AILA

WASHINGTON UPDATE

Volume 7, Number 15, December 5, 2003

IN THIS ISSUE…

Recent Changes to the Special Registration Do Not Go Far Enough

The Department of Homeland Security (DHS) recently announced the suspension as of December 2, 2003, of one aspect of what has commonly been called the "Special Registration" program, formally known as the National Security Entry/Exit Registration System (NSEERS). Under NSEERS, specified groups of foreigners have been required to be photographed, fingerprinted, and interrogated upon their arrival at a U.S. port of entry and, for those already in this country, at a designated immigration office. Under this program, these individuals (most of them males from Middle Eastern countries) also have been obligated to follow re-registration requirements after one year, or, in some cases, thirty days.

Under the new guidelines, the one-year and thirty-day re-registration requirements will be suspended. However, registration at the border, departure requirements and a "case-by-case" imposition of registration requirements, at DHS's discretion, continue. These changes also do not address the plight of the 13,000 individuals already placed in removal proceedings, those who have been refused admission, and others who have been denied benefits because they did not properly register or because our government did not properly note their registration. Equally troubling is the confusion these changes will raise, and the DHS's continued inadequate outreach to explain new and continuing program requirements.

While these changes are a step in the right direction, AILA believes the DHS needs to terminate the program in its entirety. It was deeply flawed when it was implemented and remains flawed

today, more than one year after its implementation. NSEERS is a false solution to a real problem and does not make us safer. What it has done is left immigrant communities feeling besieged, harmed our relations with foreign governments, and wasted precious resources. In fact, according to the DHS, the changes announced today will allow the agency to reallocate almost 62,000 work hours. Just think if they never had implemented this program, what a difference that many work hours could have made to a program that really enhanced our security.

Legislation Enacted to Extend, Expand Employment Verification Pilot Program, Extend Investor Pilot

President Bush on December 3 signed legislation (S. 1685; Pub L. No. 108-156) that extends through 2008 the employment eligibility verification pilot program established by § 401 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). That program, currently operating in six states (California, Texas, Florida, New York, Illinois, and Nebraska), is scheduled to sunset on November 30. The bill also mandates the program's expansion to all 50 states, no later than December 1, 2004. Prior to such expansion, however, S. 1685 requires the Secretary of Homeland Security to submit to Congress by June 1, 2004, a report evaluating whether previously identified problems with the pilot program have been substantially resolved, and describing what actions the Secretary intends to undertake to resolve any outstanding problems prior to the program's expansion. Such problems include: failure to provide timely and accurate data due, in part, to inaccurate and outdated INS data bases.

The legislation also extends for another five years the immigrant investor regional center pilot program which lapsed at the end of fiscal year 2003. The pilot program, established by § 610 of the Department of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993, facilitates foreign investment in areas in need of economic stimulus and encourages more widespread utilization of the Alien Entrepreneur program through a more streamlined, pre-approved process. The bill also requires a General Accounting Office study on the broader immigrant investor program, within one year of the bill's enactment.

The House approved S. 1685 by a voice vote under suspension of the rules on November 19, one week after the Senate, on November 12, amended and approved the bill under unanimous consent. The legislation approved by Congress differs from an earlier bill that failed to gain House approval and reflects a compromise reached by Senators Charles Grassley (R-IA) and Edward Kennedy (D-MA). The earlier House bill, H.R. 2359, would have broadened the permissible uses of the employment eligibility verification system far beyond the limited employment context initially envisioned and would have permitted state and local governments to use the confirmation system to check the immigration or citizenship status of all U.S. citizens and immigrants who come within their purview. This unwarranted expansion of the program contained no privacy protections and would have exacerbated the privacy problems addressed in an earlier evaluation report. The House bill also did not provide for extension of the immigrant investor pilot program.

DOD Authorization Bill Enacted with Important Immigration Provisions

The conflict in Iraq has brought to public attention an important reality: not only do immigrants make critical contributions to our economy, our culture, and our social fabric; they also put their lives on the line for this country by serving in the Armed Forces. Indeed, several of the first soldiers to die during this conflict were not U.S. citizens, but legal permanent residents. Approximately 37,000 immigrants currently serve in the military and more than 5,000 legal permanent residents have served in Iraq. Immigrants not only serve in high numbers, but also distinguish themselves on the battlefield, having received more than 20 percent of the Congressional Medals of Honor bestowed throughout this country's history.

Congress has acknowledged these contributions and sacrifices by including in the National Defense Authorization Act for FY 2004 significant provisions facilitating the naturalization of immigrant soldiers and reservists and providing other immigration benefits. The Act, which authorizes appropriations for the Department of Defense, was signed into law on November 24, 2003 (H.R. 1588; Pub. L. No. 108-136). The immigration provisions that were enacted include: permitting lawful permanent residents to naturalize after serving one year in the military during peacetime; authorizing naturalization interviews and oath ceremonies to be performed abroad at U.S. embassies, consulates, and overseas military installations; waiving all naturalization fees; enabling lawful permanent residents who are members of the Selected Reserves of the Ready Reserves, to expedite their naturalization in times of war or hostile military operations; allowing noncitizen spouses, unmarried children, and parents of citizens and noncitizens serving in the U.S. military who are killed as a result of such service to file or preserve already filed applications for lawful permanent residence; and expediting the process for granting posthumous citizenship to fallen soldiers.

Recognizing not only the contributions of immigrant soldiers, but the sacrifices of their families as well, this law accords these servicemen and women the respect and assistance they deserve. A number of Senators and Representatives were instrumental in ensuring that these provisions became law, including Senators Edward Kennedy (D-MA) and Harry Reid (D-NV) and Representatives Hilda Solis (D-CA) and Martin Frost (D-TX). AILA applauds these Members of Congress and their supportive colleagues for their commitment on this issue.

Senate Judiciary Committee Considers Impact of Post-9/11 Security Measures on Civil Liberties

On November 18, 2003, the Senate Judiciary Committee convened a hearing to consider the impact post-9/11 security measures have had on civil liberties in the U.S. This is the second in a promised series of hearings to be held by the Committee on post-9/11 issues. While the first hearing dealt primarily with PATRIOT Act prosecutorial power issues, this hearing focused on the civil liberties effects of increased executive powers. Chairman Orin Hatch (R-UT) deserves special praise for working with Senator Leahy (D-VT), the ranking Democrat on the Committee, to ensure that this hearing provided a meaningful opportunity to discuss concerns about due process and civil liberties. We hope that the next hearing in this series, which is likely to focus on the enemy combatant issue, will facilitate a similarly balanced discussion.

Testifying at the hearing were majority witnesses Robert Cleary (Proskauer Rose, LLP), Viet Dinh (Professor, Georgetown University Law Center), and Nadine Strossen (President, ACLU). Minority witnesses included: Bob Barr (American Conservative Union), James Zogby (Arab American Institute), Muzaffar Chishti (Director, Migration Policy Institute, NYU), and Jim Dempsey (Center for Democracy and Technology). This interesting cross-over of

representatives from groups traditionally associated with the political right (American Conservative Union testifying for the Democrats) and left (ACLU testifying for the Republicans) demonstrates that civil liberties concerns ring across the political spectrum.

The witness statements as well as statements by some of the Senators helped clarify an important point of confusion on this subject, that the use of the term "PATRIOT Act" by civil liberties activists has been meant as a catch-all phrase encompassing a much broader set of government actions. Indeed, it was pointed out that most of the immigration-related civil liberties concerns have resulted from actions of the executive branch rather than the PATRIOT Act or other statutes. Among others, the following immigration-related issues were raised: the detention policies implemented during the post-9/11 investigation; programs based on profiling (e.g. Special Registration—NSEERS) and their impact on foreign relations; the use of immigration laws to circumvent the constitutional limitations on criminal law procedures; and the government's failure to net any terrorists from its blanket immigration enforcement programs and initiatives.

Despite its promise, however, the hearing failed to hone in sufficiently on the civil liberties concerns of immigrants. Although the vast majority of civil liberties abuses since 9/11 have been directed towards noncitizens, the question and answer session was dominated by discussion of PATRIOT Act provisions affecting citizens. This left little time for consideration of potential solutions, oversight or legislative, to the legitimate concerns of noncitizens. We are hopeful that when Congress returns in January it will consider legislation designed to rein in some of these government excesses.

Bill to Reimburse States for Incarcerating Undocumented Aliens Wins Senate Approval

The Senate on November 25 approved by unanimous consent legislation (S. 460) that would authorize $6.35 billion for FY 2004 through FY 2010 to carry out the State Criminal Alien Assistance Program (SCAAP). The SCAAP reimburses states and localities for the costs associated with incarcerating undocumented immigrants with criminal convictions.

The bill would authorize $750 million for FY 2004, $850 million for FY 2005, and $950 million for each of FYs 2006 through 2010. According to a press release from the bill's primary sponsor, Senator Dianne Feinstein (D-CA), SCAAP was funded between $500 million and $585 million in previous years. In FY 03, however, the Bush Administration did not request any funding for the program, and Congress only provided $250 million dollars in the Omnibus Appropriations bill. And in the Omnibus Appropriations Bill for FY 04, only $300 million has been provided. "These cuts come at a time when state and county governments face more than $13 billion in incarceration costs," added Senator Feinstein.

"This legislation is intended to send a signal to the Administration and to appropriators that we believe it is critical that SCAAP be funded at adequate levels," Senator Feinstein said. "Control of illegal immigration is clearly a Federal responsibility. When the Federal government fails to control the nation's borders, state, and local taxpayers should not have to foot the bill. Congress must not turn its back on the communities that continue to shoulder the burden of what is a federal responsibility." Companion legislation in the House (H.R. 933) has not yet moved.

S. 460 reinforces the need for fundamental reform of our immigration system to make legality the norm. Undocumented immigration is a symptom of a system that is out of touch with our economic and social realities and our security needs. Such reform would include: an earned adjustment for people who are working and contributing; a new worker program; and family backlog reduction.

Flawed Senate Bill Calls for State and Local Law Enforcement of Federal Immigration Laws

Senators Jeff Sessions (R-AL) and Zell Miller (D-GA) on November 20, 2003 introduced the Homeland Security Enhancement Act (HSEA), S. 1906. This bill, which effectively obligates states and localities to enforce federal civil immigration laws, closely parallels the CLEAR Act (H.R. 2671) introduced by Representative Charles Norwood (R-GA) in July 2003. Both the CLEAR Act and the HSEA demonstrate a fundamental lack of understanding about the challenges and concerns of state and local law enforcement agencies around the country. The HSEA would terminate federal funding to states and localities that have decided, through policy or practice, that enforcing civil immigration laws would harm their communities.

Already stretched thin by budget woes, the last thing state law enforcement agencies want is an expanded mandate to enforce civil immigration laws, laws that they do not understand. Furthermore, the widespread deputization of local law enforcement officers will undermine the community-based policing initiatives that have been so successful in recent years and will have a serious chilling effect on crime reporting by victims and witnesses. Victims of abuse and other crimes will refuse to come forward if they believe that police officers may inquire about their immigration status. This, in turn, would lead to the perverse result of actually leaving more dangerous criminals out on the streets.

Perhaps most troubling, the HSEA (like the CLEAR Act) takes the unprecedented step of declaring all immigration status violations to be criminal in nature. Criminalized as such, the Act would require all immigration status violations, however technical or innocuous in nature, to be entered into the National Crime Information Center (NCIC) database. This requirement would undermine rather than enhance national security. By overwhelming the NCIC database with records of minor immigration status infractions that are inherently and historically civil in nature, this provision will make it more difficult for law enforcement to focus on apprehending criminals and terrorists.

Unlike the CLEAR Act, the HSEA also contains provisions relating to identification documents and driver's licenses. Specifically, it would: (1) deny funding to states that issue driver's licenses to undocumented immigrants; (2) prohibit the federal government from accepting or recognizing state-issued driver's licenses for aliens unless such licenses expire on the date that immigration status expires; and (3) prohibit the federal government from accepting or recognizing any identification document unless issued by a federal or state authority and subject to verification by federal law enforcement (i.e. prohibition on acceptance of consular identification cards issued by foreign states).

AILA opposes tying access to driver's licenses to immigration status. Denying driver's licenses to large segments of the population is an inefficient way to enforce immigration laws and prevent terrorism and would make everyone in the community less safe. Indeed, many local law enforcement officials oppose restrictive licensing proposals because driver's license databases play an important role in law enforcement. A huge practical concern is that restrictive licensing would require state motor vehicle administrators to become INS law and document experts in order to evaluate properly an applicant's immigration status and determine when such status expires. This is a recipe for disaster given the complexity of the immigration regime and its approximately 60 nonimmigrant visa categories plus classifications for asylees, refugees, parolees, persons in immigration proceedings, persons under orders of supervision, applicants for these categories, and applicants for extension, change, or adjustment of status (to name a few). Finally, proposals to restrict immigrants' access to driver's licenses will result in more unlicensed

drivers operating vehicles on U.S. roads. Whether licensed or not, many individuals will have no choice but to drive—to work, to schools, to doctors, and to many other destinations—to meet basic everyday needs. Thus, restrictive licensing has the potential to reduce the safety of Americans and all drivers on our roads.

AILA also objects to the HSEA's overbroad limitation on use of foreign government-issued identification. This proposal, written broadly, is a thinly veiled attempt to proscribe the use of consular identification cards (also known as *matriculas consular*) issued by the Mexican government. These documents have numerous security features and in many ways are more secure than, for example, state issued driver's licenses. If we honestly acknowledge that at least several million people in this country are undocumented and have no means of obtaining U.S. government issued documentation, consular ID cards represent a legitimate alternative mechanism for people to self-identify. The solution to the broader problem of undocumented immigration implicated by these cards is not their elimination, but instead comprehensive immigration reform.

AILA categorically opposes both the HSEA and the CLEAR Act. Please contact your Senators and Representatives by clicking on the following link and urge them to defeat these measures:

<http://capwiz.com/aila2/mail/oneclick_compose/?alertid=3435061>

Bipartisan AgJobs Still the Reform Bill of Choice, Despite Newly Introduced Legislation

Since its introduction in both the House and Senate on September 23, the bipartisan Agricultural Jobs, Opportunity, Benefits, and Security (AgJobs) Act (H.R. 3142/S. 1645) has continued to garner bipartisan support in both chambers of Congress. The measure, which represents a compromise agreement between the representatives of farm workers and the agricultural industry, would streamline the H-2A temporary agricultural worker visa category and create an earned adjustment program that would permit undocumented farm workers currently in the U.S. to apply for temporary resident status based upon their past work contributions in this country. Upon satisfying prospective work requirements, these hard working individuals could then become eligible for permanent resident status.

Once enacted, the AgJobs legislation would include an adjustment program that would encourage workers to come out of the shadows and be reviewed by our government. This vital element of the bill would enhance our security by providing us information on who lives and works within our borders. In addition, the much-needed reforms to the H-2A temporary agricultural worker program are the second vital element in this bill and would provide the U.S. agricultural industry with access to a stable, legal labor force. These two elements of reform, in concert with one another, are the key to bringing our immigration system under control and making legality the norm in the agricultural sector.

Despite the broad, bipartisan support for the AgJobs bill, a deeply flawed bill recently was introduced on November 21 by Representative Bob Goodlatte (R-VA), the Temporary Agricultural Labor Reform Act of 2003 (H.R. 3604). Although H.R. 3604 includes revisions to the outdated H-2A temporary agricultural worker program, it falls short of the AgJobs measure in that it fails to provide a solution to the vast undocumented population currently working in America's agricultural sector. By not providing a means to bring these workers out of the shadows and under the review of our government, this bill misses an important opportunity to increase our nation's security efforts and protect our food supply.

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. The AgJobs legislation has both of these components.

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 is needed to fully 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.

House Small Business Committee Holds a Second Hearing on Visa Delays

The House Committee on Small Business, chaired by Representative Donald Manzullo (R-IL) held a second hearing (the first took place on June 4, 2003) to focus on the negative impacts of visa restrictions on our economy generally, and on small business specifically. Witnesses testifying at the November 20 hearing (entitled "Lowering the Cost of Doing Business in the United States: How to Keep our Companies Here") were: Bob Kapp of the U.S-China Business Council, William Norman of the Travel Industry Association, Randall Johnson of the U.S. Chamber of Commerce, and Palma Yanni of AILA.

Chairman Manzullo opened the hearing with a strong statement about how the business visa backlog acts as a trade barrier that "costs American companies enormous business and will encourage those companies that cannot receive visitors" from abroad to offshore more operations and jobs to avoid the need to bring foreign buyers and business partners to the U.S. Chairman Manzullo was critical of what he characterized as "the official position of the U.S. government to discourage foreign visitors to come to the U.S. to buy our products," and emphasized that we cannot presume that every visitor is a terrorist, a "policy that is destroying our manufacturing base."

In her testimony, Ms. Yanni reported that the ever-burgeoning backlog in the visa process has gotten worse in the last six months, with problems at both the DHS's Citizenship and Immigration Services (USCIS) arm, and at U.S. consulates abroad. Underscoring and strengthening her testimony were examples that illustrate the range of the problem. These examples are:

- An engineer, who had worked in the U.S. for 4 years under L-1 status prior to his most recent visa application, applied in Jakarta in early 2002 to renew his L-1 visa stamp. The visa still has not been issued, with no explanation as to the reason, other than that "another agency is conducting the check" and "the visa office is very busy." After much trouble and expense to keep his projects going without him, the company finally had to transfer the engineer to an overseas office, and move projects abroad to complete them.

- A telecommunications engineer waited over a year for an H-1B visa in Saudi Arabia. Despite numerous inquiries by the company, the consular post never replied, and inquiries to Washington, DC were met with replies that the clearances had not been completed. The company and the engineer have given up.

- A businessman coming to the U.S. to act as President of a subsidiary of a British company applied for his visa in London more than a month ago. He has a very common name, and so a name check in the security database resulted in a "hit". His fingerprints were taken, and he still awaits FBI clearance of this fingerprint check. There is no indication of when the visa will be issued. In the meantime, the U.S. subsidiary is without a leader.

- A Panamanian couple in their mid-seventies, who have visited their adult daughter in the U.S. every year for the past 15 years, needed to renew their visitor visas. Apparently because they were born in Morocco, they were subjected to additional security checks, and have been waiting for several months for their visas. They missed out on spending the Jewish High holy days with their daughter because of the delay in their visas.

- A German professor who had visited the Institute for Surface and Interface Science at the University of California, Irvine, for roughly twenty five years will not come this year due to the difficulties he had obtaining a visa.

Senate Confirms Two DHS Nominees

The Senate, on November 25, confirmed two appointees to the Department of Homeland Security (DHS). Michael J. Garcia was confirmed as Assistant Secretary of the DHS's Bureau of Immigration and Customs Enforcement (BICE). Mr. Garcia previously served as the final INS Commissioner before that agency was dismantled and absorbed into the DHS. Prior to his tenure at the INS, he served for 10 years in the U.S. Attorney's Office for the Southern District of New York.

Retired Coast Guard Admiral James M. Loy was confirmed as the new Deputy Secretary of Homeland Security. Previously, Mr. Loy was Commandant of the Coast Guard and Coast Guard Chief of Staff. He replaces Gordon England, who left the DHS to return to his previous post as Secretary of the Navy.

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 as they move through the legislative process.

House Legislation

H.R. 3604, the Temporary Agricultural Labor Reform Act of 2003, introduced on November 21 by Representative Bob Goodlatte (R-VA), would revamp the H-2A temporary agricultural worker program. For further details on this legislation, see article no. 7 in this *Update.*

H.R. 3587, introduced on November 21 by Representative Ed Case (D-HI), would amend INA § 203(e)(1) to give priority in the issuance of immigrant visas to the sons and daughters of Filipino World War II veterans who are or were naturalized citizens of the United States.

H.R. 3534, the Border Enforcement and Revolving Employment to Assist Laborers Act of 2003, introduced on November 19 by Representative Tom Tancredo (R-CO), is an omnibus restrictionist bill that would, among other things: suspend the Visa Waiver Program; authorize the use of the U.S. military to secure the border; increase the number of border patrol agents,

immigration inspectors, detention and removal officers and BICE special agents; impose criminal penalties for unlawful presence in the United States; allow consular officers to require certain nonimmigrant visa applicants to obtain visa term compliance bonds as a condition of receiving the visa; set new and stringent requirements on the acceptance of identification documentation by government agencies; impose a mandatory employment eligibility verification system; and do away with the current H visa scheme and substitute in its place a new, highly restrictive catch-all "H" category for both skilled and unskilled workers.

H.R. 3522, the Securing America's Future through Enforcement Reform (SAFER) Act of 2003, introduced on November 19 by Representative J. Gresham Barrett (R-SC), is a massive, 93-page restrictionist bill that would make a number of egregious changes to the INA under the guise of making America safer. Among other things, the legislation would: authorize the use of the U.S. Army and Air Force to secure the border; require consular officer interviews of all visa applicants; broaden substantially the current grounds of inadmissibility and removability; provide more sweeping authority to track aliens present in the United States; amend INA § 245(c) to do away with the exception for immediate relatives and special immigrants from the bar to adjustment of status for individuals who have fallen out of status or worked without authorization; increase the number of border inspectors and border patrol agents; and further circumscribe judicial review and due process in immigration proceedings.

H.R. 3510, the Angolan Temporary Protected Status Act of 2003, introduced on November 18 by Representative Stephen Lynch (D-MA), would designate Angola under the temporary protected status (TPS) program of INA § 244 and would set forth eligibility criteria for participation in the program by Angolan nationals. The legislation also contains Congressional Findings concerning Angola's long history of conflict and a Sense of Congress that Angola should be designated under the TPS program. The Attorney General terminated Angola's designation under the program on March 29, 2003, deciding that conditions in that country no longer supported participation in the TPS program, despite the State Department's characterization of Angola as a place of "considerable risk," with poor government infrastructure and security capabilitites.

H.R. 3480, the Memorial to Noncitizen Patriots Act, introduced on November 6 by Representative Randy "Duke" Cunningham (R-CA), would require the construction at Arlington National Cemetery of a memorial to noncitizens killed in the line of duty while serving in the United States Armed Forces.

H.R. 3461, introduced on November 6 by Representative Jeff Flake (R-AZ), would bar federal agencies from accepting for any identification-related purpose a state-issued driver's license, or other comparable identification document, unless the state has in effect a policy requiring presentation of acceptable forms of identification prior to issuance of the license or document, and the state requires the license or document, if issued to a nonimmigrant alien, to expire upon the expiration of the alien's authorized period of stay in the United States. The legislation requires the Secretary of Homeland Security to make grants to states to assist them in complying with the requirements set forth above.

H.R. 3452, the Visitor Information and Security Accountability (VISA) Act, introduced on November 6 by Representative Pete Sessions (R-TX), would make a number of restrictive changes to our immigration laws. Among other things, the bill would: authorize the use of the U.S. Army and Air Force to secure the border; require consular officer interviews of all visa applicants; provide for the administrative removal of additional classes of aliens; require nonimmigrant visa applicants from certain countries to post maintenance of status/departure

bonds as a condition of receiving the visa; and label certain identification documents as "insecure" and prohibit their use for entry into or departure from the United States.

H. Res. 440, introduced on November 14 by Representative Solomon Ortiz (D-TX), would resolve that the executive branch should remove certain entry restrictions for Mexican nationals. Specifically, this House Resolution states that: (1) the executive branch should amend the permissible period of entry for users of the Laser Visa (Border Crossing Card), and should remove the 25-mile restriction on travel by Mexican nationals in the United States in order to more accurately reflect the economic and social realities of the United States-Mexico border region; and (2) in developing the United States Visitor and Immigrant Status Indicator Technology (US-VISIT) for land ports, the executive branch should take into consideration national security and any potential harm to any of the economies of the NAFTA countries and the economies of the border regions of those countries.

Senate Legislation

S. 1949, the Return of Talent Act, introduced on November 24 by Senator Joseph Biden (D-DE), would allow aliens who are legally present in the United States to return temporarily to their country of citizenship in order to make a "material contribution" if that country is engaged in post-conflict reconstruction, and still be considered to be physically present in the U.S. for purposes of the naturalization residency requirements.

S. 1934, the Intercountry Adoption Reform (ICARE) Act of 2003, introduced on November 23 by Senator Don Nickles (R-OK), would establish an Office of Intercountry Adoptions within the State Department, and would transfer all immigration-related functions with respect to the adoption of foreign-born children to the new office. In addition, the legislation would reform U.S. laws governing intercountry adoptions, including provisions of the INA relating to automatic acquisition of citizenship for adopted foreign-born children.

S. 1924, the Dairy Farm Workers Fairness Act, introduced on November 21 by Senator James Jeffords (I-VT), would provide for the coverage of milk production under the H-2A temporary agricultural worker program.

S. 1906, the Homeland Security Enhancement Act of 2003, introduced on November 20 by Senator Jeff Sessions (R-AL), would effectively obligate states and localities to enforce civil immigration laws and would also render all immigration status violations criminal in nature. For additional details on this legislation, see article no. 6 in this *Update.*

S. 1830, the Paul and Sheila Wellstone Trafficking Victims Reauthorization Act, introduced on November 6 by Senator Sam Brownback (R-KS), would authorize appropriations for fiscal years 2004 and 2005 for the Trafficking Victims Protection Act of 2000. The legislation also contains measures designed to further combat trafficking in persons as well as enhanced protection for the victims of trafficking.

Recent Rulemaking and Other Activity in the Federal Agencies

Federal agencies have issued just one new regulation in recent weeks, albeit an important one pertaining to special registration. A brief summary of that regulation, as well as a listing of several additional agency notices recently published in the Federal Register, follows.

Department of Homeland Security

Interim Rule Suspending NSEERS 30-Day and Annual Re-Registration Requirements: U.S. Immigration and Customs Enforcement (ICE), in a December 2 interim rule, amended the Department of Homeland Security's (DHS's) regulations for the registration and monitoring of certain nonimmigrant aliens by suspending the 30-day and annual re-registration requirements for aliens who are subject to the National Security Entry-Exit Registration System (NSEERS) Registration. Instead of requiring all aliens subject to NSEERS to appear for 30-day and/or annual re-registration interviews, the DHS will utilize a more tailored system in which it will notify individual aliens of future registration requirements. The rule also eliminated the requirement for those nonimmigrant aliens subject to special registration who are also enrolled in the Student and Exchange Visitor Information System (SEVIS) to separately notify DHS of changes in educational institutions and addresses. Additionally, the rule clarified how nonimmigrant aliens may apply for relief from special registration requirements and clarified that certain alien crewmen are not subject to the departure requirements. Finally, certain conforming amendments were made to the existing regulations to reflect the fact that the former INS has been abolished and its functions transferred from the Department of Justice to DHS under the Homeland Security Act of 2002. The interim rule took effect on December 2, and comments must be submitted by February 2, 2004. (68 FR 67577, 12/02/03, see AILA InfoNet Doc. No. 03120240). For further details on this development, see the first article in this *Update.*

CBP Appoints Members to its Two Performance Review Boards. U.S. Customs and Border Protection (CBP), in a November 19 Federal Register notice, announced the appointment of the members of its two Performance Review Boards, which review performance appraisals for senior executives and to make recommendations regarding proposed performance ratings, bonuses, and other related personnel actions. These appointments became effective on November 1. (68 FR 65303, 11/19/03, see AILA InfoNet Doc. No. 03111941).

Department of State

Extending the Restrictions on the Use of U.S. Passports for Travel to Libya: In a November 24 Federal Register notice, the State Department extended for another year the restriction on the use of U.S. passports for travel to, in or through Libya. The restriction has been renewed yearly since 1981. (68 FR 65981, 11/24/03, see AILA InfoNet Doc. No. 03112441).

Presidential Documents

Presidential Determination Authorizing up to 70,000 Refugees: Presidential Determination No. 2004-06, dated October 21 and published in the Federal Register on November 10, authorizes the admission of up to 70,000 refugees in Fiscal year 2004, and provides regional allocations. 20,000 unallocated refugee numbers shall be allocated to regional ceilings as needed, and an additional 10,000 numbers are allocated to adjusting asylees in the United States. (68 FR 63979, 11/10/03, see AILA InfoNet Doc. No. 03111040).

MEDIA SPOTLIGHT: Members and Staff in the News

The Argus quoted **Robert Jobe** (Northern California) in a December 4 article about a federal appeals court that has ordered immigration officials to release his client, a Sikh activist who has been held in jails for six years without being charged with a crime. **Carl Shusterman** (Southern California) was quoted in a December 3 *Associated Press* article about his clients who are seeking a stay of deportation from the Federal Appeals Court of the Ninth Circuit because the

Board of Immigration Appeals overturned an IJ's ruling that the family would suffer hardship because the father is a Mexican national, the mother is a Guatemalan national and their daughter is an academically gifted student. *The San Francisco Chronicle* quoted **Banafsheh Akhlaghi** (Northern California) in a December 3 article about the suspension of some provisions of Special Registration.

The Miami Herald quoted **Michael Bander** (Southern Florida) and **Cheryl Little** (Southern Florida) in a December 1 article about more frequent interceptions of migrant boats, and less frequent arrivals of large migrant-laden boats on local shores. **Lisa Johnston** (New York) was quoted in a November 30 *Journal News* article about the decline in Diversity Visa applications by Irish nationals.

Judy Flanagan (Arizona) was quoted in a November 29 *Associated Press* article about her clients—four students facing deportation to Mexico who were given another reprieve when an immigration judge postponed their hearing for 10 more months pending the outcome in Congress of the proposed DREAM Act legislation. *The Associated Press* quoted **Boyd Campbell** (Atlanta) in a November 28 article about Alabama's Public Safety Department that will not give a driver's license to someone who cannot prove they are allowed to stay in the United States the for the entire four years' duration of the driver's license.

J. Christopher Keen (Utah) was quoted in a November 28 *Salt Lake Tribune* article about his client who faces deportation. **Ira Kurzban** (Southern Florida) was quoted in a November 27 *Miami Herald* article about a former Haitian military officer who has been accused of human rights violations and was arrested in South Florida by immigration agents. *The Houston Press* quoted **Charles Foster** (Texas) in a November 27 article about plans by the city of Houston to erect a statue honoring George H.W. Bush.

Manny Avila (Southern Florida) was quoted in a November 26 *Associated Press* article in which a judge ended deportation proceedings against his client who is a Polish-born high school senior who has lived in the United States since she was eight years old. *The San Jose Mercury News* quoted **Beverly Byrd** (Northern California) in a November 26 article about advanced parole. *The Des Moines* Register quoted **Jim Benzoni** (Iowa/Nebaska) in a November 26 article about his client who was detained for nine months and has since been released and is seeking residency. **Richard Reinhart** (Central Florida) was quoted in a November 25 *Bradenton Herald* article about the AgJobs Bill.

The Houston Chronicle quoted **Jodi Goodwin** (Texas) in a November 24 article about a man with a U.S. birth certificate who is being detained pending deportation. **Jack Pinnix** (Carolinas) was quoted in a November 24 *Associated Press* article about a poll conducted in North Carolina in which most residents believed that the U.S. admits too many immigrants. **Marcia Needleman** (New York) was quoted in a November 24 *New York Daily News* article about sham marriages. *The Associated Press* quoted **Boyd Campbell** (Atlanta) in a November 23 article about providing immigrants with driver's licenses.

Jeanne Butterfield (National) was featured in a November 20 *Newsday* article about her speech to the Central American Refugee Center. **Banafsheh Akhlaghi** (Northern California) was featured in a November 20 *San Jose Mercury News* article about Special Registration. **Melvin Bilal** (Washington, DC) and **Kamal Nawash** (Washington, DC) were featured in a November 20 *Associated Press* article about their run for elected office. **Julie Zimmer** (Minnesota/Dakotas) was featured in a November 20 *Associated Press* article about her clients who have had their deportation hearing postponed until March.

Alison Brown (Iowa/Nebraska) and **Vard Johnson** (Iowa/Nebraska) were quoted in a November 19 *Omaha World* article about reaching out to Latino voters. **Tarik Sultan** (Arizona) was quoted in a November 19 *Tucson Citizen* article about hiring undocumented workers. **Michael Ray** (Southern Florida) was quoted in a November 19 *Miami Herald* article about Massachusetts becoming the first state to overturn the legal barriers to gay marriage. **Steven Thal** (Minnesota/Dakotas) was quoted in a November 18 *Minneapolis Star-Tribune* article about the effects of the overhaul of the Board of Immigration Appeals (BIA). **Ben Casper** (Minnesota/Dakotas) and **Jennifer Prestholdt** (Minnesota/Dakotas) were quoted in a November 18 *Associated Press* article about a study commissioned by the American Bar Association that found that more immigrants are losing appeals since the restructuring of the BIA.

The *Miami Herald* quoted **Tammy Fox-Isicoff** (Southern Florida) in a November 17 article about BCIS's customer service 800 number and the poor information callers receive. **Christopher Helt** (Chicago) was quoted in a November 17 *Chicago Tribune* article about the crackdown on Muslim immigrants post September 11th. **Martha Hereford** (Missouri/Kansas), **Judy Bordeau** (Missouri/Kansas), and **Mira Mdivani** (Missouri/Kansas) were quoted in a November 17 *Business Journal of Kansas City* article about the Wal-Mart raid and the effect that it might have on other companies that use third party contractors.

Newsday quoted **Anne Pilsbury** (New York) in a November 16 question and answer article about immigration. **Laura Lichter** (Colorado) was quoted in a November 16 *San Diego Tribune* article about two brothers who were undocumented and have been deported to Mexico but have lived almost their entire lives in the U.S., and their town's campaign to bring them home. **Satnam Singh** (Washington, DC) was quoted in a November 16 *Virginian Pilot* article about an internet site that provides translation services. **Juli Gammon** (Michigan) was featured in a November 16 *Detroit News* article about People on the Move. **Arminda Kinzer Ferguson** (Mid-South) was quoted in a November 15 *Arkansas Democrat-Gazette* article about CLE immigration courses offered by the Arkansas Bar Association.

Beth Stickney (New England) was featured in a November 13 *Portland Press Herald* article about new programs that seek to help immigrants and refugees in Maine. **Socheat Chea** (Atlanta) was featured in a November 13 *Atlanta Journal-Constitution* article about his request to be removed from jury duty, which the judge granted while also ordering him to watch the proceedings. **Knox White** (Carolinas) was quoted in a November 13 *Los Angeles Times* article about the political shift in the South from a primarily Democratic stronghold to a Republican one.

The Palm Beach Post featured **Aileen Josephs** (Southern Florida) in a November 13 editorial about her teenage client who is a Guatemalan immigrant accused of killing her newborn baby. **Nancy-Jo Merritt** (Arizona) was quoted in a November 13 *Phoenix New-Times* article about her client who is a 32-year-old LPR son of a Vietnamese mother and African-American father who has been found deportable but the U.S. has no agreement with Vietnam allowing deportation of native Vietnamese. **Ms. Merritt** is arguing that her client derived American citizenship as the son of the unknown U.S. serviceman. **Melinda Basaran** (New Jersey), **Anayancy Housman** (New Jersey), and **Regis Fernandez** (New Jersey) were featured in a November 13 *The Record* article about the establishment of a toll-free number for immigration detainees in county jails to help them contact lawyers and outside aid.

The San Jose Mercury News featured **David Sheen** (Northern California) and **Michele Gee** (Santa Clara) in a November 12 question and answer article about immigration. **Carl Shusterman** (Southern California) was quoted in a November 12 *La Opinión* article about his

clients who are facing deportation. **Ron Russell** (Mid-South) was quoted in a November 12 *Louisville Courier-Journal* article about abuse of undocumented workers. **Elizabeth Ricci** (Central Florida) was quoted in a November 12 *Knight Ridder* article about immigration reform. *The Arizona Republic* quoted **Emilia Bañuelos** (Arizona) in a November 11 article about the prevalence of immigrant smuggling.

Ed Beshara (Central Florida) was quoted in a November 10 *Orlando Sentinel* article about the time-share industry. **Warren Leiden** (Northern California) was featured in a November 10 *Recorder* article about his immigration practice. **Jeff Summerlin-Long** (Carolinas) had an Op-ed on in-state tuition for immigrants published in the November 10 edition of the *News & Observer*. **Jorge Rivera** (Southern Florida) was quoted in a November 10 *Miami Herald* article about his client who is facing deportation.

Aileen Josephs (Southern Florida) was featured in a November 8 *Palm Beach Post* article about her teenage client who is a Guatemalan immigrant accused of killing her newborn baby. **Ms. Josephs** (Southern Florida) was also featured in a November 8 *Sun-Sentinel* article on the same topic.

American Medical News quoted **Carl Shusterman** (Southern California) and **Greg Siskind** (Mid-South) in a November 10 article about H-1B visas being cut by two-thirds for next year, creating uncertainty for international medical graduates and those hiring them. **Glenn Prior** (Washington State) was quoted in a November 7 *Atlanta Journal-Constitution* article about Pvt. Juan Escalante, an undocumented immigrant who enlisted in the Army and fought in Iraq. **John Miotke** (Central Florida) was quoted in a November 7 *St. Petersburg Times* article about his mentally disabled client who had recently become a citizen. **Cheryl Little** (Southern Florida) was quoted in a November 7 *Miami Herald* article about her client, Ernesto Joseph, whose age the DHS is trying to determine using x-rays of his wrists.

Carl Shusterman (Southern California) authored an article entitled "Strategies for Employing Foreign-Born Nurses," which was published in the November edition of *Surgical Services Management*. **Cindy J. Gornto** (Central Florida) was a guest on the October 23 *The Legal Hotline television show* in which she discussed recent legislation pertaining to U.S. immigration. **Amy Peck** (Iowa/Nebraska) was featured in the August/September 2003 *Today's Omaha Woman* and the *Burt County Plaindealer*.

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?

"J.C. Penney is not a port of entry."

--Christian Ramirez, director of the American Friends Service Committee's U.S.-Mexico Border Program, at a November 20 press conference that was held to protest the deportation of two Mexican nationals after they were questioned about an alleged shoplifting incident in J.C. Penney and reported to the immigration authorities by J.C. Penney employees. They were reportedly deported the same day, with no charges having been filed.

CONTRIBUTORS

Judith Golub, Senior Director of Advocacy and Public Affairs
Marshall Fitz, Associate Director of Advocacy
Danielle Polen, Legislative and Regulatory Affairs Associate
Joanna Carson, Business Immigration Associate
John Estrella, Advocacy 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

47AU2037