

# **WASHINGTON UPDATE**

**Volume 8, Number 2, February 6, 2004**

## **IN THIS ISSUE...**

- House Democratic Leadership Releases Principles on Immigration Policy
- Administration Releases FY 2005 Budget Request; USCIS Proposes Immigration Benefits Fee Increase
- House Subcommittee Holds Oversight Hearing on US VISIT
- House International Relations Committee Holds Hearing on L Visas
- House Agricultural Committee Examines Recent Guestworker Proposals
- Urban Institute Hosts Briefing Entitled “Crossing Borders: The Impact of Immigration”
- Cato Institute Holds Briefing on “Willing Workers: How to Fix the Problem of Illegal Immigration”
- Recent Rulemaking and Other Activity in the Federal Agencies
- Media Spotlight: Members and Staff in the News
- Did You Know?

### **House Democratic Leadership Releases Principles on Immigration Policy**

The House Democratic Leadership on January 28 issued a comprehensive set of principles to help recraft our immigration policies to “better reflect our core values of family unity, fundamental fairness and economic opportunity.” AILA applauds the House Democratic leaders for recognizing that the status quo is broken and that change is urgently needed to address the concerns of American business and families and to enhance our national security. These principles embrace a set of necessary reforms that, if enacted into law, would be a giant step forward toward helping us achieve the goal of creating an immigration system that reflects our nation’s values, our traditions, and our needs. These principles are: family reunification, earned access to legalization, immigrant student adjustment, border safety and protection, an enhanced temporary worker program, civil liberties, and fairness for immigrants and legal residents.

These principles reflect the understanding that meaningful reform of our immigration laws can only be achieved by addressing a variety of interrelated issues. Reforms that target one problem in the system while ignoring others will have but a fleeting impact and ultimately will perpetuate the chronic dysfunction that currently characterizes our system. AILA believes that the principles set forth by the House Democratic Leadership address all of the major components needed for an enduring reform of our failing system.

Several immigration reform measures have been introduced thus far in the 108<sup>th</sup> Congress. Bills introduced by Arizona Republican Representatives Jeff Flake, Jim Kolbe, and Senator John McCain (H.R. 2899/S.1461) and Senator John Cornyn (R-TX) (S. 1387) take important steps toward comprehensive reform, but fall short in one way or another. However, it is very significant that Senators from border states acknowledge the need for both a worker program as well as some sort of earned adjustment for eligible people living here (although the provisions in their bills on this latter subject raise some concerns), and have introduced legislation. It also is

significant that lawmakers such as Senator McCain have stated publicly that our nation cannot achieve border security unless we reform our immigration laws.

The Immigration Reform Act of 2004 (S. 2010), introduced by Senators Chuck Hagel (R-NE) and Tom Daschle (D-SD), is the only initiative introduced to date that includes all three components necessary for comprehensive immigration reform: family reunification through family backlog reduction; a new temporary worker program; and access to an earned adjustment for eligible people already living and working in the U.S. While AILA has concerns with some of the bill's provisions, the Immigration Reform Act is a very positive first step toward the goal of comprehensive and effective immigration reform.

Recognition of the need to reform our immigration laws has received a boost with President Bush's announcement of his immigration reform plan. The Administration's proposal is centered on an uncapped temporary worker program intended to "match willing foreign workers with willing U.S. employers when no Americans can be found to fill the job." The program would grant program participants temporary legal status and authorize working participants to remain in the U.S. for three years, with their participation renewable for an unspecified period. Initially, the program would be open to both undocumented people as well as foreign workers living abroad (with the program restricted to those outside of the U.S. at some future, unspecified date). American employers would have to make reasonable efforts to find U.S. workers. Under this proposal, participants would be allowed to travel back and forth between their countries of origin and "enjoy the same protections that American workers have with respect to wages and employment rights." The proposal also includes incentives for people to return to their home countries and calls for increased workplace enforcement as well as an unspecified increase in legal immigration.

While these and other general provisions of the plan are known, much is still unclear (partially because this proposal has not yet taken legislative form). What is unknown or unclear to date about this plan could spell the difference between a proposal that works and one that does not.

AILA looks forward to working in support of a bipartisan measure that achieves necessary reform. (For more information about comprehensive immigration reform, visit the Advocacy Center on <[www.aila.org](http://www.aila.org)>. Once there, click on "AILA on the Issues" and then "Issue Papers & Backgrounders.")

### **Administration Releases FY 2005 Budget Request; USCIS Proposes Immigration Benefits Fee Increase**

The \$2.4 trillion fiscal year (FY) 2005 budget request that President Bush sent to Congress on February 2 contains a variety of immigration-related initiatives, as well as a 10 percent increase in funding for the Department of Homeland Security (DHS) over FY 2004 levels. Lawmakers have until April 15 to adopt a conference report on the congressional budget resolution, after which the House of Representatives, beginning on May 15, may commence consideration of the 13 appropriations bills for FY 2005. However, the budget is a contentious issue and Congress in recent years has not met deadlines. In addition, with record budget deficits and a looming November election, the battle in Congress to timely pass a budget is expected to be particularly fierce this year.

The FY 2005 budget proposal reflects how our immigration functions are organized within the DHS, with funding divided between three bureaus: U.S. Citizenship and Immigration Services (USCIS); U.S. Immigration and Customs Enforcement (ICE); and U.S. Customs and Border

Protection (CBP). Proposed funding allocations for these three bureaus, as well as for other miscellaneous immigration-related activities, are summarized below.

U.S. Citizenship and Immigration Services: Proposed FY 2005 funding for USCIS's operations totals \$1.711 billion, comprised of \$140 million in discretionary funding and \$1.57 billion in mandatory funding, or fee revenues from legal immigration benefit applications and petitions. In announcing the bureau's budget request, USCIS Director Eduardo Aguirre, in a February 2 press release, stated: "Our progress in restoring integrity and public confidence in America's legal immigration system allows us to further emphasize reducing the backlog. We anticipate a \$60 million increase over FY 2004 to help realize the President's goal of a six-month processing times for all immigration benefit applications by the end of FY 2006." However, while the President has been promising to meet the six-month processing time goal for some time, backlogs continue to grow. Currently, an immigrant's application to become a citizen takes a year or more to process. It can take up to four years or even longer to process applications for permanent residency.

The President's request allocates USCIS funding as follows:

- \$765 million for immigrant services, a decrease of \$8 million from FY 2004
- \$400 million for nonimmigrant services, a decrease of \$3 million from FY 2004
- \$247 million for citizenship services, an increase of \$3 million over FY 2004
- \$139 million for asylum/refugee services, an increase of \$6 million over FY 2004
- \$160 million for backlog reduction, an increase of \$60 million over FY 2004

A day after the President sent his budget request to Congress, USCIS proposed increases in fees for immigration applications of up to 55 percent. However, at a time when the quality of service is at an historic low, increases of this magnitude are difficult to justify. Processing backlogs have reached crisis proportions, while the agency wastes resources revisiting issues already resolved and harassing honest petitioners with requests for paperwork unrelated to their immigration eligibility. Making matters worse, the public's only available avenue to resolve government errors and problems is a contractor-run 800 number that has proven to be useless to deal with these issues.

AILA has long supported direct congressional appropriations to supplement user fees: USCIS adjudications and security checks are in the national interest and such appropriations are necessary to ensure a rational and predictable funding stream. The President's proposed budget is going in the wrong direction. The \$140 million in proposed discretionary funding marks a 41 percent reduction from the inadequate \$236 million the bureau received in FY 2004. Furthermore, Administration spokespersons have indicated their goal of eventually covering costs wholly with fee revenue. AILA calls on the Administration to conduct a study to determine what level of funding is necessary to adequately support USCIS's adjudications functions, eliminate the backlog, and put this bureau on sound financial footing. Both the Administration and Congress need to step up to the plate and recognize that the current funding system is deeply flawed and needs to be changed.

U.S. Immigration and Customs Enforcement Proposed FY 2005 funding for ICE's operations totals \$2.596 billion, including \$2.371 billion in discretionary funding and \$225 million in mandatory funding. ICE's functions include locating, detaining, and deporting undocumented aliens, monitoring foreign students, and investigating alien smuggling. This sum includes an increase of \$108 million for the Detention and Removal Program, including an additional \$50

million to expand the program to apprehend alien absconders, currently numbering an estimated 400,000, and \$30 million to increase efforts to ensure that aliens convicted of crimes are deported directly from correctional institutions once their time is served. The budget request also includes \$11 million to develop and expand alternatives to detention, and an additional \$23 million to more than double the number of worksite investigations currently performed by ICE, providing an additional 200 investigators.

U.S. Customs and Border Protection: Proposed FY 2005 funding for CPB's operations totals \$5.654 billion, including \$4.580 billion in discretionary funding and \$1.074 billion in mandatory funding. Of this sum, \$340 million would be used for the US VISIT program—a 3.7 percent increase over the \$328 million allocated in FY 2004. Much of the US VISIT funding will be used to expand the program to the 50 busiest land border crossings by the end of this year.

#### Terminated Programs:

Among the items that President Bush failed to fund in his FY 2005 budget request was the State Criminal Alien Assistance Program (SCAAP), which reimburses state and local government expenditures for costs incurred to imprison undocumented criminal aliens. Funding for SCAAP was previously slashed from \$564 million in FY 2001 to \$297 in FY 2004. The FY 2005 budget also proposes to end grantmaking for, and rescind unobligated balances from, the H-1B Training Grants Program, with the explanatory note that “the Program has not reduced firms’ reliance on foreign workers with H-1B visas.” Authorization for the fee that finances the program expired on September 30, 2003.

#### **House Subcommittee Holds Oversight Hearing on US VISIT**

The Subcommittee on Infrastructure and Border Security of the Select Committee on Homeland Security held a hearing on January 28, 2004 on the US VISIT program and the need for integrity and security at the border. This oversight hearing followed the first few weeks of operation of the United States Visitor and Immigrant Status Indicator Technology program (US VISIT), the entry-exit system that is being implemented at our nation’s ports of entry.

DHS launched the first phase of US VISIT on January 5 at 115 airports and 14 seaports across the nation. Unless Congressional deadlines are extended, the second phase of the program is expected to begin at the 50 busiest land ports of entry by December 31, 2004. Despite hearty endorsements from Representatives Kay Granger (R-TX) and Christopher Cox (R-CA), many subcommittee members expressed an array of concerns with US VISIT, ranging from the feasibility of moving forward with the US VISIT at the land ports to the scope of foreign nationals included within US VISIT.

Panelists at the hearing were: AILA Treasurer Kathleen Campbell Walker testifying on behalf of AILA and (GET CORRECT NAME) the Foreign Trade Association, Inc.; Asa Hutchinson, Under Secretary of the Department of Homeland Security, Directorate of Border and Transportation Security; Maura Hardy, Assistant Secretary of State for Consular Affairs; James C. May, President and CEO, Air Transport Association of America, Inc.; and Dennis Carlton, Director of Washington Operations International Biometric Group, LLC.

In her testimony, Ms. Campbell Walker cautioned that the subcommittee needed to assess the realistic capabilities of US VISIT and to push back the US VISIT implementation deadline at the land borders in order to address the unique needs of those ports of entry. She highlighted that land ports of entry currently do not have the necessary scanners and staffing levels to handle the

current flow of cross border traffic. Before DHS implements US VISIT at a land port, it must consider these deficiencies as well as other unique obstacles, such as lack of infrastructure to handle the US VISIT exit functions as well as the need for efficiency at these ports of entry. Without this efficiency, resulting delays could threaten the economic survival of border communities.

Ms. Campbell Walker also cautioned the committee that while US VISIT is being erected at our ports of entry, we must also get control over our expansive borders. Comprehensive immigration reform is needed to give hard working foreign nationals a legal channel by which they may apply for entry in to the U.S. Only after such a system is in place, will our nation's border control be able to secure our nations borders.

In addressing her concerns with US VISIT's ability to increase national security, Ms. Campbell Walker emphasized that the more complete security check (done with the applicable biometric database IDENT –the Automated Biometric Identification System) does not take place until after the visa holder is admitted to the U.S. IF DHS inspectors ran a full IDENT checks during the admissions process, the additional time these checks would take would generate lengthy backlogs that essentially would shut down the ports of entry. Ms. Campbell Walker also raised concerns about a recently leaked BCBP memo that directs airport inspectors to waive the US VISIT enrollment of certain foreign nationals if wait-times grow too long.

In her written testimony, Ms. Campbell Walker made several recommendations that included: Developing a comprehensive plan for U.S. VISIT; Do not use US VISIT as a substitute for increasing our intelligence capacity; Make enforcement databases accurate; Increase the interoperability of database systems; Don't implement US VISIT until an adequate infrastructure is done and put into place; Realistically assess the staffing and infrastructure necessary to implement US VISIT; Delay implementation at land border until an adequate infrastructure is in place; Clearly define what constitutes an exit and allow for flexibility in compliance with the exit requirements in the early stages of US VISIT; DHS must increase its outreach to the public; Establish an immigration specialist position at the ports-of-entry; Don't conduct redundant security checks; Allow access to counsel; Place cameras at the ports-of-entry. (To view Ms. Campbell Walker's testimony, visit the Advocacy Center on <[www.aila.org](http://www.aila.org)>. Once there, click on "Congressional Testimony.")

Subcommittee members raised several concerns, including the need to give airports adequate resources to process visitors in a timely manner. Members also noted concerns about the program's effectiveness as a security tool considering that, at this time, Visa Waiver Program (VWP) participants are not required to enroll in US VISIT. However, adding roughly 13.5 million additional foreign nationals into the US VISIT program could put serious strains on the databases, increase false matches of biometric information and would likely increase delays at the ports of entry. Complicating the issue is an October 26, 2004 statutory deadline that requires that VMP participants to obtain a biometric visa unless they have a biometric machine-readable passport. In her testimony, Ms. Harty alluded to the fact that many of the "visa waiver" countries have said they will be unable to issue biometric passports in time. If these countries cannot issue the biometric passports in time, the VWP participants will be required to obtain a visa with biometric identifiers before entering the country. This additional burden on the U.S. consulates is expected to increase already burgeoning visa delays and could result in a sharp decline in tourism to the U.S.

## **House International Relations Committee Holds Hearing on L Visas**

The House International Relations Committee held a hearing, “L visas: Losing Jobs Through Laissez-Faire Policies?” on February 3, 2004. The panel consisted primarily of witnesses who supported restricting the L visa: Daniel Stein, Executive Director, Federation for American Immigration Reform (FAIR); Michael W. Gildea, Executive Director, Department for Professional Employees, American Federation of Labor and Congress of Industrial Organizations (AFL-CIO); Sona Shah, Displaced Worker; and Pat Fluno, Displaced Worker. The lone proponent for the visa category was Harris Miller, President of the Information Technology Association of America.

This hearing, which according to Chairman Hyde will be the first of a series of hearings on this issue, highlighted the current confusion in Congress over the differences between the L-1 visa and the H-1B visa, erroneously blamed the L visa for current outsourcing, and did not recognize the importance of this visa as a tool to increase foreign investment and create American jobs. As a result, committee members pondered potential “fixes” to the L visa program such as numerical limits and caps to the permissible length of stay.

The tenor of this week’s hearing was in sharp contrast to last year’s hearing on the L- visas held by the Senate Judiciary Committee Subcommittee on Immigration and Border Security. In that hearing, subcommittee members received a clear message that the L visa program is a vital tool for the creation and preservation of American jobs and that any changes to the visa program must be made with a scalpel, not a sledgehammer. Following the hearing last year, Senator Chambliss introduced S. 1635, the L-1 Visa (Intracompany Transferee) Reform Act of 2003. If modification to the L program is necessary, S. 1635 is the least burdensome option available. This measure would clarify visa eligibility requirements and sponsor obligations without diminishing the positive attributes of the program or destroying the unique purpose of the L visa category by treating it like the H-1B category.

Currently, no bill offering a narrowly tailored reform of the L visa, such as S. 1635, has been introduced in the House. Legislation introduced thus far (H.R. 2154, H.R. 2702 and H.R. 2849) would unnecessarily limit legitimate use of the L visa program, thereby hurting American workers and employers. Check on [www.aila.org](http://www.aila.org) for more information on the L-1 visa.

## **House Agricultural Committee Examines Recent Guestworker Proposals**

The House Committee on Agriculture held a hearing on January 28, 2004 to review the potential impact of recent temporary guest worker proposals on the agricultural sector. Witnesses at the hearing included Stuart Anderson, Executive Director of the National Foundation for American Policy; James Edwards, Consultant for the restrictionist group Numbers USA; Larry Wooten, representing the American Farm Bureau Federation; William Brim, Vice President of the Georgia Fruit and Vegetable Growers Association; Chalmers Carr III, Owner/Operator of Titan Peach Farms, Inc.; Tim Baker, Executive Director of U.S. Custom Harvesters; and Lorinda Ratkowski, President of Great Lakes Glads.

In his opening statement, Committee Chairman Bob Goodlatte (R-VA) stated that he has “seen first-hand that the current H-2A process is not working,” adding that he introduced his own agricultural worker bill (H.R. 3604, the Temporary Agricultural Labor Reform Act of 2003) because “the current illegal immigration crisis cannot be allowed to continue.” His bill, he continued, would not “reward illegals” by creating a “blanket amnesty,” as would, he believes, some of the other proposals currently before Congress. With regard to the Bush Administration’s

recently announced immigration reform proposal, Chairman Goodlatte said that he was pleased to see that the President's proposal does not contain a direct path to legal permanent resident status, but noted that he has concerns with the proposal nonetheless.

Representative Calvin Dooley (D-CA), in his opening statement, took a broader view, stressing that "we need to accept the reality of the situation." He cautioned that we must be careful how we go about implementing reform, emphasizing that we need a program that will allow those individuals who are already present in the U.S. contributing to our economy and society to continue to do so legally. "We need to look at the benefits these estimated 8-11 million [undocumented individuals] provide rather than just viewing them as a problem," he continued. "We need to think about our productivity as a nation."

In his testimony, Mr. Anderson urged that the only proven way to control the border is to open up paths to legal entry, "allowing the market to succeed where law enforcement alone has failed." "Those who say we should not permit more people to work on legal temporary visas until we 'control the border' have it wrong," he said. He began his testimony with an overview of data from the old *bracero* agricultural worker program, with the goal of demonstrating that the historical use of legal visas to bring in needed workers greatly reduced illegal immigration to the United States. Increased *bracero* admissions produced dramatic results, he said. Between 1953 and 1959, when the *bracero* program was in full swing, illegal entries, as measured by INS apprehensions, fell by 95 percent. During that same time period, the annual number of Mexican farm workers legally admitted to the U.S. more than doubled, from 201,380 in 1953 to an average of 437,937 for the years 1956-59. With the demise of the program in 1964, however, illegal immigration skyrocketed, continued Mr. Anderson, with INS apprehensions increasing more than 1,000 percent between 1964 and 1976. According to Mr. Anderson, this increase did not surprise INS officials. He cites a congressional hearing in the 1950s, during which a top INS official was asked what would happen to illegal immigration if the *bracero* program ended. The INS official reportedly replied, "We can't do the impossible, Mr. Congressman."

Mr. Anderson also noted that the current H-2A agricultural guestworker program attracts an insufficient number of participants to be part of a solution to illegal migration. For example, he pointed out, fewer than 30,000 H-2A visas were used in fiscal year 2003 compared to the 300,000 to 445,000 range of annual *bracero* admissions between 1954 and 1960. On the issue of why admissions under the H-2A category are so low, Mr. Anderson quoted testimony by the Chief of the Department of Labor's Agricultural Certification Unit before a 1997 House Immigration Subcommittee hearing: "The program is...cumbersome and litigation-prone...[and] too complex for the average grower to comprehend and use....The H-2A program is not currently a reliable mechanism to meet labor needs in situations where domestic workers are not available."

In closing, Mr. Anderson noted that any reform legislation must achieve enough of a consensus to pass both houses of Congress, and he expressed hope that lawmakers would remain open to enacting legislation that would move those currently here illegally—both in the agricultural sector and in other industries—into legal status, and would include an eventual path to legal permanent resident status.

During the question and answer period following presentation of testimony, Representative Dooley mentioned the "AgJobs bill" (H.R. 3142/S. 1645) as a potential vehicle for reform, noting that it has a strong bipartisan coalition behind it, thus making it easier to move legislatively. "Will Chairman Goodlatte's proposal be enough of an inducement for these [undocumented] folks to leave the United States and risk not coming back in?" he asked Mr. Anderson. In response, Mr. Anderson pointed out that no legislation focused solely on the agricultural sector

will induce the undocumented non-agricultural sector to leave. For that reason, he continued, President Bush's proposal would "cast a wider net" than the Goodlatte bill, simply because it contains provisions for non-agricultural workers and would purportedly increase legal immigration numbers.

AILA believes that in order to make legality the norm in the agricultural sector, reform legislation must address both the undocumented population currently working in the U.S. as well as the need for a usable program through which future workers can legally enter. AILA supports H.R. 3142/S. 1645 because it includes both of these components. Moreover, the need for real reform in the agricultural sector underscores the need for comprehensive immigration reforms so vital to our broader immigration system that impact other sectors, including the service sector. Such comprehensive reform would address our economic, humanitarian and security needs. Any successful and comprehensive immigration reform package requires three components: legalization for undocumented immigrants living and working in the U.S.; a new worker program that would legalize future flows of essential workers; and a reduction of the backlogs in family-based immigrant visas.

### **Urban Institute Hosts Briefing Entitled "Crossing Borders: The Impact of Immigration"**

The Urban Institute on February 3 hosted a lively panel about the policy and political implications of President Bush's conceptual proposal for immigration reform. The panel was moderated by Robert Suro, Executive Director of the Pew Hispanic Center. Speakers included: Raul Damas, director of Hispanic grassroots development at the Republican National Committee; Maria Echaveste, principal of the Nueva Vista Group; Doris Meissner, senior fellow at the Migration Policy Institute; and Jeffrey Passel, demographer and research associate in the Urban Institute's Center on Labor, Human Services, and Population.

Mr. Passel briefly summarized the most recent data he has compiled on the numbers and profiles of undocumented immigrants in the United States. His analysis suggests there were 9.3 million undocumented immigrants in the U.S. as of March 2002 and closer to 10 million today. While Mexicans and nationals from other Latin American countries make up nearly three quarters of that population, ten percent originate from Asia, five percent from Europe and Canada, and five percent from elsewhere in the world. Nearly two-thirds of this population lives in six states: California, Texas, New York, Illinois, and New Jersey. Mr. Passel also estimates that about 6 million undocumented immigrants are working, including virtually all undocumented men.

Ms. Meissner followed this profile of the target population with an analysis of the difficulties any guest worker plan would encounter. Drawing on our nation's experience with similar policies such as the *bracero* program, she observed that migration is not only an economic process, but a social process as well. Once labor migration networks develop, social and familial networks take root as well. Hence, any solution to the problem of undocumented immigration must have the flexibility to account for and respond to factors beyond the purely economic. Ms. Meissner also noted several other historical problems with guestworker programs: establishing meaningful protections for the rights of foreign workers; enforcing the program's limitations; and identifying a labor market test that helps limit any adverse impact to the U.S. worker population.

Mr. Damas and Ms. Echaveste were billed as the partisan politicians of the panel and they engaged in a restrained sparring session about the import of the President's proposal. Mr. Damas asserted that the introduction of other immigration plans and proposals (e.g. the Hagel/Daschle bill) since the President's January 7 speech evidenced the President's strong leadership on this issue. Ms. Echaveste countered that the President's proposal was so lacking in substance as to be



laughable and contrasted it with proposals such as the Hagel/Daschle bill, which reflect a serious, thoughtful attempt to grapple with the difficult, intricate policy questions identified by Ms. Meissner. She also noted that the President's complete silence on existing bills that have strong bipartisan support such as AgJobs and the DREAM Act, demonstrates his utter lack of seriousness about this proposal.

### **Cato Institute Holds Briefing on “Willing Workers: How to Fix the Problem of Illegal Immigration”**

On January 28, 2004, the Cato Institute held a briefing on recent immigration proposals featuring Representative Jeff Flake (R-AZ) and immigration and trade policy expert Dan Griswold. Last July, Representatives Flake (R-AZ) and Jim Kolbe (R-AZ) introduced a bill, the Border Security and Immigration Improvement Act of 2003 (H.R. 2899), that would, among other provisions, create a new visa program to match willing workers and employers and creates a path to permanent residence. Several other bills addressing the subject also have been introduced, the most recent being the comprehensive bipartisan Immigration Reform Act of 2004 from Senators Chuck Hagel (R-NE) and Tom Daschle (D-SD), which AILA strongly supports. With President Bush weighing in as well with a conceptual proposal to normalize the status of undocumented immigrants in this country, these issues have returned to center stage in Washington policy discussions.

Representative Flake stated that he has had a number of recent discussions with the White House concerning immigration reform and that, of the various proposals out there, his bill most closely matches the principles set forth by the President. He suggested that his bill, like the President's proposal, matches willing workers and employers without creating an amnesty. He argues that his plan is not an amnesty because the undocumented workers must pay a fine and take a backseat in the permanent residence line. He also maintains, consistent with the President's message, that immigration reform along these lines is imperative for national security, economic security, and humanitarian reasons.

Representative Flake acknowledges that implementation of this or any similar program would present serious administrative challenges and would require additional resources. He contended, however, that the fines imposed on undocumented workers applying for status would go a long way towards covering the additional expense involved in administering this program. He also acknowledged that for any bill to have a chance of passing, it must garner significant bipartisan support.

AILA commends Representatives Flake and Kolbe, as well as Senator McCain (who introduced companion legislation in the Senate), for their vocal leadership on this critical issue. Although we continue to have concerns about the workability of certain aspects of their proposal, we nonetheless consider their bill to constitute a serious effort at tackling one of the most complex and vexing problems facing the country today.

### **Recent Rulemaking and Other Activity in the Federal Agencies**

Federal agencies have issued a variety of new regulations in recent weeks, impacting everything from fee increases to the US VISIT Program. A brief summary of these regulations follows.

## Department of Homeland Security

USCIS Publishes Proposed Fee Schedule Increases: U.S. Citizenship and Immigration Services (USCIS) in a February 3 rule proposes to adjust the fee schedule of the Immigration Examinations Fee Account (IEFA) for immigration benefit applications and petitions, as well as the fee for capturing biometric information of applicants/petitioners who apply for certain immigration benefit applications and petitions. Fees collected from persons filing immigration benefit applications are deposited into the IEFA and used to fund the cost of providing immigration benefits; the cost of providing similar benefits to asylum and refugee applicants; and the cost of similar benefits provided to other immigrants, as specified in the regulation, at no charge. This rule proposes to adjust the immigration benefit application fees by approximately \$55 per application, and increases the biometric fee by \$20. Written comments are due by March 4. (69 FR 5088, 2/3/04, see AILA InfoNet Doc. No. 04020340). (Please go to [www.aila.org](http://www.aila.org) for AILA's press release on the proposed fee increase.)

USCIS Announces Direct Filing to the NSC for International Organization Special Immigrant Petitions and Adjustments: A January 23 notice advises eligible members of the international organization community that USCIS is adjusting and expanding its Direct Mail Program by directing that all petitions for special immigrant classification pursuant to INA § 101(a)(27)(I), whether submitted separately or concurrently with an application for adjustment of status, be mailed to the Nebraska Service Center. Applicants who apply for adjustment of status based on a previously approved petition for special immigrant classification pursuant to § 101(a)(27)(I) must file their adjustment application at the Nebraska Service Center. (69 FR 3380, 1/23/04, see AILA InfoNet Doc. No. 04012840). A subsequent January 28 notice corrected the effective date for the commencement of the direct mailing to the Nebraska Service Center to February 23. (69 FR 4210, 1/28/04, see AILA InfoNet Doc. No. 04012841).

DHS Publishes Interim Final Rule Implementing US VISIT: The DHS, in a January 5 interim final rule, implemented the United States Visitor and Immigrant Status Indicator Technology (US-VISIT) Program. The Department will apply the rule's requirements only to aliens seeking to be admitted pursuant to a nonimmigrant visa who travel through designated air and sea ports. The rule exempts: aliens admitted on A-1, A-2, C-3 (except for attendants, servants or personal employees of accredited officials), G-1, G-2, G-3, G-4, NATO-1, NATO-2, NATO-3, NATO-4, NATO-5 or NATO-6 visas, unless the Secretary of State and the Secretary of Homeland Security jointly determine that a class of such aliens should be subject to the rule; children under the age of 14; persons over the age of 79; classes of aliens the Secretary of Homeland Security and the Secretary of State jointly determine will be exempt; and an individual alien the Secretary of Homeland Security, the Secretary of State, or the Director of Central Intelligence determines will be exempt. A Federal Register notice identifying the air and sea ports where biometrics may be collected at time of entry and departure was published simultaneously with this rule (see next item). The interim final rule authorizes the Secretary to establish pilot programs for the collection of biometric information at time of departure and at a limited number of ports of entry, to be identified through notice in the Federal Register. The biometrics provided by the aliens will be entered into the automated identification system (IDENT) system, which will be integrated with the entry exit system component of US VISIT. The alien's biometric and other information will be checked against law enforcement and intelligence data to determine whether the alien is a threat to national security or public safety, or is otherwise inadmissible. An alien's failure to comply with this rule's requirements may result in a finding that he or she is inadmissible to the United States, has violated the terms of his or her admission and maintenance of status, or is ineligible for future visas, admission or discretionary immigration benefits. The interim rule took

effect upon publication. (69 FR 467, 1/5/04, see AILA InfoNet Doc. No. 04010513). To view AILA's comments to the interim final rule, see AILA InfoNet Doc. No. 04020512.

DHS Publishes Notice Regarding US VISIT Requirements: This January 5 notice outlines the requirements for the first phase of the US VISIT program, implemented pursuant to the interim final rule noted above. The notice requires certain nonimmigrants to provide fingerprints, photographs or other biometric identifiers if arriving in or departing from the United States through designated air or sea ports of entry on or after January 5, 2004. Requirements and exemptions are specified in the notice, which also took effect on January 5. (69 FR 482, 1/5/04, see AILA InfoNet Doc. No. 04010514).

DHS Amends ADIS System to Allow Collection of Biometric and Biographic Data: The DHS, in a December 12, 2003 notice, announced that the agency is amending the Arrival and Departure Information System (ADIS) to be able to collect biometric and biographic data for US VISIT to record information on the arrival and departure of immigrants and nonimmigrants to and from the U.S. (68 FR 69412, 12/12/03, see AILA InfoNet Doc. No. 03121245).

DHS Amends ENFORCE/IDENT System to Allow Collection of Biometric and Biographic Data: The DHS, in a second December 12, 2003 notice, announced that the agency is amending the Enforcement Operational Immigration Records system (ENFORCE/IDENT) to be able to collect biometric and biographic data for US VISIT, in addition to the data collected for DHS national security, law enforcement and other mission-related functions. (68 FR 69414, 12/12/03, see AILA InfoNet Doc. No. 03121246).

#### Department of State

DOS Delegation of Authority for Special Registration Exceptions: This notice delegates the authority to determine that special registration requirements shall not apply to a specific individual from the Secretary of State to Patrick J. Kennedy. (68 FR 75019, 12/29/03, see AILA InfoNet at Doc. No. 03122910).

DOS Delegation of Authority for Special Registration Exceptions: This notice delegates the authority to determine that special registration requirements shall not apply to a specific individual from the Secretary of State to Richard H. Jones, during the period of his detail to the Coalition Provisional Authority in Iraq. (68 FR 75018, 12/29/03, see AILA InfoNet at Doc. No. 03122911).

#### Department of Labor

DOL Cancels Solicitation of Grant Applications for H-1B Technical Skills Training Grants: The Labor Department (DOL) canceled its January 6, 2003, solicitation for grant applications for H-1B Technical Skills Training Grants, effective January 16, 2004, in order to review its goals and underlying principles for these grants. The DOL will review applications received prior to 5:00 pm on January 16, 2004. (69 FR 2162, 1/14/04, see AILA InfoNet Doc. No. 04011440).

#### Other Agencies

Proposed Amendments to Sentencing Guidelines Include Several Relating to Immigration Offenses: The U.S. Sentencing Commission issued a notice on January 14 setting forth proposed amendments to the sentencing guidelines, including several pertaining to immigration-related offenses. The specific proposed immigration-related amendments and issues for comment

contained in the notice were as follows: Proposed amendment to Sec. 2L1.1 (Smuggling, Transporting, or Harboring an Unlawful Alien) and 2L2.2 (Fraudulently Acquiring Documents Relating to Naturalization, Citizenship, or Legal Resident Status for Own Use; False Personation or Fraudulent Marriage by Alien to Evade Immigration Law; Fraudulently Acquiring or Improperly Using a United States Passport). (69 FR 2169, 1/14/04, see AILA InfoNet at Doc. No. 04011450).

EOIR Proposes Attorney Registration Program: A December 30, 2003, Executive Office for Immigration Review (EOIR) proposed rule would amend the regulations pertaining to appearances by attorneys and representatives before the EOIR by authorizing the EOIR Director, or his designee, to register attorneys and representatives as a condition of practicing before immigration judges and the Board of Immigration Appeals. The proposed rule also provides that the Director or his designee will establish registration procedures including a requirement for electronic registration, and may administratively suspend from practice before the EOIR any practitioner who fails to provide certain registration information. The preamble indicates that the purpose of the proposed rule is to facilitate the institution of electronic filing. Written comments must be submitted on or before March 1, 2004. (68 FR 75160, 12/30/03, see AILA InfoNet Doc. No. 03123012).

#### **MEDIA SPOTLIGHT: Members and Staff in the News**

*The San Francisco Chronicle* quoted **Marc Van Der Hout** (Northern California) in a February 4 article about USCIS increasing fees. **Michael Bander** (Southern Florida) was quoted in a February 4 *Miami Herald* article about the increased USCIS fees. **Susanna Bogue** (Northern California) and **Shyamala T. Rajender** (Northern California) were quoted in a February 4 *San Jose Mercury News* question and answer article about immigration. **Vicki Cohen** (New York) was quoted in a February 3 *Journal News* article about a day labor site in Spring Valley that has offered workers everything from social services to English lessons. **Nicole Morrison** (Texas) was quoted in a February 2 *Associated Press* article about six homeland security town hall meetings scheduled nationwide.

*The Charlotte Observer* quoted **Eileen Scofield** (Atlanta) and **Alan Gordon** (Carolinas) in a February 1 article about Bush's immigration plan. **Dennis Sullivan** (Wisconsin) was quoted in a February 1 *Milwaukee Journal* article about off-shoring. **Solange Altman** (Northern California) was quoted in a January 31 *Sacramento Bee* article about the role private immigration bills play in obtaining legal residence. *The Orange County Register* quoted **Michael Fischer** (Southern California) in a January 30 article about the split among Latinos in response to President Bush's immigration plan. **Scott Devore** (Southern Florida) was mentioned in a January 30 *Sun-Sentinel* article about his client who is a witness in a criminal case.

*The Associated Press* quoted **David Shomloo** (Oregon) in a January 29 article about immigration agents who recently arrested 24 immigrants with sex-crime convictions. **Paul Parsons** (Texas) was quoted in a January 29 *Austin American-Statesman* article about immigrants' confusion over President Bush's immigration plan and the potential abuse of their confusion by *notarios*. **Kathleen Campbell Walker** (Texas) was quoted in a January 29 *Philadelphia Inquirer* article about her testimony on the US VISIT program before the Subcommittee on Infrastructure and Border Security of the House Select Committee on Homeland Security. **Kathleen** was also quoted in a January 28 *Associated Press* article on the same topic. **Carl Shusterman** (Southern California) was quoted in a January 29 *Daily Spartan* article about his clients, the Cuevas family, who face deportation. **Carl** was also quoted in a January 27 *San Jose Mercury News* article on the same topic.

**David Stoller** (Central Florida) was quoted in a January 28 *Florida Today* article about an immigrant who is facing deportation. **Jeanne Butterfield** (National) was quoted in a January 28 *Atlanta Journal-Constitution* article about an immigrant who faces deportation because the government did not review his application for legal status before the deadline.

**Paul Zulkie** (Chicago) and **Robert Meltzer** (Chicago) were quoted in a January 27 *Chicago Tribune* article about how the fiscal year 2004 H-1B visa cap has almost been reached. **Scott Wright** (Minnesota/Dakotas) was quoted in a January 27 *Christian Science Monitor* article about President Bush's immigration plan.

**Michael Wildes** (New York) was quoted in a January 26 *Bergen County Record* article about immigrants who state that their homes are being raided in search of undocumented immigrants. **Susie Hoeller** (Texas) was a guest on the McCuiston Show on the Dallas PBS affiliate *KERA* on January 26, during which she discussed immigration issues with other guests, including Ruben Navarette of the *Dallas Morning News*, Congressman Tom Tancredo (R-CO), Jacob Hornberger of the Future of Freedom Foundation (libertarian think tank) and David Ray of the Federation for American Immigration Reform (FAIR). **Eugene Flynn** (Texas) also participated in the same program.

**Ramon Rivera** (Upstate New York) had an op-ed about immigration reform published in the January 24 edition of the *Post-Standard*. **Jody Goodwin** (Texas) was quoted in a January 24 *San Antonio Express-News* article about scammers or *notarios* taking advantage of immigrants in the wake of President Bush's immigration plan. **Robert Mautino** (San Diego) was quoted in a January 23 *Associated Press* article about an 80-year-old New Jersey woman who had her application for subsidized senior citizen housing rejected because USCIS has no documentation that she ever became a naturalized citizen even though she immigrated 80 years ago. **Dan Kowalski** (Texas) was quoted in a January 8 *Austin American-Statesman* article about President Bush's immigration plan.

Note: Please submit all articles, letters-to-the-editor, etc. for inclusion in "Members in the News" to Julia Hendrix of the AILA Advocacy Department ([jhendrix@aila.org](mailto:jhendrix@aila.org)).

### **Did You Know?**

In a January 30, 2004, interview on *CNN*, Deputy Secretary of State Richard L. Armitage was asked the following question:

"Many Chinese, including officials, academics, tourists, and students have complained that they find it virtually impossible to get U.S. visas nowadays. Why is that so and how is that affecting bilateral exchanges?"

Mr. Armitage responded as follow:

"Well, this is not simply an issue for China. This is an issue we face with some of our closest friends. I think the candid answer is that after 9/11 the United States, reeling from that hard attack, started exporting something that is not typically American, and that is we started exporting our fear and our anger instead of our optimism and our hope and our sort of welcoming nature. That pendulum, I believe, swung way too far one way and we are working rigorously to get it to

swing back. So I understand the complaint. It's a very valid one. We are working with the U.S. Congress and with Homeland Security to do the best we can to protect our nation, but also to return to the kind of welcoming feelings that we used to exhibit to the world.”

## **CONTRIBUTORS**

Judith Golub, Senior Director of Advocacy and Public Affairs

Marshall Fitz, Associate Director of Advocacy

Danielle Polen, Legislative Associate

Joanna Carson, Business Immigration Associate

John Estrella, Senior Policy Associate

Julia Roane Hendrix, Media Relations Associate

Rossana Lo, Advocacy Assistant

### **American Immigration Lawyers Association**

918 F Street, N.W.

Washington, D.C. 20004

202-216-2403

47AU4001