

WASHINGTON UPDATE

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Meet Your Members of Congress!

With the 109th Congress scheduled to begin on January 4, but with many Members returning to their districts/states until January 20, now is a great time to schedule meetings with your Senators and Representatives. Please contact the AILA Advocacy Department for details.

Mark your calendars: Thursday, March 17, is AILA's Lobby Day. We hope to see you then in Washington, D.C.

Looking Back and Looking Forward: Congress and the November Elections

The 108th Congress: The 108th Congress finally and officially ended in mid-December, long weeks after the official October adjournment date. The reasons for the delay: an inability during the fiscal year to appropriate funding for many of the federal agencies – thereby necessitating an omnibus budget bill, and stalled negotiations over the intelligence reform legislation. During December, President Bush finally signed into law the FY 2005 Consolidated Appropriations Act of 2005 (Pub. L. No. 108-447) and the Intelligence Reform Act and Terrorism Prevention Act of 2004 (Pub. L. No. 108-458). (See below for details on these two measures.)

During the 108th Congress, advocates focused on promoting several key issues including comprehensive immigration reform, the DREAM Act, AgJobs, and the Civil Liberties Restoration Act. Despite some positive movement on these key initiatives, none of these measures became law. (See AILA's Issue Papers for details on these and other priority issues.)

Importantly, however, no significant restrictionist proposals became law during the 108th Congress. These defeats were not due to the restrictionists' lack of effort. Representatives Tom Tancredo (R-CO), Steve King (R-IA), Dana Rohrabacher (R-CA), and others introduced ill-

conceived measures that would have, among other actions, prohibited the use of consular ID cards by U.S. financial institutions, stationed U.S. troops along our southern border, mandated that hospitals report undocumented immigrants who seek treatment, and implemented provisions of the CLEAR Act.

The November Elections: New members will be joining the Senate and the House, but some familiar faces will not be returning.

The Senate: As a result of the November elections, nine states (Colorado, Florida, Georgia, Illinois, Louisiana, North Carolina, Oklahoma, South Carolina, and South Dakota) elected new Senators, with Republicans controlling the Senate, 55 to 44 with one Independent. The new Senators, seven Republicans and two Democrats, are:

Richard Burr (R-NC)
Tim Coburn (R-OK)
Jim DeMint (R-SC)
Johnny Isakson (R-GA)
Mel Martinez (R-FL)

Barack Obama (D-IL)
Ken Salazar (D-CO)
John Thune (R-SD)
David Vitter (R-LA)

Especially significant were the election of three Senators, Mel Martinez, Barack Obama, and Ken Salazar, who are expected to play key roles on immigration issues. Richard Burr served in the House of Representatives from 1994-2004; Tim Coburn from 1994-2000; Jim DeMint from 1998-2004; Johnny Isakson from 1999 -2004; John Thune from 1996-2002; and David Vitter from 1999-2004. Prior to winning their Senate seats, Mel Martinez served President Bush as Secretary of the Department of Housing and Urban Development; Barak Obama was a state senator from Chicago from 1996-2004; and Ken Salazar was Colorado Attorney General from 1998-2004.

Former Minority Leader, Senator Tom Daschle (D-SD) is not returning to the Senate, having lost his re-election bid to incoming Senator John Thune. We will sorely miss Senator Daschle as the key sponsor and supporter of much-needed immigration measures. Others retired from the Senate at the end of the 108th Cong-CO), John Edwards (D-NC), Peter Fitzgerald (R-IL), Bob Graham (D-FL), Ernest Hollings (D-SC), Zell Miller (D-GA), and Don Nickles (R-OK).

The House of Representatives: The House's new ratio, 232 Republicans, 202 Democrats, and one Independent, reflects the Republican pick-up of four seats in that body. Twenty-three new House Republican and 14 new House Democratic Members came from 20 states: California, Colorado, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Michigan, Missouri, Nebraska, New York, North Carolina, Oklahoma, Pennsylvania, South Carolina, Texas, Virginia, Washington, and Wisconsin. They are:

John Barrow (D-GA)
Melissa Bean (D-IL)
Dan Boren (D-OK)
Russ Carnahan (D-MO)
Emanuel Cleaver (D-MO)
Mike Conaway (R-TX)
Jim Costa (D-CA)
Henry Cuellar (D-TX)
Geoff Davis (R-KY)
Randy Kuhl (R-NY)

Charlie Dent (R-PA)
Thelma Drake (R-VA)
Mike Fitzpatrick (R-PA)
Jeff Fortenberry (R-NE)
Virginia Fox (R-NC)
Louie Gohmert (R-TX)
Al Green (D-TX)
Bob Inglis (R-SC)
Bobby Jindal (R-LA)
Dan Lipinski (D-IL)

Dan Lungren (R-CA)
Connie Mack IV (R-FL)
Kenny Marchant (R-TX)
Michael McCaul (R-TX)
Patrick McHenry (R-NC)
Cathy McMorris (R-WA)
Gwen Moore (D-WI)
Mike Sodrel (R-IN)

Ted Poe (R-TX)
Tom Price (R-GA)
Dave Reichert (R-WA)
John Salazar (D-CO)
Debbie Wasserman Schultz (D-FL)
Allyson Schwartz (D-PA)
Joe Schwartz (R-MI)

Many familiar faces will not be returning to the 109th Congress including Martin Frost (D-TX) who lost to Representative Pete Sessions (R-TX); outgoing Congressional Hispanic Caucus Chair Ciro Rodriguez (D-TX) who lost in a primary to Henry Cuellar – who then won in the general election; and Richard Gephardt (D-MO) who retired.

The 109th Congress: The new Congress is expected to address immigration-related issues almost as soon as the session begins, with Representative Jim Sensenbrenner (R-WI) having pledged to reintroduce some of the “poison-pill” immigration provisions that were not included in the new intelligence reform law. These measures were not included for good reason: They do nothing to enhance our security, do not reflect the recommendations made by the 9/11 Commission, and would be bad law. (For more details please go to the article later in this *Update*.) On a more positive note, Congress also is expected to address immigration reform, given President Bush’s recent call for reform and bipartisan agreement about the need for such reform. Bipartisan support for both AgJobs and the DREAM Act suggests renewed attention in the new Congress to these two measures. In addition, advocates will be urging Congress to address the need to restore civil liberties and support initiatives such as the Civil Liberties Restoration Act which was introduced in the 108th Congress.

Organization of the 109th Congress: While much remains the same with regard to the organization of the 109th Congress, changes have and will take place. Senator Bill Frist (R-TN) remains the Senate Majority Leader. The retirement of Don Nickles (R-OK) has led to changes in Senate leadership: Senator Mitch McConnell (R-KY) has assumed the role of Majority Whip and Senator Rick Santorum (R-PA) is the Republican Conference Chair. On the Democratic side, Senator Harry Reid (R-NV) has moved up and replaced Tom Daschle as Minority Leader and Senator Richard Durbin (D-IL) is the new Minority Whip.

Senator Arlen Specter (R-PA) is the new chair of the Senate Judiciary Committee, replacing Orrin Hatch (R-UT) who stepped down due to GOP term-limit rules. Senator Saxby Chambliss (R-CA), chair in the 108th Congress of the Senate Judiciary Subcommittee on Immigration, Border Security and Claims, has left the Judiciary Committee to chair the Senate Agriculture Committee. His replacement has not yet been named. In addition, the Senate Governmental Affairs Committee has been renamed the Homeland/Governmental Affairs Committee and is again to be chaired by Senator Susan Collins (R-ME). During last session’s debate over the Senate Intelligence Reform bill, the Senate voted to retain the Judiciary Committee’s jurisdiction over immigration, rather than to move jurisdiction to the Governmental Affairs Committee.

Much of the House Leadership will return along with Speaker Dennis Hastert (R-IL) and Majority Leader Tom DeLay (R-TX). Joining them with leadership roles are Majority Whip Representative Roy Blunt (R-MO) and Republican Conference Chair Representative Deborah Pryce (R-OH). Representative Nancy Pelosi (D-CA) returns as Minority Leader, Representative Steny Hoyer (D-MD) as Minority Whip, and Representative Robert Menendez (D-NJ) as Democratic Caucus Chair. Representative Jim Sensenbrenner (R-WI) returns to chair the House Judiciary Committee. Representative Christopher Cox (R-CA) returns to chair the Select Committee on Homeland Security. Republican leaders must decide whether to give full legislative authority to this panel. Speaker Hastert supports making this panel permanent, but faces opposition from some committee chairs, including Representative Sensenbrenner, because they would lose jurisdiction to the new committee.

President Signs Intelligence Bill: Restrictive Immigration Proposals Expected at Outset of 109th Congress

President Bush, on December 17, signed the Intelligence Reform and Terrorism Prevention Act of 2004 (Pub. L. No. 108-458, S. 2845). After a protracted and often acrimonious conference between House and Senate designees to reconcile the differences between the House and Senate versions of the bill, a compromise agreement was finally reached and both chambers passed the conference report in early December. The 600-plus-page bill that President Bush signed into law includes some 43 immigration-related provisions. These provisions:

- Test advanced technology (including sensors, video, and unmanned aerial vehicles) that would secure our northern border;
- Require the Department of Homeland Security (DHS) to devise plans for systemic surveillance of the southwest border by remotely piloted aircraft;
- Increase the number of full-time border patrol agents by 2,000 per year for five years;
- Increase the number of full-time Immigration and Customs Enforcement Investigators by 800 per year for five years;
- Increase the number of detention beds available to DHS for immigration detention and removal by 8,000 a year for five years;
- Strengthen visa application requirements;
- Criminalize alien smuggling;
- Make receipt of military-type training from designated terrorist organizations a deportable offense;
- Mandate a GAO study on potential weaknesses in the U.S. asylum system;
- Make inadmissible and deportable any alien who commits acts of torture, extrajudicial killing, or atrocities abroad;
- Establish counterterrorist travel intelligence strategy;
- Establish the Human Smuggling and Trafficking Center;
- Authorize funding for an immigration security initiative;
- Require DHS to develop an integrated screening system;
- Require DHS to develop a biometric entry and exit data system;
- Establish minimum federal standards for birth certificates and driver's licenses;
- Enhance the security of social security cards;
- Establish a visa and passport security program in the State Department; and
- Require DHS to establish minimum ID standards to board commercial aircraft and make recommendations for ID standards that would allow access to other federal facilities.

Fortunately, sustained advocacy by countless organizations and individuals nationwide helped ensure that the law did not contain any of the most egregious immigration-related measures from the highly partisan House-passed bill (H.R. 10). While many of the House bill's provisions were relatively non-controversial, a handful of provisions directly attacked fundamental rights and liberties of noncitizens in this country. Although advocates succeeded in modifying or removing these provisions from the measure ultimately signed into law, proponents have thrown down the gauntlet, promising to do everything in their power to see some, if not all, enacted in the 109th Congress. The following is a brief analysis of these provisions.

Ban on Acceptance of Consular Identification Cards: This provision would restrict the documents foreign nationals in the U.S. could use to establish their identity to a Federal employee. Only an unexpired foreign government-issued passport or a domestically-issued document that the Secretary of DHS designates as reliable for identification purposes would be accepted. This would exclude the use of foreign-issued birth certificates, driver's licenses, national ID cards, voter registration documents, and many other identification documents generally used by the foreign-born to prove identity.

Preventing noncitizens from proving their identity undermines national security and wastes law enforcement resources. It prevents immigrants who pose no threat to national security from identifying themselves for legitimate purposes. Consular IDs serve a security purpose in that they help people who can't otherwise obtain legal identification do so, instead of resorting to the black market for fake documents.

The GAO reports that 1,159 U.S. police departments, 363 cities, 153 counties, and 160 financial institutions recognize the Mexican consular identification card because communities are safer when immigrants can identify themselves.

Broad Expansion of Expedited Removal: This provision would broadly expand the expedited removal regime to apply mandatorily to all individuals who cannot demonstrate 5 years of continuous physical presence in the U.S. Expedited removal, as courts have previously held, is basically short hand for no due process – no access to counsel, no right to contact family members, no opportunity to challenge the detention or the basis for a decision to deport. Expedited removal, even in its current limited form, serves to undermine rather than enhance national security. Whisking someone out of the country who may pose a security risk negates the intelligence potential that individual may offer to the law enforcement community. Rapid removal only gives them another opportunity to do us harm.

The Administration has chosen to exercise its current statutory authority very narrowly because of constitutional and basic fairness concerns. The main effect of this provision would be to divert scarce government resources to remove foreign nationals with well-established ties to U.S. communities. Proving 5 years of physical presence during an on-the-spot encounter is a daunting if not impossible task for someone who has no opportunity to collect and present evidence about residence. This expansion will eliminate due process for potentially millions of individuals in this country and will have particularly harsh consequences for victims of human trafficking and other violent crimes as well as for battered immigrant women.

Heightened Standards for Asylum: During conference negotiations, House Republican conferees offered a number of proposals that would heighten the standard an asylum applicant would have to meet. They especially supported a proposal that would require all asylum applicants to prove that one of the enumerated grounds was the "central reason" for their persecution, and would allow genuine refugees to be denied asylum based on: their "demeanor," any alleged

inconsistency with a prior statement made at any time to any U.S. government official, the fact that the State Department has not documented the problems they face, or the fact that they cannot submit corroborating evidence.

Terrorists, people who have persecuted others, people who have committed serious non-political crimes abroad, and people who pose a danger to the security of our country already are excluded from both asylum and withholding of removal. This proposal therefore would not enhance our security. Rather, it would deny asylum to people who cannot prove the central motive of their persecutor, cannot produce corroborating evidence of their account, or whose demeanor is inconsistent with an immigration judge's preconceived expectations.

Proving motive is already a difficult exercise for many fleeing persecution. To require individuals to establish the centrality of one motive above potentially several motives would be impose a nearly insurmountable standard of proof. The "demeanor" of a person who has suffered torture or persecution repeatedly has been found to be a poor indicator of credibility. Victims of trauma often have a "flat" affect, and find it difficult to make eye contact or discuss the details of abuse. Demeanor often is also culture-specific: avoiding looking one's interlocutor in the eye, particularly if the interlocutor is an authority figure, is a sign of respect.

An asylum applicant may be unable to produce corroborating evidence for reasons other than the fact that the applicant "does not have the evidence or cannot obtain the evidence without departing the United States." An applicant, for example, may be unable to obtain documentation from the persecuting government without endangering his own safety or that of family members back home who would have to try to obtain such documentation for him.

Suspension of Habeas and Elimination of Temporary Stays: This provision would explicitly suspend the "Great Writ" of habeas corpus for the first time since the Civil War. It would limit all judicial review of detention and removal orders to one petition for review to the federal court of appeals. Those ineligible for such review would be barred from any review in federal court. This provision also would reduce the scope of any remaining federal court review to an extremely narrow and possibly unconstitutional standard that would allow courts to consider only "pure questions of law" or constitutional claims. Finally, this provision would eliminate temporary stays of removal pending federal court review in all immigration cases. (The only means for a federal court to stop an immigrant's removal would be through a permanent injunction, the legal standard of which is higher than the standard for actually winning the case as a whole).

Examples of claims that would be explicitly barred from any federal court review include some claims under the Convention Against Torture; claims for discretionary humanitarian relief (e.g. a noncitizen father of a severely disabled U.S. citizen child who is the child's sole caregiver); some challenges to detention; and claims involving criminal convictions, including cases that occurred years ago involving permanent residents who came to the U.S. at an early age.

Further court-stripping is controversial, has not been subject to any congressional hearings, is extraneous to the 9/11 Commission's recommendations, and will not make us safer. These proposed changes may well be unconstitutional and would certainly be challenged in the federal courts, leading to years of unnecessary litigation and to the mass deportation of people who would be deported before the courts could rule on their claims. Such draconian measures have nothing to do with enhancing our security and were certainly not recommended by the 9/11 Commission.

The elimination of temporary stays of removal pending judicial review would have the absurd and tragic result of sending asylum seekers back to countries where they may be killed or

persecuted, even though they would later win their cases once the court had the opportunity to review their claim. Moreover, this measure would break up U.S. families by deporting an immigrant parent while her case was being appealed—only to have a federal court later order her return. Asylum seekers and other immigrants who appeal to the federal courts are challenging the government’s decision to deport them. By preventing the courts from staying their deportation pending review of that decision, this provision makes meaningless even the constricted rights of appeal that would otherwise remain under this section.

Expansion of Bars to Withholding of Removal: This provision would make withholding of removal unavailable to, among others:

- Individuals who have never engaged in terrorist activities (and their spouses and children) but who are merely representatives or members;
- Members of a group (and their spouses and children) who did not even know that the group was a terrorist organization; and
- Individuals engaged in purely political expression.

For instance, a long-term lawful permanent resident may be deportable under the proposed language for “endorsing a terrorist organization.” Because the language defining a “terrorist organization” is so broad, someone who endorses certain groups based solely on ideology and not activity would be deportable and barred from withholding of removal under this provision.

This provision does not make us safer, rather, it diminishes our system of justice by enshrining into law the controversial practice of “rendering” people to countries that practice torture solely on the basis of promises from those countries that they will not torture. This authority would impact a wide range of individuals from asylum applicants who are statutorily barred from asylum to long-term lawful permanent residents deportable for peaceful activity or ideology. Such individuals would be placed in grave danger by being deported to countries against which they have expressed political opposition.

Indefinite Detention for Individuals Ineligible for Withholding: This provision applies to individuals found by U.S. immigration judges to be in danger of torture -- who, as a result, cannot be deported under the Convention Against Torture -- but who have criminal convictions, have persecuted others, or present a security risk. It requires the U.S. to seek “diplomatic assurances” from the torturing country that the individual will not be tortured. If the person still cannot be returned to their home country, then Section 3032 requires that he be jailed indefinitely without any individualized determination of the need for detention.

Neither Supreme Court precedent, the DHS regulations, nor the INA require the release of terrorists or other individuals who pose a continuing danger to the community. Yet, this provision could subject individuals to indefinite detention even for nonviolent crimes such as theft offenses. This provision undermines the U.S. promise to comply with the Convention Against Torture by encouraging immigration authorities to return people found to be in danger of torture to the very country that is likely to torture them. This diminished commitment to the international torture convention will make U.S. citizens less safe at home and abroad. The resentment against the U.S. created by the Abu Ghraib scandal makes it even more important that we formally embrace, not reject, our commitment to protect against torture.

Removal to Countries with Non-Consenting or Non-Functioning Governments: This provision would allow noncitizens to be deported to countries with no functioning government or any other country that will accept them, unless such countries “physically prevent” their entry into the

country. It also would allow DHS broad latitude to bypass the “default” country for deportation and turn immediately to “any country whose government will accept” the foreign national. This could include a country that was never even mentioned during the person’s immigration court proceedings.

This proposal would turn deportation into a chaotic and potentially violent process. It would allow immigrants to be dumped in countries where the lack of a functioning government would expose them to gross human rights abuses, in violation of basic principles of international law. It also would invite countries unwilling to accept deportees to resort to physical violence against them.

This provision has nothing to do with making us safer; rather, it simply seeks to preempt a pending Supreme Court decision – *Jama v. INS*. Application of this provision is not limited to individuals who pose a terror threat and it would allow the U.S. to deport people to countries that cannot assure even the most basic human rights protections. Perhaps most troubling of all, it would violate refugee and torture conventions by allowing U.S. immigration officers to deport people without notice of the country to which they would be sent. As a result, individuals fearing torture or persecution would have no forum or opportunity to raise claims challenging their deportations.

Expansion of Grounds of Inadmissibility and Removability: The proposed expansion of inadmissibility and removability grounds would make it a deportable offense to:

- “Endorse terrorist activity.” Terrorist activity is broadly defined as virtually any use of a weapon or threat to use a weapon against person or property.
- Urge support for a “terrorist organization,” even more broadly defined as any two or more people who have ever engaged in such activity.
- Support or be a member of any “terrorist organization” even where the individual can prove that his activities did not further any terrorist activity whatsoever.

This proposal also creates a new ground of inadmissibility and removal for military-type training with terrorist organizations regardless of whether they were designated as such at the time of training.

These provisions impose “guilt by association,” rendering people deportable for wholly lawful and peaceful activity if such activity supports any group that has engaged in the use of weapons or has threatened to use weapons. For instance, anyone who has given money to a hospital or school that is associated in any way with a group that uses guns (or threatens to use guns), would be deportable. The proposed measures would apply retroactively and would render deportable individuals who provided support, whether or not the group was a designated terrorist organization.

Elimination of the requirement that the group be a “designated” terrorist organization vitiates the agreement brokered during PATRIOT Act debate. Under the PATRIOT Act, a foreign national who supports a designated terrorist group is automatically deportable. A foreign national who supports a non-designated group that has engaged in “terrorism” (including any use or threat to use a weapon) also is deportable but ONLY if he supported the group’s “terrorist activity.” Under this proposal, the individual is deportable unless he can prove by clear and convincing evidence that he neither knew nor should have known that the organization is a “terrorist organization.”

Linking Driver's License Eligibility to Immigration Status: This proposal would establish federal standards for driver's licenses and state-issued ID cards with which states must comply or they will not be accepted as proof of identity by Federal agencies. This set of provisions usurps the states' authority to set eligibility requirements and imposes a long list of "minimum" federal standards, including restrictions on immigrants' access to driver's licenses.

Preventing immigrants from obtaining driver's licenses undermines national security by pushing people into the shadows and fueling the black market for fraudulent identification documents. More importantly, it is clear from the 9/11 Commission and Terrorist Travel staff report that the proposed restrictions would not have prevented a single hijacker from obtaining a driver's license or boarding a plane:

- The staff report correctly points out that some of the hijackers were mistakenly issued valid visas or lawfully admitted to the U.S. The rest were here legally. All therefore had the immigration documents necessary to prove legal immigration status and that status would have been verified by federal authorities if checked.
- Five of the terrorists fraudulently obtained their licenses by falsely claiming state residency, which is different from legal residency for immigration purposes. States have tightened requirements for proof of state residency to correct this deficiency in their laws.
- The terrorists did not need U.S.-issued driver's licenses to board the planes on September 11; they had foreign passports that allowed them to board airplanes. Use of foreign passports to board airplanes would continue under H.R. 10.
- Would-be terrorists would have an easy time circumventing the requirements of H.R. 10 because those requirements only apply to certain alien status categories, and not to others. Terrorists would be able to evade its measures by acting before their status expires, or by avoiding the "nonimmigrant" status categories altogether.

Prohibit All Judicial Review of Visa Revocation Decisions: The intelligence bill that President Bush signed into law includes a provision making visa revocation a ground of removal and prohibiting judicial review of a revocation decision unless the revocation provided the sole grounds for removal. We expect that proponents of additional immigration-related restrictions will attempt to broaden this provision and prohibit all judicial review of a revocation decision.

FY 2005 Appropriations Act Includes H-1B and L-1 Reforms

The President, on December 8, signed into law the Consolidated Appropriations Act of 2005 (Pub. L. No. 108-447, H.R. 4818). The new law contains several immigration-related measures, most notably, the L-1 Visa (Intracompany Transferee) Reform Act of 2004 and the H-1B Visa Reform Act of 2004.

This new law places restrictions on the L visa program that will target the L-1B visa holders and prevent them from being primarily stationed at the worksite of a third party in cases where they would not be controlled and supervised by the petitioning employer, or if their placement at the third party site is part of an arrangement to provide labor for the third party rather than in connection with their duties involving specialized knowledge specific to the petitioning employer. Such tailored reform clarifies the appropriate use of the L visa program, yet does not hinder the program's ability to support the U.S. economy. The new L-1 visa reform also will:

- Remove the INA provision permitting the six-month work requirement for L-1 blanket petitions, thereby requiring that all L-1 applicants have worked for the employer abroad for at least one year.
- 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.

The modifications to the L-1 program included in the new law derive from S. 1635, the “L-1 visa (Intracompany Transferee) Reform Act,” introduced by Senator Saxby Chambliss (R-GA) which the Senate Judiciary Committee previously had approved.

The L visa came under severe scrutiny in the 108th Congress, with several bills introduced that would have dramatically restricted this visa category. With the exception of S. 1635, these bills were overreaching in their reform of the L-1 visa program and many of them confused the L visa with the H-1B visa. If enacted, these bills would have halted the expedient transfer of international personnel so necessary in today’s economy and would have stifled a job-creating visa that has operated with a nearly unblemished record for over 30 years.

The amendments to the H-1B program made by the new law include a permanent exemption from the H-1B cap for up to 20,000 graduates of U.S. universities who have earned a Master’s or higher degree. Without such relief, U.S. employers who lost their access to the H-1B program the very first day of the fiscal year due to the category’s oversubscription would have faced an H-1B visa blackout for the entire current year fiscal year. In exchange for this limited relief from the cap, the new law includes the following fees and restrictions:

- Makes permanent and increases the H-1B training fee to \$1,500. The fee is cut in half for employers with less than 25 full-time employees. This fee went into effect upon enactment.
- Reinstates the non-displacement and recruitment attestations for H-1B-dependent employers, which expired at the end of fiscal year (FY) 2003.
- Increases the prevailing wage requirement from 95% to 100%. The new law also mandates that where the DOL uses or makes available to employers a governmental survey to determine prevailing wage, such survey shall provide four levels of wages commensurate with experience, education, and the level of supervision. If a two-level wage survey is used, this section provides a formula for calculating the two additional intermediate levels.
- Reinstates and makes permanent the ability of DOL to initiate an investigation of an employer.

In addition to the modification of the H and L visa programs, the new law subjects both visa categories to an additional \$500 “fraud detection and prevention fee.” This fee is in addition to other fees and applies to employers filing either an initial petition for an H-1B or L visa, a change of status or change of employer petition. A \$500 fraud fee will also be charged for an alien filing a visa application abroad for an L blanket petition. The fee, which will go into effect on March 8, 2005, will be split among the Department of State, Department of Homeland Security and Department of Labor in order to fund their anti-fraud efforts.

While the limited exemption from the cap provides some relief from the restrictive H-1B cap, this fix is clearly insufficient to meet the demands for foreign professionals. As our economy continues to improve, U.S. employers will need professionals with cutting edge knowledge and skills who graduate from U.S. universities, as well as professionals with the ability to tap into new markets that enable U.S. businesses to expand and grow. In addition, shortages in specific

regions across our country in professions such as teaching, medicine, and dentistry will cause U.S. employers to look to the H-1B program to fill professional positions that would otherwise remain vacant.

FY 2005 Appropriations Act Eliminates 5,000 Cap on Indochinese Parolee Adjustments

As reported above, the fiscal year (FY) 2005 omnibus spending package (Pub. L. No. 108-447, H.R. 4818) contains various immigration-related provisions scattered throughout its 658 pages, including the provisions affecting the L-1 and H-1B visa programs. Another immigration-related provision included in the new law is found at Division D, Title V, § 534(m). This provision amends Section 586 of Pub. L. No. 106-429, which provides for the adjustment of status to that of lawful permanent resident for 5,000 eligible natives or citizens of Vietnam, Cambodia, and Laos who were paroled into the United States following the Vietnam War and who have remained in an indefinite immigration status ever since.

The legislative history of Section 586 contains references to Congress's intention to consider expanding the 5,000-adjustment cap, if necessary, to accommodate otherwise eligible aliens, through future legislation. (See H.R. Conf. Rep. 106-997, at 106 (2000)). Indeed, throughout the legislative process and subsequent rulemaking process, non-governmental organizations involved with the potentially eligible groups stated that the total number of aliens who would be eligible for adjustment of status under section 586 far exceeds the 5,000 cap. The amendments to Section 586 contained in the FY 2005 spending package eliminate the cap and make several additional technical changes to the section.

A final rule establishing eligibility requirements for adjustment of status under Section 586 of Public Law 106-429 and discussing the former INS policy for tracking applications received over and above the (now obsolete) 5,000 cap was published at 67 Fed. Reg. 78667 (Dec. 26, 2002).

President Signs Bill to Extend J Waiver Program for Physicians

President Bush, on December 3, signed legislation that extends and modifies the "Conrad 30" J waiver program for foreign-born physicians (S. 2302, Pub. L. No. 108-441). 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 in 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 new law extends the program for another two years, until June 1, 2006.

Pub. L. No. 108-441 makes several important changes to the J waiver program. First, it specifies that physicians who are sponsored for a waiver by either a federal or state agency are exempt from the H-1B cap. In addition, the bill allows five of each state's 30 waivers to be issued to doctors who 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 practice in facilities that serve patients who reside in areas designated by the Secretary as having a shortage of health care professionals. Finally, the measure permits foreign doctors receiving a waiver to work in medically-underserved areas in either primary care or specialty medicine. Under current law, only state agencies and the Veteran's Administration are permitted to sponsor specialists. To request a waiver for a specialist, however, the interested agency would be required to demonstrate

a shortage of doctors able to provide the appropriate medical specialty in the designated geographical area.

President Signs Bill to Amend, Extend Irish Peace Process Cultural and Training Program Act

President Bush, on December 10, signed legislation to amend and extend the Irish Peace Process Cultural and Training Program Act of 1998 (IPPCTPA). The program allows certain young adults who live in disadvantaged areas of Northern Ireland and designated border counties of Ireland that were suffering from sectarian violence and high unemployment to enter the United States to develop job skills and conflict resolution abilities “in a diverse, cooperative, peaceful, and prosperous environment,” so that they might return to their homes “better able to contribute toward economic regeneration and the Irish peace process.” Up to 4,000 qualifying aliens (and their spouses and minor children) may be admitted each year and may remain in the U.S. for two years (prior to passage of the new law, participants could remain in the U.S. for up to three years). The program was initially set to sunset on October 1, 2005. Legislation in the 107th Congress extended the program until October 1, 2006.

The new law (Pub. L. No. 108-449, H.R. 2655) extends the program for two years, until October 1, 2008. It also makes a number of changes to the program, designed mainly to ensure that aliens granted admission are truly the economically disadvantaged young adults the program was designed to help. These changes include requirements that program participants not have degrees from a higher education institution, that they be at least 21 years of age (formerly, individuals were eligible to participate at age 18), that they be nationals of the United Kingdom or the Republic of Ireland, and that they have been unemployed for at least one year and resident in Northern Ireland or the designated border counties for at least 18 months.

The new law also makes changes to the program to help ensure that program participants return to Ireland to foster economic development and peace. As noted above, the new measure reduces the duration of the visa term from three years to two years, and also requires that aliens admitted under the program return home for two years before they can apply for an immigrant visa, permanent residence, or another nonimmigrant visa. The Secretary of Homeland Security may waive the foreign residence requirement if: (1) the alien’s departure from the United States would impose exceptional hardship upon the alien’s U.S. citizen or lawfully resident spouse or child, or (2) the admission of the alien is in the public interest or the national interest of the United States.

The House passed the measure by voice vote under suspension of the rules on October 7. The Senate amended the House bill and passed the amended version by unanimous consent on November 19. The House concurred in the Senate amendments and cleared the measure for the President on November 20.

Recently Introduced Legislation

The following briefly describes newly introduced, immigration-related legislation, in reverse chronological order and by chamber. These bills died with the end of the 108th Congress, as did all other measures that were not enacted into law, and must be reintroduced during the 109th Congress in order to move forward.

House Legislation

H.R. 5413, introduced on November 19 by Representative Bill Pascrell, Jr. (D-NJ), would amend the INA with the goal of providing greater protections to domestic and foreign workers under the H-1B nonimmigrant worker program. Among other things, the bill would amend the wage determination process, extend the time period for non-displacement, centralize enforcement functions, and create a private right of action for persons harmed by an employer's violation of the program requirements.

H.R. 5402, introduced on November 19 by Representative Michael Honda (D-CA), would provide for immigration relief in the case of certain immigrants who are innocent victims of immigration fraud.

H.R. 5379, introduced on November 17 by Representative Bart Stupak (D-MI), would amend the INA to limit the timing of issuance of H-2B visas during a fiscal year, so that not more than one-third of the total available visas may be issued during the first four months of the fiscal year, and not more than two-thirds of such number may be issued during the first eight months.

Senate Legislation

S. 3031, the Intercountry Adoption Reform Act of 2004, introduced on December 7 by Senator Don Nickles (R-OK), would reform the intercountry adoption process by, among other things, establishing an Office of Intercountry Adoptions, amending the automatic citizenship provisions of INA § 320, amending the INA's definition of "adoptable child," and providing for other immigration-related changes in the intercountry adoption process.

S. 3006, the HRIFA Improvement Act of 2004, introduced on November 18 by Senator Bob Graham (D-FL), would make various amendments to the Haitian Refugee Immigration Fairness Act of 1998.

Recent Rulemaking and Other Activity in the Federal Agencies: Highlight on PERM

Federal agencies have issued a variety of new regulations and notices in recent weeks, the most notable of these being the long awaited final "PERM" regulation, which alters the permanent labor certification process. A brief summary of these items follows.

The Final PERM Regulation

The Final PERM regulation. Two and one-half years after the proposed regulation was published, and many years after the concept was first discussed, the Department of Labor published on December 27, 2004, the final regulation implementing its Program Electronic Review Management (PERM) system. In an environment of decreasing budgets and increasing backlogs for the cumbersome permanent labor certification program, the Department needed to find a streamlined way to process applications while protecting against fraud in the program. PERM was the result.

The proposed regulation that was published on May 6, 2002, was highly troubling, attempting to remove from the process the attributes that maintained some semblance of the flexibility that exists in the real world. Among other things, the proposed regulation tried to establish a rigid reliance on Specific Vocational Preparation (SVP) levels, with no allowance for business necessity, and to eliminate entirely the ability to use experience gained with the same or a related

employer. After protest from AILA, the business community, and others, the Department of Labor came to understand the importance of these concepts to the process. The final regulation retains business necessity and, although in part abandoning long-standing criteria for use of experience gained with the same or a related employer, retains many of the concepts underlying the development of those criteria.

The 97-page final regulation adopts a number of the suggestions submitted by AILA in its comments, but rejects some of the innovations proposed in the comment process. The final regulation also contains some troubling provisions, such as provisions relating to the operation of SVP levels and Labor Department commentary in the Supplementary Information section regarding payment of labor certification expenses.

The final rule is effective March 28, 2005, thus providing a 90-day implementation period. (69 FR 77325, 12/27/04, see AILA InfoNet Doc. No. 04122312).

Department of Homeland Security

DHS Announces Expansion of the Basic Pilot Program to All 50 States and D.C. U.S. Citizenship and Immigration Services (USCIS), on December 20, published a notice in the Federal Register announcing the expansion of the Basic Pilot Program to all 50 states and the District of Columbia. As background, the USCIS currently operates a pilot program (the Basic Pilot Program) which allows employers to get automated confirmation of a newly hired employee's work authorization after an Employment Eligibility Verification form (Form I-9) has been completed. This pilot program was offered to employers in six states. USCIS was directed by Congress to expand it to all 50 states and the District of Columbia by December 1, 2004, and this notice announces that expansion. The notice also announces that the USCIS is offering Web-Based Access for the Basic Pilot Program to all employers who volunteer to participate. The Web-Based Access method became available to current and new users beginning July 6, 2004. (69 FR 75997, 12/20/04, see AILA InfoNet Doc. No. 04122064).

DHS Proposes to Raise Fees for Appeals and Motions to Reopen or Reconsider. A November 30 USCIS rule proposed raising the fee for filing appeals of, and motions to reopen or reconsider, any decision under the immigration laws in any type of proceeding other than those described at 8 CFR 1003.1(b), over which the Board of Immigration Appeals (BIA) has appellate jurisdiction. This proposed rule applies to fees for appeals and motions relating to the types of cases under the jurisdiction of the Administrative Appeals Office (AAO). The AAO is an appellate office of USCIS. The BIA remains a component of the Justice Department, and has appellate jurisdiction over the orders of immigration judges, denials of relative immigrant visa petitions (Form I-130), and decisions involving administrative fines and penalties. Appeals from denials of all other types of applications and petitions, and any subsequently filed motions, are under the jurisdiction of the AAO. According to the proposed rule's preamble, the fees are being raised from \$110 to \$385 to recover the full costs associated with the processing of an appeal or motion to reopen or motion to reconsider. Written comments must be submitted by December 30. (69 FR 69546, 11/30/04, see AILA InfoNet Doc. No. 04113060).

DHS Proposes to Lift Regulatory Response Times for RFEs and NOIDs. A November 30 USCIS proposed rule would amend Department of Homeland Security (DHS) regulations by removing the absolute requirement for, and the fixed regulatory time limitations on responses to, a USCIS-issued Request for Evidence (RFE) or Notice of Intent to Deny (NOID). According to the rule's preamble, these changes will enable USCIS to set an appropriate deadline for responding to an RFE or NOID, specific to the type of case, benefit category, or classification, and "thus improve

the process of adjudication of applications and petitions by reducing the time a case is held awaiting evidence, and by reducing average case processing time.” In addition, the rule also replaces references to the Immigration and Naturalization Service with references to USCIS, and removes obsolete regulatory language related to the Replenishment Agricultural Worker (RAW) program under section 210A of the INA, which was repealed by Public Law 103-416. The rule further removes references to the use of qualified designated entities for filing of applications for adjustment of status in the Seasonal Agricultural Workers (SAW) and legalization programs under section 210 and 245A of the Act. Written comments are due by January 31, 2005. (69 FR 69549, 11/30/04, see AILA InfoNet Doc. No. 04113061).

DHS Publishes Final Rule on US-Canada Agreement on Asylum Claims Made in Transit and at Land Ports of Entry. A November 29 DHS final rule codified specific terms of an agreement between the United States and Canada that permits the respective governments to manage which government decides certain aliens’ requests for protection from persecution or torture pursuant to domestic implementation of international treaty obligations. The rule establishes USCIS asylum officers’ authority to make threshold determinations concerning applicability of this agreement in the expedited removal context. In addition, the rule codifies the existing definitions of “credible fear of persecution” and “credible fear of torture” without altering those definitions. The final rule is effective December 29, 2004. (69 FR 69479, 11/29/04, see AILA InfoNet Doc. No. 04112966).

USCIS Publishes Notice on H-1B Processing in Light of the FY05 Cap Being Reached. A November 23 USCIS notice explained how the DHS, through USCIS, will process H-1B petitions for new employment for fiscal year (FY) 2005 now that it is clear that the demand for H-1B workers will exceed the statutory numerical limit for H-1B nonimmigrant aliens for FY 2005. The notice took effect November 23, 2004. (69 FR 68154 11/23/04, see AILA InfoNet Doc. No. 04112362).

USCIS Publishes Notice on Direct Mail Filing with the Chicago Lockbox, Effective 12/1/04. The USCIS, in a November 19 Federal Register notice, announced the expansion of its Direct Mail Program to provide that certain filings of Form I-485, Application to Register Permanent Residence or Adjust Status; Form I-765, Application for Employment Authorization; and Form I-131, Application for Travel Document, be filed at a designated Chicago, Illinois lockbox facility for initial processing. The USCIS intends for this Direct Mail rollout to be completed in a two-phased approach. Phase One will begin on December 1, 2004 and will affect certain aliens filing Form I-485, Form I-765, and Form I-131 who live in the states of Alabama, Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, West Virginia, Wisconsin, Wyoming, as well as the District of Columbia, Guam, Puerto Rico, and the Virgin Islands of the United States. Phase Two will begin on April 1, 2005 and will affect certain aliens filing Form I-485, Form I-765, and Form I-131 residing in: Alaska, California, Idaho, Iowa, Kansas, Maryland, Missouri, Montana, Nebraska, New Mexico, Oklahoma, Oregon, Texas, and Washington. The notice took effect on December 1, 2004. (69 FR 67751, 11/19/04, see AILA InfoNet Doc. No. 04111961).

Department of Labor

DOL Publishes Proposed Rule on the Service Contract Act Wage Determination On-Line Request Process. The Department of Labor (DOL) proposed amending two regulations to allow

full implementation of the Wage Determinations OnLine (WDOL) Internet website, reflect changes in a title and various statutory citations, as well as update a list of Wage and Hour Division (WHD) Regional Offices. Comments are due on or before January 18, 2005. (69 FR 75407, 12/16/04, see AILA InfoNet Doc. No. 04121713).

DOL Announces Staff Relocation in Dallas and Philadelphia; Notes New ETA 9035 Required as of 11/30/04. The DOL's Employment and Training Administration (ETA) issued a notice on November 29 announcing that the DOL has moved its Foreign Labor Certification field staff in the Dallas and Philadelphia Regional Offices to the new Dallas and Philadelphia Backlog Processing Centers. The notice provides the public in the Dallas and Philadelphia regions with contact information regarding these two new processing centers. All foreign labor certification processing activities previously conducted in the Dallas or Philadelphia Regional Offices will now be assumed by the corresponding Dallas or Philadelphia Backlog Processing Center. The Backlog Processing Centers will continue these functions on an interim basis and the ETA will publish a Federal Register notice in the near future providing guidance as to the handling of backlogged cases with the State Workforce Agencies (SWAs). The notice states that employers should continue, until ETA publishes future guidance on this issue, to file applications for H-2B and H-2A, as well as applications for permanent labor certification with the appropriate SWA, which will, in turn, forward materials to the appropriate Backlog Processing Center.

In addition, effective November 30, 2004, H-1B and H-1B1 filings must use a new version of the form ETA 9035, Labor Condition Application (LCA). The new form incorporates the distinction between H-1B and H-1B1 Singapore and H-1B1 Chile programs, updates OMB approval information, and removes the "Government Use Only" section. Starting on approximately November 15, 2004, H-1B and H-1B1 filings using the revised ETA Form 9035 will be accepted at the existing Application Processing Center address and fax number set forth below. The new form will be available for use on the LCA Online Web site (<http://www.lca.doleta.gov>). As of November 30, 2004, the new ETA Form 9035 must be used by both H-1B and H-1B1 filers, and the H-1B1 applications for Singapore and Chile will no longer be accepted at the Washington, DC, address previously included in H-1B1 program instructions. The H-1B and H-1B1 address and fax number are: ETA Application Processing Center, P.O. Box 13640, Philadelphia, PA 19101, Fax: 800- 397-0478. This notice does not affect the pending proposal to streamline procedures for permanent labor certification under 20 CFR part 656, which was published in the Federal Register on May 6, 2002. (69 FR 69412, 11/29/04, see AILA InfoNet Doc. No. 04112963).

DOL Publishes Interim Final Rule on H-1B1 Labor Condition Applications. The DOL's ETA, on November 23, issued an interim final rule amending agency regulations related to the temporary employment of foreign professionals to implement procedural requirements applicable to a new visa category—the H-1B1 visa. The H-1B1 visa permits the temporary entry and employment in the United States of professionals in specialty occupations from countries with which the United States has entered into agreements identified in INA § 214(g)(8)(A). Congress created the new visa category as part of its approval of the United States-Chile Free Trade Agreement and the United States-Singapore Free Trade Agreement. By statute, the new H-1B1 visa is available only to nationals of Chile and Singapore. Under the implementing legislation, DOL's responsibilities regarding H-1B1 visas are to be implemented in a manner similar to the existing H-1B program. Thus, employers in the United States seeking to temporarily employ foreign professionals in specialty occupations through H-1B1 visas must file a labor attestation with the DOL making the same attestations regarding payment of prevailing wages, working conditions, absence of strikes or lockouts, and notice to other employees that employers currently make when seeking entry of a foreign worker under the H-1B program. The interim final rule

took effect on November 23, 2004. Comments are due by January 24, 2005. (69 FR 68221, 11/23/04, see AILA InfoNet Doc. No. 04112363).

Department of Justice

DOJ Publishes Final Rule on US-Canada Agreement on Asylum Claims Made in Transit and at Land Ports of Entry. The Department of Justice's (DOJ's) Executive Office for Immigration Review (EOIR) published a final rule on November 29, adopting without substantial change the proposed rule to implement the December 5, 2002, Agreement Between the Government of the United States and the Government of Canada For Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries (Agreement). The Agreement bars certain aliens who are arriving from Canada, or in transit during removal from Canada, from applying for asylum and related protections in the United States. In the context of expedited removal proceedings, the DHS will conduct a threshold screening interview to determine whether the Agreement applies to an alien. The DHS final rule is summarized above. The role of the EOIR is limited to an evaluation of how the Agreement applies to aliens whom DHS has chosen to place in removal proceedings. The rule is effective December 29, 2004. (69 FR 69490, 11/29/04, see AILA InfoNet Doc. No. 04112967).

MEDIA SPOTLIGHT: Members and Staff in the News

Ben Johnson (National) had a letter to the editor published in the December 27 *Wall Street Journal* about how adding more border guards will not stop undocumented workers from entering the country to fill vital jobs. *The Chicago Tribune* quoted **Judy Golub** (National) in a December 26 article about the effect the H-2B visa cap has on employers. **Jonathan Willmoth** (Missouri/Kansas) was quoted in a December 25 *Kansas City Star* article about his client, Sprint Corp., who filed a lawsuit against the U.S. Department of Homeland Security to break through a year-old logjam that was preventing an H-1B worker from keeping his job. **Crystal Williams** (National) was quoted in a December 24 *Dallas Morning News* article about the new online "backlog elimination centers" in Dallas and Philadelphia. **Larry Lebowitz** (Pittsburgh) was quoted in a December 24 *Pittsburgh Tribune Review* article about delays returning to the U.S. that foreign visa holders face when trying to travel home for the holidays.

The Boston Globe quoted **Chris Lavery** (New England) in a December 23 article about 40 Brazilian employees of a roofing company who lost their jobs after eight former coworkers filed a lawsuit alleging that their employer did not pay its immigrant staff more than \$1 million in overtime pay and wages. **Mark Knapp** (Pittsburgh) and **Judy Golub** (National) were quoted in a December 23 *Associated Press* article about his client, a Canadian Amish man, who will cite the First Amendment in his fight to stay in the United States without having to submit to the immigration photo that he maintains would violate his strict religious beliefs. **Carl Shusterman** (Southern California) was quoted in a December 23 *KPBS* broadcast about how changes in immigration procedures will make some foreign nurses' wait to get work permits longer.

The Denver Post quoted **Jeff Joseph** (Colorado) in a December 22 article about his clients, an Armenian family that has been fighting for six years to become legal residents of the United States. **Mark Citrin** (Southern Florida) was quoted in a December 22 *Sun-Sentinel* article about alarm that has spread through Haitian communities as ICE has increased their surveillance and deportation efforts. **Emilia Banuelos** (Arizona) was quoted in a December 21 *Arizona Republic* article about legal immigrants in Arizona are pouring into the offices of document preparers and lawyers to apply for citizenship, in the wake of the passage of Proposition 200. **Ms. Banuelos** was also quoted in the *Associated Press* on December 21 about the same subject.

Ira Kurzban (Southern Florida) was quoted in a December 20 *Miami Herald* article about a pair of former military officers linked to the bombings of the Spanish and Colombian diplomatic missions in Venezuela and who are now at the center of an extradition fight. **Julie Zimmer** (Minnesota/Dakotas) was quoted in a December 20 *Associated Press* article about a German couple she represented who were deported after living in the U.S. for 9 years and now are seeking work permits in Canada.

Joyce Antila Phipps (New Jersey) was quoted in a December 17 *Newhouse News Service* article about immigrants who are defrauded by “notarios.” **David M. Cohen** (Canada) was quoted in a December 17 *Washington Times* article about Americans immigrating to Canada following the November 2 presidential election. **Nancy Morawetz** (New York) and **Marshall Fitz** (National) were quoted in a December 15 *Newsday* article about the Justice Department initiative to reduce the backlog of immigration cases that has prompted a spiraling rise in appeals in federal courts, particularly in New York. **Joanna Hedvall** (National) was quoted in a December 15 *Press Enterprise* article about the Basic Pilot Program. **Lisa Battan** (Colorado) was quoted in a December 15 *Rocky Mountain News* article about her client, a 21-year-old Boulder man who for nearly two months was hooked to a dialysis machine because he was undocumented and could not receive a transplant – he now has legal status after several articles about his plight appeared in the paper.

Peter Ashman (Nevada) was quoted in a December 15 *Las Vegas Sun* article about an immigration policy conference held that addressed technologies to be used to secure the southern U.S. border. **Diane Butler** (Washington State) was quoted in a December 14 *Associated Press* article about an agreement in principle that has been reached to settle human rights lawsuits against oil giant Unocal Corp. over a 1990s pipeline project in Southeast Asia. **Marshall Fitz** (National) was quoted in a December 14 *Washington Post* article about the U.S. Court of Appeals for the Second Circuit in New York City, which covers New York, Connecticut and Vermont, which currently has a backlog of more than 4,000 immigration appeals, most of them asylum claims. **Judy Golub** (National) was quoted in a December 13 *Dallas Morning News* article about the mini-revolt by House conservatives against President Bush's plan to grant temporary legal status to millions of undocumented immigrants. **Jeff Joseph** (Colorado) was quoted in a December 13 *New York Times* article about his clients who are facing deportation because the U.S. citizen ex-husband brought them here on student visas and said they did not need to be in school. **Marshall Fitz** (National) was quoted in a December 13 *Washington Post* article about the Justice Department ordering hundreds of its lawyers in Washington and around the country to take on immigration cases as part of an emergency effort to clear a large backlog in the New York federal courts. **Bob Beer** (Atlanta) was quoted in a December 12 *Atlanta Journal-Constitution* article about hiring undocumented nannies in the wake of Secretary of the Department of Homeland Security designate Bernie Kerik's hiring of an undocumented nanny.

Ira Kurzban (Southern Florida) was quoted in a December 12 *Miami Herald* article about the decision by U.S. immigration authorities to stop putting noncriminal Cuban immigrants who arrive by sea in the Krome detention center for temporary detention and processing. **Mr. Kurzban** was also quoted by the *Associated Press* on December 12 about the same subject. **Carl Shusterman** (Southern California) was quoted in a December 10 *Associated Press* article about a decision by the government to block temporary work permits for thousands of foreign nurses while they await getting legal permanent residency. **Joshua Sohn** (Canada) was featured in a December 10 *Los Angeles Times* article about a seminar he conducted for Americans interested in immigrating to Canada. **Jo Ann Alderstein** (New York) had an op-ed published in the December 10 edition of *Newsday* about the need to stem the “brain drain” and to reform the U.S. visa

categories so that our nation will not lose its technological edge. **Marshall Fitz** (National) had an article, “The Changing Face of Immigration: A Year in Transition,” published in the fall edition of *St. John’s Journal of Legal Commentary*.

Jonathan Montag (San Diego), **Boyd Campbell** (Atlanta) and **Crystal Williams** (National) were quoted in a December 9 *Associated Press* article about the burgeoning backlog of immigration applications. **Leopoldo Ochoa** (Southern Florida) was quoted in the December 9 *Miami Herald* about an anti-Aristide gang leader who was detained by federal immigration authorities in South Florida as he was coming to the area to seek medical care and visit his mother in Orlando.

Greg Boos (Washington State) was featured in a December 9 *Bellingham Herald* article about the 2010 Olympics and the security issues concerning crossing the U.S.-Canadian border. **Jeffrey Feinbloom** (New York) was quoted in a December 9 *New York Times* article about his client, who was granted a waiver and a visa, shortly after an article appeared discussing the effect of her deportation on her 8-year-old daughter. **Mary McCarthy** (Chicago) was quoted in a December 9 *Chicago Daily Law Bulletin* about political refugees’ struggle to find an immigration attorney to represent them. **Angelo Paparelli** (Southern California) was a featured guest on KNX-AM 1070’s The Business Hour on December 8, in which he squared off against Ira Mehlman, Media Director of FAIR, and maintained that America needs a practical solution to immigration reform. **Marshall Fitz** (National) was quoted in a December 8 *Sun-Sentinel* article about the Intelligence Reform legislation. **Jeanne Butterfield** (National) was a guest on a December 8 *MSNBC News* segment about immigration.

Chuck Kuck (Atlanta) was quoted in a December 7 *Lexington Herald-Ledger* about fraudulent documents. **Murali Bashyam** (Carolinas) was quoted in a December 7 *News and Observer* article about the new H-1B exemption for foreign graduates of U.S. universities. **Svetlana Kaff** (Northern California) was quoted in a December 7 *Oakland Tribune* article about the Ukrainian election. **Denise Hammond** (Washington, DC) was quoted in a December 6 *Wall Street Journal* article about the granting of driver’s licenses to undocumented immigrants which caused an impasse on the intelligence reform legislation.

The El Paso Times quoted **Carlos Spector** (Texas) in a December 5 article about complaints by laser visa applicants against the U.S. Consulate in Juarez. **Richard Kurland** (Canada) was quoted in a December 5 *Washington Post* article about the scarcity of strippers in Canada and a government program to import hundreds of exotic dancers. **Brian Funai** (Chicago) was quoted in a December 5 *Chicago Sun-Times* article about two professors at Northeastern Illinois University -- where faculty members are on strike -- are crossing the picket line because they are not U.S. citizens and fear becoming entangled in murky federal immigration law.

Lisa Battan (Colorado) was featured in a December 3 *Denver Post* op-ed in which her client was featured in his battle to receive his legal residency while he was fighting kidney failure. **Carole Mehlman** (Central Florida) and **John Ovink** (Central Florida) were featured in a December 2 *Tampa Tribune* article about how security measures that are designed to thwart terrorists have unfairly targeted immigrants—both legal and illegal. *The Dallas Morning News* quoted **Roy Petty** (Texas) in a December 2 article about a notario whose assets were frozen and who was sued by Texas Attorney General Greg Abbott for defrauding immigrants. **Brent Renison** (Washington State) and **Judy Golub** (National) were quoted in a December 2 *Washington Post* article about immigration law provisions that mandate the deportation of a widow if she has been married to her U.S. citizen spouse for less than two years prior to his death.

Jim Mayock (Northern California) was quoted in a December 2 *Cal News* article about his client, who was promised legal residency when she came to the US in 1986 with ousted Filipino President Ferdinand Marcos, and was subsequently placed into deportation proceedings. **Mr. Mayock** was also quoted in a December 2 *San Francisco Chronicle* article about the same subject. **Grant Sovern** (New England) was a guest on a December 2 segment of *New England Cable News* in which he discussed the intelligence reform legislation provision that would have put restrictions on driver's licenses for immigrants.

Alyssa Simpson (Northern California) was quoted in a December 1 *Contra Costa Times* article about the extension of temporary protected status to Hondurans and Nicaraguans. **Crystal Williams** (National) was quoted in a December 1 *Los Angeles Times* article about the resignation of Secretary of Homeland Security, Tom Ridge. **Mark Knapp** (Pittsburgh) was quoted in a November 29 *Associated Press* article about the new State Department requirement that visa applicants not smile in photographs. **Marc Van Der Hout** (Northern California) was quoted in a November 29 *Copley News Service* article about his clients, the Mirmehdi brothers, who have been detained on post 9/11 immigration violations since October, 2001. **Patricia Ice** (Mid-South) was quoted in a November 29 *Associated Press* article about a federal proposal to create a national database of all college students.

Carolyn Choi (Santa Clara) and **Joanne Haag** (Santa Clara) were quoted in a November 28 *San Jose Mercury News* question and answer article about immigration. **Keil Hackley** (Southern Florida) was quoted in a November 28 *Sun-Sentinel* article about the paperwork and bureaucracy that is commonplace in the U.S., but may not be in their native countries. **Frank Lipiner** (New York) was quoted in a November 28 *Newsday* question and answer article about immigration. *The Miami Herald* quoted **Ira Kurzban** (Southern Florida) in a November 27 article about a naturalized U.S. citizen who may face deportation to his native country because he committed a crime while his citizenship application was pending – his case is currently being appealed before the U.S. Court of Appeals for the 11th Circuit. **Mark Nesbit** (Ohio) was quoted in a November 27 *Columbus Dispatch* article about refugees who have faced torture in their native countries.

Joyce Phipps (New Jersey) was featured in a November 26 *Asbury Park Press* article about her recent trip to Indonesia. **Aileen Josephs** (Southern Florida) had a letter to the editor published in a November 26 *Palm Beach Post* about the need for immigration reform. **Greg Siskind** (Mid-South) was quoted in a November 25 *San Jose Mercury News* about the L-1 visa program and potential abuse by American employers. *The Atlanta Journal-Constitution* quoted **Daryl Buffenstein** (Atlanta) in a November 24 article about the growing immigrant population. **Jack Herzig** (Philadelphia) was quoted in a November 21 *Courier-Post* article about the financial and emotional strains that Liberian immigrants feel when they try to support family members in Liberia. **Jacqueline Baronian** (New York) was quoted in a November 21 *Newsday* question and answer article about immigration.

Janet Sabel (New York) was featured in a November 19 *New York Daily News* article about her participation in Citizenship Now hotline, a joint project of the Daily News and the City University of New York to give free legal advice to immigrants. **John Pratt** (Southern Florida) was quoted in a November 19 *St. Petersburg Times* article about his client, a Haitian clergyman, who died in DHS custody. **David Leopold** (Ohio) was quoted in a November 19 *Associated Press* article about FBI questioning of Arab-Americans as part of a 100-city terrorism sweep that ran from May until the day after the presidential election. **Mr. Leopold** was also quoted in a November 19 *Cleveland Plain Dealer* article about the same topic.

Michael Bander (Southern Florida) was featured in a November 18 *Miami Herald* question and answer article about immigration. **Mr. Bander** was also quoted in a November 18 *Sun-Sentinel* article about a man who is suing the federal government to recognize his U.S. citizenship. **Sam McTyre** (Washington, DC) was quoted in a November 17 *Atlanta Journal-Constitution* about his client, natives of the former East Germany, who have met with a bureaucratic nightmare in trying to obtain legal residency for the past 16 years. **Susan Henner** (New York) and **Jaclyn Miller** (New York) were quoted in a November 16 *Journal News* article about the diversity visa lottery. **Patricia Ice** (Mid-South) was quoted in an October 22 *Clarion-Ledger* article about the need for foreign nurses.

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?

"Now, let me talk about the immigration issue. First we want our Border Patrol agents chasing crooks and thieves and drug runners and terrorists, not good-hearted people who are coming here to work. And, therefore, it makes sense to allow the good-hearted people who are coming here to do jobs that Americans won't do a legal way to do so. And providing that legal avenue, it takes the pressure off the border.

Now, we need to make sure the border is modern and we need to upgrade our Border Patrol. But if we expect the Border Patrol to be able to enforce a long border, particularly in the south -- and the north, for that matter -- we ought to have a system that recognizes people are coming here to do jobs that Americans will not do. And there ought to be a legal way for them to do so. To me that, is -- and not only that, but once the person is here, if he or she feels like he or she needs to go back to see their family, to the country of origin, they should be able to do so within a prescribed -- the card and the permit would last for a prescribed period of time.

It's a compassionate way to treat people who come to our country . It recognizes the reality of the world in which we live. There are some jobs in America that Americans won't do and others are willing to do."

--excerpted from transcript of President Bush's press conference, 12/20/04

CONTRIBUTORS

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