiciary to file written reports on bills that it reports to the Senate.

¹⁶⁹¹ 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

¹⁶⁹² See Pages 876-881 of the [August 3, 2009, edition of the Weekly Legislative Update](#) for a detailed analysis of the immigration- and refugee-related provisions in the Senate Appropriations Committee-approved version of H.R. 3293

¹⁶⁹³ [S. Rept. 111-44](#), July 9, 2009

¹⁶⁹⁴ See Pages 764-767 of the [July 13, 2009, edition of the Weekly Legislative Update](#) for an analysis of the immigration- and refugee-related provisions in the Senate Appropriations Committee-approved version of the Fiscal Year 2010 State, Foreign Operations, and Related Programs Appropriations Bill

¹⁶⁹⁵ [S. Rept. 111-85](#), October 1, 2009

It is anticipated that once the bill has been cleared by both the Democratic and Republican cloakrooms, the Senate will take it up by unanimous consent.¹⁶⁹⁶

- **Senate Committee on Homeland Security.**

1. **Revision of the REAL ID Act's Driver's License Provisions.** The Senate Committee on Homeland Security and Governmental Affairs has approved [S. 1261](#), the "Providing for Additional Security in States' Identification Act of 2009", or PASS ID Act, which would retain many of the alienage-related mandates that are found in the REAL ID Act.

Under S. 1261, states would still be required to deny driver's licenses and state-issued identification cards to aliens who are in the U.S. illegally, they would still be required to obtain identification to verify an applicant's immigration status, and they still would be required to limit the period during which a driver's license or state-issued identification card is valid so that the period of its validity matches the period that an alien is authorized to be in the U.S.

S. 1261 would make a number of changes to the alienage-based restrictions on states' issuance of driver's licenses and identification cards. Some would ease those restrictions. Others would make them more rigorous.¹⁶⁹⁷ ☀ ◇

report accompanying H.R. 2892, the Fiscal Year 2010 Homeland Security Appropriations Bill.

- **Fiscal Year 2010 Appropriations for EOIR, Alternatives to Detention, and SCAAP.** Next week's Weekly Legislative Update will report on any immigration-related action that occurs this week in the Senate on H.R. 2847, the Fiscal Year 2010 Commerce, Justice, Science, and Related Agencies Appropriations Bill, which funds the Executive Office for Immigration Review (EOIR), alternative to detention programs, and the State Criminal Alien Assistance Program (SCAAP).
- **House Judiciary Committee Markup of Immigration Bills.** Next week's Weekly Legislative Update will report on any action that occurs in the House Judiciary Committee on two immigration bills that it could markup this week. ◇

Next Week's Edition ...

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

- **Health Care Reform and Immigrants.** Next week's Weekly Legislative Update will report on any activity that occurs this week in the Senate Committee on Finance on the Baucus health care reform bill, which contains provisions restricting the eligibility of immigrants to purchase health insurance.
- **Fiscal Year 2010 Appropriations for the Department of Homeland Security.** Next week's Weekly Legislative Update will report on any developments that occur this week in the House or Senate on the conference

¹⁶⁹⁶ 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

¹⁶⁹⁷ See Pages 881-882 of the [August 3, 2009, edition of the Weekly Legislative Update](#) for a more detailed analysis of the immigration-related provisions in the Senate Homeland Security and Governmental Affairs Committee-approved version of S. 1261

Appendix

Summary of Conference Agreement on Key Immigration-Related Differences between the House- and Senate-Passed Versions of the Fiscal Year 2010 Homeland Security Appropriations Act

Last Updated: Monday, October 12, 2009

The chart that follows compares selected immigration- or refugee-related policy and appropriations provisions in the House-passed version of H.R. 2892, the Senate-passed version of the measure, and in what is known at the time of this writing about the conference agreement on H.R. 2892. The chart will be updated once the conference agreement is filed and the legislative language in the final version of the measure becomes available for inspection.

Side-by-Side Comparison of Selected Immigration- and Refugee-Related Appropriations and Policy Matters Addressed in the Fiscal Year 2010 Homeland Security Appropriations Act

Item	Issue	House Bill	Senate Bill	Conference Agreement
1.	Funding for Immigration Services Ombudsmen	<p>The House-passed version of H.R. 2892 would appropriate \$6.685 MILLION for the Citizenship and Immigration Services Ombudsman.</p> <p>The committee report accompanying the House bill notes that this would be \$250,000 less than the amount the Administration requested and \$214,000 more than was provided in fiscal year 2009 for that purpose.</p>	<p>The Senate-passed version of H.R. 2892 would appropriate \$6.685 MILLION for the U.S. Citizenship and Immigration Services Ombudsman.</p> <p>The committee report accompanying the Senate bill notes that this would be \$250,000 less than the amount the Administration requested and \$214,000 more than was provided in fiscal year 2009 for that purpose.</p> <p>The report defended the Committee's decision by noting that "[f]unds are decreased below the request due to the delay in filling full-time permanent positions within this office."¹⁶⁹⁸</p>	Information Not Yet Known
2.	Direct Appropriations for Refugee and Asylum Adjudications	<p>The committee report accompanying the House version of H.R. 2892 notes that the measure would directly appropriate \$100 MILLION in fiscal year 2010 for refugee and asylum adjudications, which is \$106 MILLION less than the Administration requested and \$206 MILLION than was appropriated for this purpose in fiscal year 2009.</p> <p>Language in the House committee report precludes USCIS from using those funds until it publishes a new final rule implementing a new</p>	<p>The committee report accompanying S. 1298, the Senate version of H.R. 2892, notes that the Committee rejected the Administration's proposal that refugee and asylum adjudications be funded by a direct appropriation of \$201 MILLION rather than by continuing the current practice of assessing a surcharge on fees paid by applicants for other immigration services.</p> <p>Language in the Senate committee report indicates that the Committee was directing the Department of</p>	The conference agreement directly appropriates \$50 MILLION for refugee and asylum adjudications.

¹⁶⁹⁸ [S. Rept. 111-31](#), Page 10

Item	Issue	House Bill	Senate Bill	Conference Agreement
		schedule of fees for immigration applications. ¹⁶⁹⁹	Homeland Security "to submit a reprogramming within 30 days after the date of enactment of this act, to reflect the continuation of these activities as fee funded." ¹⁷⁰⁰	
3.	Direct Appropriations for Military Naturalizations	The committee report accompanying the House version of H.R. 2892 notes that the bill has rejected the Administration's request that military naturalizations be funded through directly appropriated funds. Instead the Committee stated its expectation that the \$5.1 MILLION cost for military naturalizations should be borne by seeking a reimbursement from the Department of Defense. ¹⁷⁰¹	The committee report accompanying S. 1298 notes that the Committee supports the Administration's request that military naturalizations be funded through directly appropriated funds. In approving the request, the committee report notes that the Committee "supports appropriations to support those men and women serving this Nation in the military and has included \$5,000,000, as requested, for military naturalizations." ¹⁷⁰⁰	The conference agreement directly appropriates \$5 MILLION for military naturalization adjudications.
4.	Immigration Integration Programs	<p>The committee report accompanying the House version of H.R. 2892 notes that the bill is providing \$11 MILLION for the promotion of legal paths to U.S. citizenship and outreach to immigrant communities in fiscal year 2010.</p> <p>The committee report notes that this would be an increase of \$9.2 MILLION in fiscal year 2010 compared to the \$1.9 MILLION that was provided for this purpose in fiscal year 2009, and that it is \$1 MILLION more than the Administration requested.¹⁷⁰²</p>	<p>The committee report accompanying S. 1298 notes that the Committee has rejected the Administration's request for \$10 MILLION for immigrant integration programs, opting, instead to continue funding at \$1.2 MILLION, the amount provided in fiscal year 2009.</p> <p>In support of the committee's position, the committee report states, "[t]he Committee notes that the current year grant applications are still being evaluated and that the 2009 funds have yet to be awarded. The Committee does not recommend the \$10,000,000 requested in the budget for a new immigrant integration activity. The Committee notes that the Office of Citizenship Services has long provided admirable services to assist those individuals seeking to become U.S. citizens or otherwise legally adjust their status and will have \$6,400,000 of carry forward balances to continue these efforts. This makes a total of \$7,600,000 available for immigrant services and integration grants."¹⁷⁰⁰</p>	The conference agreement appropriates \$11 MILLION "to expand immigrant integration and outreach efforts that promote legal paths to U.S. citizenship."
5.	Basic Pilot/E-Verify Program	The House-passed version of H.R. 2892 would appropriate a total of	The Senate-passed version of H.R. 2892 would appropriate a total of	The conference agreement appropriates \$137 MILLION to

¹⁶⁹⁹ [H. Rept. 111-157, Pages 128-131](#)

¹⁷⁰⁰ [S. Rept. 111-31, Page 117](#)

¹⁷⁰¹ [H. Rept. 111-157, Pages 128-131](#)

¹⁷⁰² [H. Rept. 111-157, Pages 131-132](#)

Weekly Immigration and Refugee Legislative Update (continued)
Monday, October 12, 2009

Item	Issue	House Bill	Senate Bill	Conference Agreement
		<p>\$162 MILLION for the Basic Pilot/E-Verify Program, \$50 MILLION more than the Administration requested.¹⁷⁰³</p> <p>In addition to appropriating funds for the E-Verify program, the House-passed version of H.R. 2892 would--</p> <ul style="list-style-type: none"> • Extend the program for three years • Make reforms to protect the Social Security Administration. <p>The committee report accompanying the House version of H.R. 2892 notes that the most recent audit of the system “shows an unacceptably high rate of individuals falsely identified as ineligible to work.” It noted that “[o]f particular concern is the report’s conclusion that nearly 1 in 10 naturalized citizens is reported by Basic Pilot/E-Verify as non-work authorized.” The report strongly urges USCIS “to update and publish regular Basic Pilot/E-Verify accuracy and performance audits, so that Congress and Administration policy makers can remain informed of the system’s strengths and weaknesses.”</p> <p>The report also expresses the Committee’s strong support for efforts by USCIS “to establish a compliance group to monitor use of the Basic Pilot/E-Verify system and to ensure that companies enrolled in the program are not using it to take inappropriate or illegal employment actions.” The draft report notes that the Committee-approved bill will accommodate the Administration’s request to hire 40 Monitoring and Compliance</p>	<p>\$118.5 MILLION for the Basic Pilot/E-Verify Program, \$6.5 MILLION more than the Administration requested.</p> <p>In addition to appropriating funds for the E-Verify program, the Senate-passed version of H.R. 2892 would--</p> <ul style="list-style-type: none"> • Permanently extend the program¹⁷⁰⁵ • Formally rename it the E-Verify Program¹⁷⁰⁵ • Require federal contractors to use the E-Verify program to verify the employment eligibility of their employees¹⁷⁰⁵ • Permit employers using the E-Verify System to use it to verify the work eligibility of existing employees, not just new-hires.¹⁷⁰⁶ <p>The committee report accompanying the Senate version of H.R. 2892 includes an extensive write-up on the E-Verify program, defending and expressing support for it. After explaining why it thinks USCIS has made great improvements in the program, the report goes on to state that, “[g]iven the concerns by some of the general public with E-Verify, the Committee urges USCIS to continue to work to enhance the system to further improve performance, to continue its public outreach and education campaign, and to perform a new, independent evaluation of the system during the first quarter of fiscal year 2010.”</p>	<p>operate the E-Verify system “and further improve its accuracy and compliance rates.”</p> <p>In addition to appropriating funds for the E-Verify program, the conference agreement –</p> <ul style="list-style-type: none"> • Extends the program for three years

¹⁷⁰³ This includes \$112 MILLION that was provided in the bill as it was reported by the House Appropriations Committee and an additional \$50 MILLION that was added by the Rogers Motion to Recommit that the House of Representatives agreed to on June 24, 2009

Item	Issue	House Bill	Senate Bill	Conference Agreement
		staff "to ensure the system is not used for prohibited purposes." ¹⁷⁰⁴		
6.	EB-5 Regional Centers	There is no provision in the House-passed version of H.R. 2892 relating to EB-5 Regional Centers	Sec. 549 of the Senate-passed version of H.R. 2892 would permanently extend the EB-5 Regional Center Program. ¹⁷⁰⁷	Sec. [] of the conference agreement extends the EB-5 Regional Centers program through October 1, 2012.
7.	Special Immigrant Non-Minister Religious Worker Visas Program	There is no provision in the House-passed version of H.R. 2892 relating to the Special Immigrant Non-Minister Religious Worker Visas Program.	Sec. 571(a) of the Senate-passed version of H.R. 2892 would extend for three years the Special Immigrant Non-Minister Religious Worker Visa Program, extending it through September 30, 2012. The provision also would require U.S. Citizenship and Immigration Services to conduct a study and report on certain aspects of the program. ¹⁷⁰⁸	Sec. [] of the conference agreement extends the Special Immigrant Non-Minister Religious Worker Visa Program through October 1, 2012.
8.	Conrad State 30 J-1 Visa Program	There is no provision in the House-passed version of H.R. 2892 relating to the Conrad State 30 J-1 Visa Program.	Sec. 571(b) of the Senate-passed version of H.R. 2892 would extend for three years the Conrad State 30 J-1 Visa Waiver Program ¹⁷⁰⁹ , extending it through September 30, 2012. ¹⁷⁰⁷	Sec. [] of the conference agreement extends the Conrad 30 State J-1 Visa Program through October 1, 2012.
9.	Relief for Widows and Orphans	There is no provision in the House-passed version of H.R. 2892 relating to relief for widows and orphans.	Sec. 571(c) of the Senate-passed version of H.R. 2892 would protect widows, widowers and orphans of deceased U.S. citizens and legal permanent residents who are in the family immigration system by allowing widows, widowers and orphans, to immigrate on a family-	Sec. [] of the conference agreement protects widows, widowers and orphans of deceased U.S. citizens and legal permanent residents who are in the family immigration system by allowing widows, widowers and orphans, to immigrate on a family-based visa

¹⁷⁰⁵ As reported by the Senate Committee on Appropriations, S. 1298, the Senate version of the Fiscal Year 2010 Homeland Security Appropriations Act, would have extended the E-Verify program for three years. On Wednesday, July 8, 2009, the Senate agreed to Sessions Amendment 1371 to H.R. 2892, which would permanently extend the E-Verify Program. The Senate agreed to the Sessions amendment by a voice vote after first rejecting a Schumer motion to table it by a vote of 44-53

¹⁷⁰⁶ This provision was not in the Senate Appropriations Committee-reported version of S. 1298, the Senate version of the Fiscal Year 2010 Homeland Security Appropriations Act. It was added to the measure on the Senate floor by Grassley Amendment 1415, which the Senate agreed to by a voice vote

¹⁷⁰⁴ [H. Rept. 111-157](#), June 16, 2009, Page 131

¹⁷⁰⁷ This section was not in the Senate Appropriations Committee-reported version of the Fiscal Year 2010 Homeland Security Appropriations Act. It was added to the measure on the Senate floor on July 8, 2009, by Leahy Amendment 1407, a second degree amendment to the Sessions E-Verify Amendment. The Senate agreed to the Leahy amendment by a voice vote. The Senate went on to agree to the Sessions amendment by a voice vote after first rejecting a Schumer motion to table it by a vote of 44-53

¹⁷⁰⁸ This section was not in the Senate Appropriations Committee-reported version of the Fiscal Year 2010 Homeland Security Appropriations Act. It was added to the measure on the Senate floor on July 9, 2009, by Hatch Amendment 1428, which the Senate agreed to by unanimous consent

¹⁷⁰⁹ The Conrad State 30 / J-1 Visa Waiver Program is used to place international medical graduates who have completed their medical education in the United States in underserved areas of the state. Normally, upon completion of their education, these international medical graduates are required to return to their country of nationality for at least two years before returning to the United States. However, under the Conrad State 30/J-1 Visa Waiver Program this home residency requirement can be waived for up to thirty (30) J-1 physicians annually. In exchange, the J-1 physicians must agree to practice medicine full time at a Delaware pre-approved sponsoring site for a minimum of three years. These practice sites must be located in federally designated Health Professional Shortage Area (HPSA) or a Medically Underserved area (MUA).

Weekly Immigration and Refugee Legislative Update (continued)
Monday, October 12, 2009

Item	Issue	House Bill	Senate Bill	Conference Agreement
10.	Fencing Along the U.S. Border with Mexico	There is no provision in the House-passed version of H.R. 2892 relating to fencing along the U.S. border with Mexico	<p>based visa despite the death of a petitioner.¹⁷⁰⁷</p> <p>Sec. 560 of the Senate-passed version of H.R. 2892 would impose a number of restrictions and mandates on the Administration with regard to fencing being constructed along the U.S. border with Mexico.</p> <p>More specifically, Sec. 560 of the Senate-passed version of H.R. 2892 would --</p> <ul style="list-style-type: none"> • require that construction of the mandated 700 miles of fencing be completed by December 31, 2010; • provide that fencing that does not effectively restrain pedestrian traffic (such as vehicle barriers and virtual fencing) may not be used to meet the 700-mile fence requirement under the law; and • provide that funds for fence construction may not be withheld for failure to comply with consultation requirements. <p>Sec. 560 of the Senate-passed version of H.R. 2892 also would impose reporting requirements on the Administration with regard to the construction of fencing along the U.S. border with Mexico.¹⁷¹⁰</p>	<p>despite the death of a petitioner.</p> <p>There is no comparable provision in the conference agreement</p>
11.	SSA No-Match Letters	There is no provision in the House-passed version of H.R. 2892 relating to SSA No-Match Letters	Sec. 561 of the Senate-passed version of H.R. 2892 provide that none of the amounts made available under the Act may be used to implement changes to the final rule describing the process for employers to follow after receiving a “no match” letter in order to qualify for “safe harbor” ¹⁷¹¹	The conference agreement reportedly stripped this provision from the bill.

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¹⁷¹⁰ This section was not in the Senate Appropriations Committee-reported version of the Fiscal Year 2010 Homeland Security Appropriations Act. It was added to the measure on the Senate floor on July 9, 2009, by DeMint Modified Amendment 1399, which the Senate agreed to by a vote of 54-44

¹⁷¹¹ This section was not in the Senate Appropriations Committee-reported version of the Fiscal Year 2010 Homeland Security Appropriations Act. It was added to the measure on the Senate floor on July 8, 2009, by Vitter Modified Amendment 1375, which the Senate agreed to by a voice vote