

WASHINGTON UPDATE

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Every Vote Counts: Information for AILA Members, Their Clients and the Public

Remember to Vote on November 2!

The 2000 elections taught us one thing: every vote counts! All U.S. citizens who are registered to vote may vote in the elections on Tuesday, November 2. [Read more information](#) about the candidates and voting in your area. Please note—if you believe that you are properly registered to vote but your name does not appear on the rolls, or you do not present the proper form of identification, or an election official asserts that you may not vote, new Federal and State laws provide voters in some areas with the opportunity to cast a provisional ballot under certain circumstances. Call toll free --- 1-866-Our-Vote --- to report problems and to receive advice on what to do. This hotline is being operated by the Election Protection Coalition, which is composed of many organizations including the League of Women Voters. Read further [voter education information](#).

Lame Duck Session is a Certainty: Congress Needs to Address Other Issues

Most Members of Congress have left Washington to return to their states/districts to campaign, leaving behind some of the conferees who have been negotiating on the intelligence reform legislation (see article below). Intelligence reform, along with several other issues, likely will be considered during the upcoming lame duck session, scheduled to begin on November 16. Thus, it is not too late to make your voice heard on Capitol Hill on a number of issues, including

increased access to H-1B and H-2B visas (see the fourth article in this *Update*) and opposition to the anti-immigrant and anti-civil liberty provisions in H.R. 10.

To send a letter to your Senators and Representatives urging them to support the H-1B Visa program, go to:

http://capwiz.com/aila2/mail/oneclick_compose/?alertid=5183421.

To urge your lawmakers to provide an H-2B “fix”, click on:

http://capwiz.com/aila2/mail/oneclick_compose/?alertid=5462641.

To urge your members of Congress and the Administration to oppose the anti-immigrant and anti-civil liberty provisions of H.R. 10, go to:

http://capwiz.com/aila2/mail/oneclick_compose/?alertid=6540936 (Congress)

http://capwiz.com/aila2/mail/oneclick_compose/?alertid=6559396 (President Bush).

Senate and House Conferees Fail to Agree on Intelligence Reform Bills; 9/11 Commissioners and Families Seek Removal of Anti-Immigrant and Law Enforcement Provisions; Families Hold Responsible Republican Conferees and the White House

The Senate and House conferees failed, prior to the November 2 elections, to resolve differences between intelligence reform legislation passed by the House (H.R. 10) and the Senate (S. 2845). It is expected that negotiations will continue, and Congress will address this issue, during the upcoming lame duck session that begins on November 16.

These two bills could not differ more. S. 2845 is responsible, bipartisan legislation endorsed by the 9/11 Commission and the Steering Committee of 9/11 Families—the families of victims of the terrorist attacks. In contrast, the array of anti-immigrant and anti-civil liberties provisions included in the partisan H.R. 10 go well beyond the 9/11 Commission’s recommendations. The eleven most controversial provisions in H.R. 10, Sections 3006-3010, 3031-3035, and 3052, should not be included in the bill that emerges from conference. These anti-immigrant and anti-civil liberties provisions will serve only to distract our government from effectively enhancing our security, divert precious resources, and make us less safe.

These controversial measures include: (1) a broad expansion of expedited removal; (2) heightened burdens for asylum eligibility; (3) a prohibition on acceptance of consular identification cards; (4) restrictions on driver’s license issuance to noncitizens based on immigration status; (5) elimination of habeas review for a variety of administrative orders; (6) new mandatory detention provisions; (7) elimination of temporary stays of removal pending judicial review; (8) authorization to remove individuals to countries without functioning governments; (9) guilt by association as a basis for deportation; and (10) prohibition on review of the basis for certain deportation orders.

In an October 20 letter to Senator Susan Collins and Representative Peter Hoekstra, Commission Chair Thomas Kean and Vice-Chair Lee Hamilton noted their strong belief that this bill:

is not the right occasion for tackling controversial immigration and law enforcement issues that go well beyond the Commission’s recommendations. We note in this regard that some of these provisions have been advocated in response to Commission recommendations. They are not Commission recommendations....We believe that we are better off with broad bipartisan agreement on key recommendations of the Commission in support of border security than taking up a number of controversial provisions that are

more central to the question of immigration policy than they are to the question of counterterrorism.

The Commissioners had petitioned House Republican leadership to delete these troubling provisions from the bill after it was first introduced. In addition, in an open letter to the House, family members of 9/11 victims also urged that these controversial provisions be dropped from the bill:

We have heard the House Bill to implement the 9/11 Commission Recommendations (H.R. 10) also includes provisions to expand the USA PATRIOT Act and reform immigration law in ways not recommended by the Commission. We strongly urge you to take these provisions out of the bill, and not vote for any bill that contains them. These provisions are outside the scope of the Commission's recommendations, and this is neither the time nor place to consider controversial, unrelated issues. Those issues can be discussed at a later date and proposed in different legislation.

In response to concerns raised about these provisions, House Republicans developed a "compromise" draft which, far from being a compromise, is even more radical than H.R. 10 as passed. Although the "compromise" version would eliminate the expedited removal provision, it would make even more extreme some of the controversial provisions and would maintain other objectionable provisions as drafted in H.R. 10.

Unfortunately, the White House is not providing the necessary leadership to oppose these harmful, anti-immigrant and anti-civil liberties provisions. An October 18 White House letter signaled the Administration's support for a wide range of ill-conceived measures included in H.R. 10 such as: visa revocation and deportation without any administrative or judicial review; the suspension for the first time since the Civil War of the "Great Writ" of habeas corpus; severely limiting the power of the courts to review detention and deportation, including claims that a detainee will be tortured if returned; and removing noncitizens to countries that will not accept them, and countries to which the noncitizen has no connection whatsoever. Most of these provisions and others the White House does not specifically address, but would appear to support, have not yet received hearings before any congressional committee and violate agreements made during negotiations over the PATRIOT Act. The White House needs to stand on the side of enhancing this nation's security and reject radical, restrictionist, anti-immigrant, and anti-civil liberties measures that will make us less secure.

In response to the conferees' failure to resolve the differences between the two bills, the Family Steering Committee for the 9/11 Commission issued a press release "On the Failure to Pass Intelligence Reform Legislation." In this press release, the families noted that they "are angry and saddened that the opportunity for significant reform of our country's intelligence structure has been squandered" and held "the following elected officials responsible for this failure: House Republican conferees Hoekstra, Hunter, Hyde, Sensenbrenner and Dreier; Speaker of the House Dennis Hastert; and the President of the United States, George W. Bush."

With the looming lame duck session, AILA urges Congress, especially House and Senate conferees, and the Administration to reject the onerous restrictions in H.R. 10 and produce a bipartisan measure behind which this nation can unite, not a measure that will divide our nation, make us less safe, divert resources, and make immigrant communities feel besieged and our immigration processes even more dysfunctional than they are today.

Senate Conferees: Senators Susan Collins (R-ME), Pat Roberts (R-KS), Trent Lott (R-MS), George Voinovich (R-OH), Mike DeWine (R-OH), Norm Coleman (R-MN), John Sununu (R-NH), Joseph Lieberman (D-CT), Carl Levin (D-MI), Richard Durbin (D-IL), John Jay Rockefeller (D-WV), Bob Graham (D-FL), Frank Lautenberg (D-NJ).

House Conferees: Representatives Peter Hoekstra (R-MI), Duncan Hunter (R-CA), Henry Hyde (R-IL), James Sensenbrenner (R-WI), David Dreier (R-CA), Robert Menendez (D-NJ), Jane Harman (D-CA), Ike Skelton (D-MO).

For AILA's latest Action Alert, click on:

<http://www.aila.org/contentViewer.aspx?bc=10,3080,5940,7070>

For AILA's latest press release on this legislation, click on:

<http://www.aila.org/contentViewer.aspx?bc=10,911,594,6795>.

To send a letter to your Senators and Representative urging them to remove the anti-immigrant provisions from the intelligence reform bill, go to:

http://capwiz.com/aila2/mail/oneclick_compose/?alertid=6540936.

To urge President Bush to do the same, click here:

http://capwiz.com/aila2/mail/oneclick_compose/?alertid=6559396.

H Blackouts: New Fiscal Year Shuts Door on H-1B Visas, Signals Imminent Exhaustion of H-2B Visa Program

On October 1, 2004, the very first day of the new fiscal year, U.S. Citizenship and Immigration Services (USCIS) officials announced that the H-1B cap on visas for highly educated foreign professionals had been reached. Reports indicate that exhaustion of the cap on H-2B non-agricultural seasonal workers may not be far behind. Unless Congress takes action before the end of this congressional session, employers will be facing an H visa "blackout" for almost an entire year.

While the H-1B and H-2B programs deal with very different types of foreign workers, both programs fill a vital role for our nation's businesses, small and large. Without access to H-1B visas, U.S. employers will be unable to hire the professionals with cutting-edge knowledge and skills—including recent graduates from top U.S. universities with advanced degrees in math and science—to develop new products, engage in groundbreaking research, create new jobs, and compete in the global marketplace. There still are not enough U.S. students interested in pursuing advanced degrees to fill these highly specialized positions and, according to the Bureau of Labor Statistics, the demand for these graduates will only increase.

Foreign nationals account for roughly half of all Master's and PhD graduates in math, science and engineering. If we cannot keep this U.S.-educated talent in the U.S., our competitors abroad will profit. In fact, several European countries recently have updated their immigration laws to attract highly educated talent. A workable H-1B program that protects U.S. employers' access to highly educated foreign nationals who graduate from U.S. universities with advanced degrees will keep the world's brightest minds in the U.S. and help retain American jobs.

While the H-1B program gives U.S. employers a means to access highly educated foreign professionals, the H-2B program is instrumental in providing employers with essential workers where no U.S. workers are available. H-2B visa holders help keep the doors of American

businesses open. These workers include restaurant, landscape, food production, and hotel service workers. They fill the rosters of our minor league hockey and baseball teams, teach our kids to ski, and repair helicopters that fight summer forest fires.

Currently the H-2B program is capped at 66,000 visas per year. This number has not been adjusted since the visa category was initially capped in 1990 yet, during that time, improvements in education and other factors have hampered U.S. employers' ability to find and hire willing American workers for seasonal positions. Without increased access to this visa category, many seasonal businesses across the nation will have to close their doors.

It is important that Congress takes action to provide U.S. employers with adequate access to needed professional and seasonal workers. Failure to do so will adversely affect the full spectrum of American businesses.

For more information on the need for access to these vital visa categories, see AILA's press release entitled "U.S. Employers Out of Luck?" at:

<http://www.aila.org/fileViewer.aspx?docID=16364> and "U.S. Slams the Door Shut on Highly Educated Foreign Professionals" at: <http://www.aila.org/fileViewer.aspx?docID=16371>.

President Signs \$33.1 Billion Homeland Security Bill with Prohibition on Outsourcing

President Bush, on October 18, signed into law the fiscal year (FY) 2005 Department of Homeland Security (DHS) appropriations bill (H.R. 4567, Pub. L. No. 108-334), bringing to an end a legislative journey that included controversy, divisiveness and even a presidential veto threat. The law provides approximately \$36 billion in funding for the DHS, which is \$896 million more than President Bush requested and \$2.8 billion more than the FY 2004 law.

The funds, however, come with many strings attached. For example, the new law mandates the submission of over 40 reports and studies between now and 2006 on a broad range of topics. Also required is a detailed expenditure plan and congressional approval before the DHS can spend more than \$100 million of the allotted \$340 million for the US-VISIT program.

President Bush signed this measure into law despite an earlier veto threat. In a September 8 Statement of Administration Policy (SAP), the White House had warned that the President would consider vetoing the measure if Congress insisted on including language that would bar the DHS from conducting a competitive sourcing initiative study about contracting out over 1,100 immigration information officer (IIO) jobs. Such a study is required before contracting out can take place.

AILA strongly opposed contracting out the IIO function for the following reasons:

- **These functions are inherently governmental:** The workload of Immigration Information Officers (IIOs), Contact Representatives, and Investigative Assistants is inherently governmental and therefore must be performed by federal employees.
- **Immigration is very complicated and inadequate knowledge can lead to dire consequences:** Immigration law is very complicated and contractors do not have the requisite knowledge and training. Such knowledge cannot be taught through lists and scripts. And the consequences can be severe if inaccurate or incomplete information is given.

- **Past experiences with contracting out have been problematic.** Contracting out the 1-800 number system has resulted in problems that have ranged from the frustrating to the truly damaging.
- **Contracting out these functions raises security concerns:** Immigration officers review applications, conduct criminal background checks, and search for fraud. They are on the front line to make sure we are safe. As such, these positions must be filled by federal employees who are clearly accountable to the agency within which they work.
- **Contracting out will damage backlog reduction efforts:** In many immigration offices, IIOs also perform basic adjudications functions, freeing adjudicators to handle more complex cases while giving the IIOs background in how the functions are performed. Contractors cannot perform adjudications. Thus, this important supplement to the adjudications workforce would be lost, further hampering backlog reduction efforts.
- **Contracting out has led to neither efficiencies nor cost savings:** The only way contracting out could produce cost savings is if the agency could thereby provide less service. In fact, past and current contracting out has led to increases in inefficiencies and increased costs that have required the Service Centers to allocate personnel to deal with contractors' errors and, in many instances, redo the contractors' work. Supervisors often have had to spend more time monitoring contracted employees, "shadowing" them to try and make sure they do not make errors. And when they do make errors, these errors ripple through the entire system, often forcing additional, unnecessary work and often negative consequences for individuals who should be able to expect some adequate level of service.

DHS decided not to proceed with the proposal at this time and President Bush signed the legislation.

Although the outsourcing proposal ceased to be a deal-killer, President Bush continues to take issue with provisions that require congressional approval before funds can be spent, alleging that certain of the provisions violate the separation of powers doctrine. "The executive branch shall construe as calling solely for notification the provisions of the Act that purport to require congressional committee approval for the execution of a law," said President Bush upon the signing the measure. "Any other construction would be inconsistent with the principles enunciated by the Supreme Court of the United States in *INS v. Chadha*," he added.¹

House, Senate Each Pass Bills to Extend J Waiver Program for Physicians

The House and the Senate each passed legislation that would extend and modify the J waiver program for foreign-born physicians. Under the program, aliens who participate in medical residencies in the United States on exchange program (J) visas are exempted from the two-year foreign residence requirement of INA § 212(e) if they agree to practice medicine for three years in an area designated by the Secretary of Health and Human Services (HHS) as having a shortage of health care professionals. The program has been extended several times, most recently via the 21st Century Department of Justice Appropriations Authorization Act (Pub. L. No. 107-273, § 11018 (2002)), which extended the program until June 1, 2004.

The House bill (H.R. 4453) as introduced would have extended the waiver for a year and clarified the practice of allowing foreign doctors receiving a waiver to receive H-1B nonimmigrant status

¹ *CQ Today*, Oct 18, 2004.

regardless of the annual H-1B visa quota. At the full Committee markup, Representatives John Hostettler (R-IN) and Sheila Jackson Lee (D-TX) offered an amendment in the nature of a substitute that would extend the program until June 1, 2006, specify that the H-1B cap exemption would apply to doctors who were sponsored for a waiver by either a state or federal agency, allow foreign doctors receiving a waiver to work in medically-underserved areas in either primary care or specialty medicine, and allow five of each state's 30 waivers to go to doctors that would practice medicine in areas not designated by the Secretary of HHS as having a shortage of health care professionals, if the doctors receiving the waivers would practice in facilities that serve patients who reside in areas designated by the Secretary as having a shortage of health care professionals. The Committee adopted the Hostettler-Jackson Lee amendment in the nature of a substitute, and the bill as reported out of Committee reflected that text.² The House, on October 6, passed the measure without change by voice vote under suspension of the rules.

The Senate passed a nearly identical bill on October 11 (S. 2302). The Senate version differs slightly from the House measure in that it would require federal or state agencies requesting a waiver for a specialist to demonstrate a shortage of doctors able to provide the appropriate medical specialty in the designated geographical area.

According to Senate sources, staffers currently are working toward crafting the necessary agreements to have the Senate version of the bill adopted by the House during the upcoming lame duck session.

Congress Sends to President Bill to Allow Electronic Completion and Storage of I-9s

On October 11, Congress cleared for the President legislation that would amend INA § 274A(b) to allow employers to electronically complete and store employment eligibility verification (I-9) forms. Under current law, employers are required to retain the I-9s on paper, microfilm or microfiche, either for three years after the date of hire or for one year after employment is terminated, whichever is later. Maintaining sufficient storage space to accommodate hard copies of I-9 forms has become a significant document management challenge for many companies, especially in industries with high employee turnover rates. The legislation (H.R. 4306), introduced by Representative Chris Cannon (R-UT), would permit the use of handwritten or electronic signatures in completing the I-9 forms and allow employers to store the I-9s electronically, should they choose to do so.

The House Report accompanying the bill (H. Rep. 108-731) notes that the electronic completion and storage of I-9 forms is consistent with the Government Paperwork Elimination Act (Pub. L. No. 105-277), which gave federal agencies until October 2003 to provide citizens the option of conducting business with the government electronically. That law also provides that electronic records and their related electronic signatures are not to be denied legal effect, validity, or enforceability merely because they are in electronic form.

The measure passed the House by a voice vote on October 6. The Senate cleared the measure by unanimous consent on October 11 and forwarded it to the President on October 19. President Bush is expected to sign the legislation shortly.

² See H. Rep. 108-730 to H.R. 4453.

Senate Passes Unaccompanied Alien Child Protection Act

The Senate, on October 11, passed by voice vote the Unaccompanied Alien Child Protection Act of 2004 (S. 1129), legislation that recognizes the special circumstances of unaccompanied children who arrive in the U.S., including those who seek asylum. S. 1129 seeks to address many of the problems that confront the more than 5,000 immigrant children found in the U.S. each year who are unaccompanied by a parent or legal guardian by establishing guidelines for their treatment and care at the hands of federal authorities. These children include asylum seekers, as well as children who have been smuggled into the country and who may be forced into sweatshop labor or sexual servitude. These children are often unable to understand the proceedings against them and are without a legal guardian to guide them through the process.

The legislation would build upon § 462 of the Homeland Security Act (Pub. L. No. 107-296), which transferred the care, custody and placement of unaccompanied alien children from the Department of Justice to the Department of Health and Human Service's Office of Refugee Resettlement (ORR). The measure would provide the ORR with the authority to appoint guardians ad litem where appropriate and would require that every child receive competent legal counsel. A previous incarnation of the bill that AILA strongly supported would have guaranteed government paid counsel for the unaccompanied children, but Senator Dianne Feinstein (D-CA), the bill's sponsor, introduced a substitute measure at the Committee level which omitted that provision. AILA continues to support the provision of government funded legal counsel for these needy children and will advocate for policies to that end. S. 1129 also would establish minimum standards for the care and custody of unaccompanied alien children and reform procedures for abused, abandoned, or neglected children to access permanent protection when such protection is warranted.

The House has yet to consider a companion measure (H.R. 3361), introduced by Representative Zoe Lofgren (D-CA).

House Committee Votes to Ax Diversity Visa Program, While Senate Committee Approves Bill to Preserve DV Eligibility in the Face of Processing Delays

The House Judiciary Committee, on September 30, approved by a vote of 18-8 legislation (H.R. 775) that would do away with the Diversity Visa (DV) program. The Committee's Report accompanying the bill (H. Rep. 108-747) alleges that the DV program has been "susceptible to fraud and manipulation" and "poses a threat to U.S. national security." The Report also labels the program as unfair, and contends that it is the least justifiable of our current immigrant visa programs in that "the program's qualification requirements...do nothing to ensure that the applicants have the skills needed to compete in the U.S. economy and do not hurt American workers."

However, this view couldn't be further from the truth. The DV program was created to ensure that the U.S. benefited from the contributions of a diverse group of immigrants who shared the American dream. At a time when legal immigration channels are needed to improve our national security and regularize our cross-border flow, this legislation moves in the opposition direction and would eliminate one of the few legal channels by which foreign nationals may migrate to this country. AILA urges House Members to vote against this misguided legislation should it move forward for a vote.

While House lawmakers sought to do away with the program, the Senate Judiciary Committee, on October 4, approved bipartisan legislation (S. 2089) introduced by Senator Saxby Chambliss (R-

GA) and co-sponsored by Senators Edward Kennedy (D-MA) and Zell Miller (D-GA) that would amend INA § 204(a)(1)(I)(ii) to allow an immigrant visa made available to an eligible alien under the DV program to remain available even after the end of the current fiscal year. As background, individuals who win the DV lottery program are provided a number and, when their number becomes current, are eligible to apply for permanent residence. However, the law presently requires that applicants not only file their applications in a timely manner, but also be approved during the fiscal year in which they file. If approval is delayed for any reason, including administrative backlogs, the person loses the opportunity to benefit from the program. Thus, many people who have done everything our government requires them to do, through no fault of their own, ultimately are unable to become permanent residents under the DV Program. Gross inaction by our government is often the cause of the problem.

Senator Chambliss's legislation would address this unfair situation and would provide welcome relief to people who, during fiscal years 1998 through 2003, were unable to obtain permanent residence under the DV program because the fiscal year ended before their cases were approved. The bill authorizes such individuals to reopen their cases and continue processing as long as diversity visas for the fiscal year in which they filed remain available.

Law abiding people who follow the rules, pay the required fees, and rely on our government's procedures should not be punished because of government inaction. AILA commends Senator Chambliss for introducing this critical legislation that would redress a problem in the DV program that has called into question in the starkest possible terms the fairness of our system, and urges Congressional support for its passage.

Senate Committee Passes Narrowly Targeted L Visa Reform Legislation

The Senate Judiciary Committee approved a measure on September 30 that would tighten restrictions on the L-1 visa category. The legislation (S. 1635), introduced by Senator Saxby Chambliss (R-GA), would amend the L-1B visa category. The Committee approved the measure by voice vote, with an amendment in the nature of a substitute that tightened some of the language in the bill as originally introduced. The bill now moves to the full Senate for further consideration.

Specifically, S. 1635 would:

- Modify INA § 214(c)(2) to prevent an L-1B visa holder from being primarily stationed at the worksite of another employer in cases where: (1) the L-1B visa holder will be controlled and supervised by an unaffiliated employer, or (2) the placement of the L-1B visa holder at the third party site is part of an arrangement to provide labor for the third party rather than placement at the third party site in connection with the provision of a product or service involving specialized knowledge specific to the petitioning employer.
- Strike from INA § 214(c)(2)(A) the provision permitting the six-month work requirement for L-1 blanket petitions.
- Require the Department of Homeland Security to maintain statistics on petitions filed for L-1 visas, including the number of L-1B petitions approved where the visa holder will work primarily offsite.

Any legislation seeking to reform the L visa program must recognize that the L program is a vital tool for U.S. companies that have an international presence, and international firms looking to

expand their offices to the U.S. If Congress unnecessarily limits the legitimate use of this visa program, both foreign investment in the U.S. and the work of international companies based in the U.S. would be impeded, with the consequence that American jobs would be lost rather than protected. Please click on the following link to register your support for the L visa program with your lawmakers: http://capwiz.com/aila2/mail/oneclick_compose/?alertid=3137656.

Congress Passes Relief Bill for Family Victimized by 9/11 Hate Crime

In a rare move, Congress passed and sent to the President a private immigration relief bill for victims of a post 9/11 hate crime (H.R. 867). The legislation, sponsored by Representative Rush Holt (D-NJ), concerns the plight of Durreshahwar (Duri) Hasan, and her four daughters. Duri's husband Waqar, a Pakistani immigrant, was murdered four days after 9/11 in a brutal hate crime. The President is expected to sign this measure shortly.

On September 15, 2001, Mark Anthony Stroman shot Mr. Hasan to death at a convenience store in Dallas claiming that he "did it to retaliate on local Arab Americans or whatever you want to call them." He added that he "did what every American wanted to do but didn't." Stroman was convicted of murder and is now on death row in Texas. As a result of Waqar's death, his family would have faced removal from the United States had Congress not acted to permit them to remain in their adopted homeland.

Though he did not die at the World Trade Center, Waqar was nonetheless a victim of September 11. Unlike the families of other immigrant victims of 9/11, however, the Hasan family was not granted special immigrant status that would allow them to avoid deportation and remain on the road to citizenship. After building a life in this country for nine years, the Hasan family went from being one step away from permanent residency to one step away from deportation.

Our nation must remain true to our core humanitarian principles as we confront terrorism wherever it exists. We must therefore act in every way possible to oppose retaliatory violence and revenge killings. Congressional support of H.R. 867 is a critically important statement in opposition to hate-crimes and in defense of American unity in the face of terrorist violence.

Recently Introduced Legislation

The following is a brief description of newly introduced, immigration-related legislation, in reverse chronological order and by chamber. AILA will report further on these bills if and when they move through the legislative process. (These bills die with the end of the 108th Congress, and would have to be introduced anew in the upcoming 109th Congress.)

House Legislation

H.R. 5316, introduced on October 8 by Representative Alcee Hastings (D-FL), would designate Haiti, Grenada, and the Cayman Islands under INA § 244 to render nationals of those countries eligible for temporary protected status.

H.R. 5315, the International Remittance Consumer Protection Act of 2004, introduced on October 8 by Representative Luis Gutierrez (D-IL), would amend the Electronic Fund Transfer Act to extend certain consumer protections to international remittance transfers of funds originating in the United States.

H.R. 5291, the Winning the War on Terror Act of 2004, introduced on October 8 by Representative Jim Turner (D-TX), is a large omnibus measure that, while not strictly an immigration bill, contains many immigration provisions. Title IV of the bill is entitled "Improving Border Security," and contains numerous subtitles and chapters dealing with infrastructure enhancements, border monitoring technology, personnel training, a comprehensive border security strategy, secure identification documents, interior enforcement, the visa waiver program, overseas coordination, immigration benefits, and much more.

H.R. 5267, introduced on October 7 by Representative Solomon Ortiz (D-TX), would implement policies to ensure that DHS personnel along the United States-Mexico border have the security clearances required to access information necessary to adequately screen immigrants entering the United States, including IDENT and IAFIS databases and databases used by the Department's inspectors in secondary inspections. The bill also would require the Secretary of Homeland Security, subject to the availability of appropriations, to add 2,000 new detention beds at the Port Isabel Service Processing Center at Los Fresnos, Texas.

H.R. 5240, introduced on October 6 by Representative John Sullivan (R-OK), would require the Secretary of Homeland Security to establish a U.S. Immigration and Customs Enforcement (ICE) Office of Investigations field office in Tulsa, Oklahoma.

H.R. 5148, the Identity Management Security Act of 2004, introduced on September 24 by Representative Candice Miller (R-MI), would provide federal standards for issuing driver's licenses and state identification documents and require the Comptroller General to conduct a study of the security of birth certificates and other birth documentation states use as proof of identity.

H.R. 5130, the Secure Borders Act, introduced on September 23 by Representative Jim Turner (D-TX), seeks to enhance security and promote economic prosperity on the Southern Border through, among other provisions: creating a \$1 billion infrastructure investment fund; issuing federal standards for identification documents and birth certificates; doubling the numbers of law enforcement at and between the ports of entry; deploying technology to monitor the entire border 24/7; increasing interior enforcement; screening all cargo trucks crossing the southern border for weapons of mass destruction; expanding detention and removal operations; and requiring Spanish language and other specialized training for inspectors.

H.R. 5111, the Illegal Immigration Enforcement and Social Security Protection Act of 2004, introduced on September 21 by Representative David Dreier (R-CA), would, among other provisions, enforce restrictions on employment in the U.S. of unauthorized aliens through the use of biometrically enhanced Social Security cards and an Employment Eligibility Database.

H. Res. 838, introduced on October 7 by Representative Jerrold Nadler (D-NY), would express the sense of the House of Representatives regarding the creation of refugee populations in the Middle East, North Africa, and the Persian Gulf region as a result of human rights violations.

H. Res. 810, introduced on September 30 by Representative Major Owens (D-NY), would express the sense of the House of Representatives that the Secretary of Homeland Security should designate Haiti, Grenada, Jamaica, the Dominican Republic and the Bahamas under INA §244 to render nationals of those countries eligible for temporary protected status.

Senate Legislation

S. 2871, the Human Trafficking and Smuggling Penalty Enhancement Act of 2004, introduced on September 30 by Senator Lindsey Graham (R-SC), would enhance criminal penalties for crimes related to alien smuggling and slavery.

S. 2844, introduced on September 23 by Senator Rick Santorum (R-PA), would designate Poland as a program country under the visa waiver program of INA § 217.

S. 2833, the Angel Island Immigration Station Restoration and Preservation Act, introduced on September 23 by Senator Dianne Feinstein (D-CA), would authorize appropriations to the Secretary of the Interior for the restoration of the Angel Island Immigration Station in California.

S. 2823, the Agricultural Job Opportunity, Benefits, and Security Act of 2004, introduced on September 21 by Senator Larry Craig (R-ID), would provide for the adjustment of status of certain foreign agricultural workers and would amend the INA to reform the H-2A agricultural worker program. The bill is very similar to the pending AgJobs bill (S. 1645), also sponsored by Senator Craig.

S. 2816, the Montserrat Immigration Fairness Act, introduced on September 20 by Senator Charles Schumer (D-NY), would provide for the adjustment of status of certain aliens granted temporary protected status in the United States because of conditions in Montserrat. Representative Major Owens (D-NY) introduced the House companion bill on February 5, 2003.

S. Res. 449, introduced on October 6 by Senator Edward Kennedy (D-MA), would encourage the protection of the rights of refugees.

Recent Rulemaking and Other Activity in the Federal Agencies

Federal agencies have issued a variety of new regulations and notices in recent weeks, impacting everything from the TPS program to former INA § 212(c) relief. A brief summary of these items follows.

Department of Homeland Security

DHS Publishes Final Rule Adding Actuaries and Plant Pathologists to NAFTA Professions. The Department of Homeland Security's (DHS's) U.S. Citizenship and Immigration Services (USCIS), on October 13, published a final rule that adopts without substantive change a December 19, 2000 proposed rule published by the former INS. The final rule amends the DHS's regulations by adding Actuaries and Plant Pathologists to Appendix 1603.D.1 of the North American Free Trade Agreement (NAFTA) and by modifying the licensure requirements for Canadian citizens seeking admission to the United States as "trade NAFTA" (TN) nonimmigrant aliens. According to the rule's preamble, these amendments reflect the agreements made among the three parties to the NAFTA and will facilitate travel to and business in the United States. The final rule will take effect on November 12, 2004. (69 FR 60939, 10/13/04, see AILA InfoNet Doc. No. 04101363).

DHS Officially Changes Name of BCIS to USCIS. The DHS published a notice in the Federal Register on October 13, informing the public that the agency has officially changed the name of the Bureau of Citizenship and Immigration Services (BCIS) to U.S. Citizenship and Immigration

Services (USCIS). The notice took effect upon publication. (69 FR 60937, 10/13/04, see AILA InfoNet Doc. No. 04101362).

DHS Extends, Redesignates Sudan Under the TPS Program. The DHS's USCIS, on October 7, published a notice in the Federal Register extending the current designation of Sudan and redesignating that country for Temporary Protected Status (TPS). The redesignation will allow nationals of Sudan who have been continuously physically present and continuously resident in the United States since October 7, 2004, to apply for TPS. The notice also sets forth procedures necessary for nationals of Sudan (or aliens having no nationality who last habitually resided in Sudan) to re-register for TPS. The extension of Sudan's TPS designation is effective November 2, 2004, and will remain in effect until November 2, 2005. The 60-day re-registration period begins October 7, 2004 and will remain in effect until December 6, 2004. The re-designation of Sudan for TPS also is effective November 2, 2004, and will remain in effect until November 2, 2005. The 180-day registration period begins October 7, 2004 and will remain in effect until April 5, 2005. (69 FR 60168, 10/7/04, see AILA InfoNet Doc. No. 04100761).

DHS Extends Designation of Burundi Under the TPS Program. The USCIS, on October 7, published a notice in the Federal Register extending the current designation of Burundi under the TPS program for another 12 months, until November 2, 2005. The notice also sets forth procedures necessary for nationals of Burundi (or aliens having no nationality who last habitually resided in Burundi) to re-register for TPS. The extension of Burundi's TPS designation is effective November 2, 2004, and will remain in effect until November 2, 2005. The 60-day re-registration period begins October 7, 2004 and will remain in effect until December 6, 2004. (69 FR 60165, 10/7/04, see AILA InfoNet Doc. No. 04100760).

DHS Extends Liberian TPS EADs Until 10/24/04. The USCIS recently corrected an August 25, 2004 Federal Register notice that announced the termination and re-designation of TPS for nationals of Liberia. In the supplemental information to that notice, USCIS inadvertently misstated that the termination would be effective, and benefits obtained through the Liberia TPS designation would expire, on October 1, 2004. However, under INA § 244(b)(3)(B), a TPS designation may be terminated no earlier than 60 days after publication of the termination notice in the Federal Register. Pursuant to INA § 244(a)(2) and 8 CFR 274a.12(a)(12), persons granted TPS retain that status and employment authorization until the effective date of termination unless their TPS is withdrawn before then. Thus, USCIS is notifying affected Liberians and their employers that termination of the Liberian TPS designation is effective October 24, 2004, 60 days after the August 25, 2004 termination notice. USCIS also is extending until October 24, 2004 the validity of Form I-688B employment authorization documents issued to Liberian TPS beneficiaries that bear an expiration date of October 1, 2004 and a notation of "274a.12(a)(12)" or "274a.12(c)(19)." The effective date of the re-designation remains October 1, 2004. This correction took effect October 1, 2004. (69 FR 58934, 10/1/04, see AILA InfoNet Doc. No. 04100162).

TSA Publishes Notice to Renew Registered Traveler Pilot Program. The DHS's Transportation Security Administration (TSA), on September 21, published a notice in the Federal Register announcing that the agency will renew the Registered Traveler Pilot program in 2005. The program operates in five states and involves voluntary submission of biographical and biometric information for expedited inspection procedures. Comments are due on or before November 22. (69 FR 56451, 9/21/04, see AILA InfoNet Doc. No. 04092460).

Department of Justice

DOJ Publishes Final Rule on 212(c) Relief. The Executive Office for Immigration Review (EOIR), on September 28, published a final rule that adopts without substantial change a proposed rule to establish procedures for lawful permanent residents with certain criminal convictions arising from plea agreements reached prior to a verdict at trial to apply for relief from deportation or removal pursuant to former INA section 212(c). The final rule also sets forth procedures and deadlines for filing motions to seek such relief before an immigration judge or the Board of Immigration Appeals for eligible aliens currently in proceedings or under final orders of deportation or removal. This rule is effective on October 28, 2004. (69 FR 57826, 9/28/04, see AILA InfoNet Doc. No. 04092861).

DOJ Publishes Notice of Class Action Judgment in *Durnford v. Aschcroft*. The EOIR published in the Federal Register a Notice of Resolution of Class Action on behalf of white males not selected as immigration judges during 1994 and 1995 to inform class members of the class action settlement, and to set forth the rights of class members. (69 FR 57714, 9/27/04, see AILA InfoNet Doc. No. 04092761).

Department of Labor

DOL Publishes Notice on H-2B Filings for Employment in FY 2005. The Department of Labor (DOL), on October 1, published a notice in the Federal Register to provide additional guidance to the public regarding the Employment and Training Administration's (ETA's) processing of H-2B applications that will count against the fiscal year (FY) 2005 cap. As background, on March 10, 2004, the USCIS announced receiving sufficient H-2B petitions to reach the FY 2004 congressionally mandated cap of 66,000. In light of USCIS's announcement, the ETA published a Federal Register notice on May 13, 2004 to provide guidance to the public regarding ETA's processing of H-2B applications that will count against the FY 2005 cap. ETA published the current notice to provide additional guidance due to the number of inquiries and questions that have arisen. (69 FR 58961, 10/1/04, see AILA InfoNet Doc. No. 04100164).

Department of State

DOS Interim Rule Amends U.S. Passport Regulations for Minors Under 14. The Department of State (DOS), on October 13, published an interim rule amending the regulation implementing the statutory requirement that both parents consent to issuance of a passport for children under 14 years to require that a statement of consent submitted in support of a minor's application be notarized. The goal of the rule is to ensure that the individual providing the signature is properly identified. The rule takes effect on November 1, and comments are due on or before November 13, 2004. (69 FR 60811, 10/13/04, see AILA InfoNet Doc. No. 04102110).

DOS Redesignates the Islamic Movement of Uzbekistan as a Terrorist Organization. Based upon a review of the Administrative Record, and in consultation with the Attorney General and the Secretary of the Treasury, the Secretary of State has concluded that there is a sufficient factual basis to find that the relevant circumstances described in INA § 219, as amended, exist with respect to the Islamic Movement of Uzbekistan. Therefore, effective September 24, 2004, the Secretary of State hereby redesignates that organization as a Foreign Terrorist Organization pursuant to INA § 219(a). (69 FR 57373, 9/24/04, see AILA InfoNet Doc. No. 04092762).

Executive Branch

President Issues Determination on FY 2005 Refugee Admissions. Presidential Determination No. 2004-53 of September 30, 2004 was published in the Federal Register on October 14. The Determination authorizes up to 70,000 refugees to be admitted to the U.S. during FY 2005, and includes regional allocation of the admission numbers, as well as authorization to transfer unused numbers based on regional need. (69 FR 60943, 10/14/04, see AILA InfoNet Doc. No. 04101465).

MEDIA SPOTLIGHT: Members and Staff in the News

Newsday quoted **Angela Bean** (Northern California) in an October 24 question and answer article about immigration. **Patricia Ice** (Mid South) was quoted in an October 22 *Clarion Ledger* (Mississippi) article about the nursing shortage in Mississippi and how Filipino nurses are filling those vacancies. **Jim Benzoni** (Iowa/Nebraska) was quoted in an October 21 *Associated Press* article about the hardship immigrants face when using InfoPass, the electronic appointment scheduling system at USCIS, because they don't understand the system or don't have access to a computer. **Richard Gump** (Texas) and **Charla Truett** (Texas) were quoted in an October 20 *Houston Chronicle* article about a wealthy Dallas-area businessman and naturalized U.S. citizen who is associated with a charity that allegedly aided Palestinian terrorists and now faces deportation

Christine Brigagliano (Northern California) and **Susanna I. Bogue** (Northern California) were quoted in an October 18 *San Jose Mercury News* question and answer article about immigration. **Judy Golub** (National) was quoted in an October 18 *Star-Telegram* article about the immigration positions that President Bush and Senator Kerry took during the last presidential debate.

Mark Silverman (Northern California) and **Marirose Piciucco** (Northern California) were quoted in an October 17 *Contra Costa Times* article about Ms. Piciucco's client who is waiting in Nigeria for DHS to process his security clearance so he can return to his family. **Mario DeMarco** (New York) was quoted in an October 16 *Journal News* article about the backlog that immigrants face when trying to become citizens. **Robert Whitehill** (Pittsburgh) and **Daniel Kowalski** (Texas) were featured in an October 16 *Associated Press* article about the ruling of an immigration judge who found a Jordanian college student who did not report for NSEERS deportable without first letting him testify or submit written evidence in his defense. **Jeanne Butterfield** (National) was quoted in an October 12 *Centre Daily Times* article on the same topic.

David Leopold (Ohio) was quoted in an October 15 *Kansas City-Star* article about the NSEERS program. **Dawn M. Lurie** (Washington, DC) was featured in an October 14 *Washington Post* article about the problems that employers face due to the H-1B cap. **Marshall Fitz** (National) was quoted in an October 14 *Sun-Sentinel* article about the expedited removal provisions contained in the "9/11 Commission Recommendations Implementation Act" (H.R. 10). **Cheryl Little** (Southern Florida) was quoted in an October 13 *Broward Daily Business Review* about the U.S. Attorney's office seeking to prosecute asylum-seekers who enter the country with false documentation. **Ira J. Kurzban** (Southern Florida) had an op-ed published in the October 13 *Miami Herald* about why the U.S. government should grant TPS status to Haitians.

The Associated Press quoted **Judy Flanagan** (Arizona) and Emilia Bañuelos (Arizona) in an October 11 article about the longer than average processing times of the Phoenix Immigration Office for applications for legal permanent residency and citizenship. **Jeanne Butterfield** (National) was quoted in an October 10 *Pittsburgh Post-Gazette* article about a local Jordanian

student who, after failing to register for NSEERS, was ordered deported by an immigration judge who decided the merits of the case without allowing the student to testify on his own behalf. The same article also ran in the *Associated Press*. **Ann Pinchak** (Texas) and **Harry Gee** (Texas) were quoted in an October 10 *Houston Chronicle* article about the recent exhaustion of the H-1B cap.

The Miami Herald quoted **Ira Kurzban** (Southern Florida), **Cheryl Little** (Southern Florida), **Dale Schwartz** (Atlanta) and **Ken Levine** (Atlanta) in an October 9 article about Operation Compliance. **Paul Zulkie** (Chicago) was quoted in an October 6 *Atlanta Journal Constitution* article about reaching the H-1B visa cap. **David Sperling** (New York) was quoted in an October 8 *Voice of America* broadcast about undocumented students facing obstacles to continuing their education. **Beth Stickney** (New England) was featured in an October 7 *Portland Press Herald* article about her client who faces deportation to Cambodia following violations of his probation for a 2002 vehicular manslaughter conviction.

The Pittsburgh Post-Gazette quoted **Lisa Ventresca** (Pittsburgh) and **Joanna Hedvall** (National) in an October 6 article about the exhaustion of H-1B visas. **Tammy Fox-Isicoff** (Southern Florida), **Ted Ruthizer** (New York), and **Andrew Koerner** (Southern Florida) were quoted in an October 5 *Miami Herald* article on the same topic.

Dan Kowalski (Texas) was quoted in an October 5 *Cox News Service* article about H.R. 10, the House of Representative's ill-conceived national security bill, which has several anti-immigrant and anti-civil liberty provisions. **Vic Goel** (Washington, DC) was quoted in an October 5 *ComputerWorld* article about the imminent exhaustion of H-1B visas. **Ira Kurzban** (Southern Florida) and **Eduardo Soto** (Southern Florida) were quoted in an October 4 *Miami Herald* article about Mr. Soto's client, who faces a legal struggle to determine if he is actually a U.S. citizen because he missed his naturalization ceremony. **Judy Golub** (National) was quoted in an October 5 *La Voz* article about the anti-immigrant provisions in the House of Representative's 9/11 Commission Recommendations Implementation Act (HR 10).

Timothy Wheelwright (Utah) was quoted in an October 4 *Deseret Morning News* article about InfoPass which is now available in Utah. **Jacqueline Baronian** (New York) was featured in an October 3 *Newsday* question and answer article about immigration issues.

The Press Enterprise quoted **Carrye Washington** (Southern California) in an October 2 article about the border patrol round-up of undocumented immigrants in three locations in Temecula, CA.. **Lynn Coyle** (Texas) was quoted in an October 2 *Star-Telegram* article about two dozen immigrants who face deportation but whose testimony helped secure record prison sentences against several smugglers. **David Leopold** (Ohio) was quoted in an October 2 *Philadelphia Inquirer* article about two Irishmen whose former affiliation with the IRA resulted in their deportation.

Mark Silverman (Northern California) was featured in an October 1 *San Diego Union-Tribune* article about a free legal advice meeting in which he participated to educate immigrants about immigration laws and where they stand in the immigration process. **Susana De Leon** (Minnesota/Dakotas) was quoted in an October 1 *Associated Press* article about the detention of suspected undocumented immigrants who were arrested after a drug raid. **Ms. De Leon** was also quoted in an October 1 *Star-Tribune* article about the same issue.

Ira Kurzban (Southern Florida) was quoted in a September 30 *New Times Broward-Palm Beach* article about a 41-year National Guard sergeant's wife who was deported due to her

undocumented status. The **American Immigration Lawyers Association's** analysis of the House of Representative's 9/11 Commission Recommendations Implementation Act (HR 10) was featured in a September 29 *New York Times* article. **Carl Shusterman** (Southern California) was quoted in a September 29 *Los Angeles Times* article about his clients who face deportation after having lived in the U.S. for 20 years. **Marshall Fitz** (National) was quoted in a September 28 *Newsday* article about the "culture of no" at the Department of Homeland Security that influences the deportation of hardworking immigrants.

The Los Angeles Times quoted **Erin Corcoran** (Washington, DC) in a September 27 article about a Burmese man who was granted asylum in the U.S. after 6 years and was finally able to bring his wife and three children to the U.S. **Jorge Rivera** (Southern Florida) was quoted in a September 27 *Miami Herald* article about his client who is an Ecuadorian native married for 6 years to a U.S. Army sergeant and faces deportation. **Maile Hirota** (Hawaii) had a letter to the editor published in the September 27 *Honolulu Advertiser* edition about the need for immigration reform rather than just enforcement of a dysfunctional immigration system. **Marshall Fitz** (National) was featured in a September 27 *Pacifica Radio* broadcast about the rush to pass the House of Representatives' 9/11 Commission Recommendations Implementation Act (HR 10).

Manuel Vargas (New York) was quoted in a September 26 *Newsday* question and answer article about immigration. **Jay Marks** (Washington, DC) was quoted in a September 24 *Baltimore Sun* article about his clients who plan to testify on behalf of the brother and son who are accused of murdering their 3 children. **Sohail Mohammed** (New Jersey) was quoted in a September 24 *Associated Press* article about the new online immigration appointments system that has reduced lines at the Newark immigration office.

The New York Sun quoted **Matthew Dunn** (New York) in September 24 article about New York State's new "immigration consultant" law which does not go far enough to prohibit anyone not accredited by the federal government from selling advice on immigration matters. **Denyse Sabagh** (Washington, DC) and **David Leopold** (Ohio) were quoted in a September 24 *Associated Press* article about a Palestinian-born leader of Ohio's largest mosque who was stripped of his U.S. citizenship and is appealing his conviction and deportation.

Kenneth Liebman (New England) was quoted in a September 23 *Boston Globe* article about hundreds of no-match SSN letters that were sent to undocumented Brazilian immigrants who had obtained the SSN cards through a multimillion-dollar scheme. **Margaret Donnelly** (Texas) was quoted in a September 23 *Dallas Observer* article about the controversy surrounding Father Justin Lucio and his advocacy for immigrants. *The Washington Post* quoted **Michael Maggio** (Washington, DC) in a September 23 article about the drop in the number of foreigners who became permanent U.S. immigrants in 2003. **Beth Stickney** (New England) was quoted in a September 23 *Press Herald* article about her permanent resident client who faces deportation to Cambodia, where he does not speak the language.

The Associated Press quoted **Michael Boyle** (New England) in a September 22 article about a 19-year-old undocumented immigrant who received a reprieve from deportation when U.S. Sen. Christopher Dodd and others interceded on her behalf. **Lilia Velasquez** (San Diego) was quoted in a September 22 *Associated Press* article about San Diego immigration raids that targeted contractors who work with North Island Naval Air Station. **Ms. Velasquez** was also quoted in a September 22 *San Diego Union-Tribune* article about the same topic.

Chuck Kuck (Atlanta) was featured in a September 22 *Atlanta-Journal Constitution* article about his testimony about the history and future of the U.S. refugee program before the Immigration

Subcommittee of U.S. Senate Committee on the Judiciary. **Crystal Williams** (National) was quoted in a September 22 *Washington Post* article about Pearson Government Solutions, Inc., the contractor that runs the BCIS call in center.

Helen Hui (Northern California) was quoted in a September 19 *San Jose Mercury News* question and answer article about immigration. **Margaret Wong** (Ohio) was featured in a September 18 *Columbus Dispatch* article about her clients who are the surviving relatives of 10 people killed in an apartment fire and probably will not be allowed back into the U.S. if they travel to Mexico for the burials. **Gail Pendleton** (Associated Press) was quoted in a September 18 *Associated Press* article about the federal push to deport undocumented immigrants. **Marisol Zequeira-Burke** (Southern Florida) was quoted in a September 18 *Sun-Sentinel* article about how immigrant workers in Florida have suffered after two hurricanes. **Jonathan Scop** (Oregon) had an op-ed published in the September 3 *Portland Insight* edition about the contributions that immigrants make to America.

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).

Did You Know?

“But at the same time that I work with Tom Ridge to make sure we are protecting our borders, we have to do it in a way that keeps our borders open. We want youngsters to come here and go to SAIS. We want people to come to our great hospitals. We want people to come to our entertainment facilities. We want secure borders but we want open doors because, as was touched on by Bill earlier, we are an immigrant nation; we are a nation that is touched by every nation in the world and we, in turn, touch every nation in the world. It is our openness, it is our welcoming attitude, that makes us what we are. It's reasonable for us to protect ourselves, but at the same time important for the world to know that we are a welcoming nation, a welcoming people.”

--Excerpted from Secretary of State Colin Powell's Remarks at the Johns Hopkins Paul Nitze School of Advanced International Studies (SAIS) 60th Anniversary Gala

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