

# WASHINGTON UPDATE

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### **Spring Recess Provides an Opportunity to Meet Locally with Your Lawmakers**

The House of Representatives recessed for the Spring District Work period on April 5. The Senate is to follow on April 12. Both chambers will end this recess on April 16. This short break offers you the opportunity to touch base with your Senators and Representatives in their state/district offices. Please contact the AILA Advocacy staff with any questions.

### **H-2B Emergency Fix Legislation Introduced in Both Chambers**

Last month's announcement by U.S. Citizenship and Immigration Services (USCIS) that it had received enough H-2B petitions to reach the cap for this fiscal year was followed by intense lobbying on Capitol Hill, primarily by employers who rely on H-2B employees during the fast approaching summer employment season. Lawmakers responded last week by introducing four H-2B "fix" bills. The speed with which these bills were introduced is a tribute to the energized grassroots efforts undertaken by H-2B employers and national advocacy groups and should serve as a model for future immigration campaigns. The following is a brief description of the four bills currently under consideration in Congress:

- The "Save Summer Act of 2004" (S. 2252/ H.R. 4052), introduced on March 22 in the Senate by Senators Kennedy (D-MA), Snowe (R-ME), Leahy (D-VT), Gregg (R-NH), Jeffords (I-VT), Murkowski (R-AK), Sarbanes (D-MD), Collins (R-ME), Murray (D-WA), Stevens (R-AK), Edwards (D-NC), McCain (R-AZ), Daschle (D-SD) and Sununu (R-NH), and in the House by Representatives Delahunt (D-MA), Young (R-AK), Gilchrest (R-MD), Simmons (R-CT), Allen (D-ME), Van Hollen (D-MD), Serrano (D-NY), Bordallo (D-GU), Jones (R-

NC), Ortiz (D-TX), and Cannon (R-UT), would increase the H-2B cap for fiscal year (FY) 2004 by 40,000 visas and would implement reporting requirements similar to those mandated for the H-1B program.

- The “Summer Operations and Services (SOS) Relief and Reform Act (S. 2258), introduced on March 30 by Senators Hatch (R-UT), Chambliss (R-GA), Allen (R-VA), Gregg (R-NH), Warner (R-VA), Murkowski (R-AK), Collins (R-ME), and Thomas (R-WY), would require the Department of Homeland Security (DHS) to “carve-out” from the cap any H-2B visa holders and applicants for this fiscal year who had obtained an H-2B visa in the previous two fiscal years. Although a speedy solution is imperative, how DHS would implement this fix is unclear.
- H.R. 4041, introduced on March 25 by Representative Bob Goodlatte (R-VA), would provide that H-2B employers who employed H-2B workers last year be granted access to the same number of H-2B workers for this fiscal year. Employers concerned with this legislation cite the fact that this proposal would favor established employers who had previously relied on H-2B workers and would fail to recognize the growth of businesses or the establishment of new businesses.

Without an immediate increase in the H-2B cap for the current fiscal year, the shortage of seasonal employees that American employers are facing will leave many with no option other than to shut their doors. In turn, this lack of access to H-2B workers could be devastating to certain industries and communities nationwide. Such a temporary “fix,” however, must be followed in the next fiscal year by a more lasting solution that can be achieved only through comprehensive immigration reform. To view AILA’s press release in support of S. 2252/H.R. 4052, please go to: <http://www.aila.org/newsViewer.aspx?bc=273&docID=12650>

### **Lawmakers, Supporting Organizations Call for Swift Passage of AgJobs Act**

Congressional sponsors of the bipartisan Agricultural Job Opportunity, Benefits, and Security (AgJobs) Act (S. 1645/H.R. 3142), together with supporting organizations, convened a press conference on March 24 to urge swift passage of this critical legislation. The bill, whose chief Senate sponsors are Senators Larry Craig (R-ID) and Edward Kennedy (D-MA) and chief House sponsors are Representatives Chris Cannon (R-UT) and Howard Berman (D-CA), is a landmark example of business, immigrant, agriculture, labor, civic and faith-based groups working together to fix long-standing problems with agricultural labor policy. Few major bills enjoy broader support than the AgJobs Act, whose 55 cosponsors in the Senate and 94 in the House are nearly evenly divided between Democrats and Republicans. The bill also has been endorsed by over 400 organizations representing a broad range of farming, business, and other interests. To view AILA’s Issue Paper on the AgJobs bill, see: <http://www.aila.org/fileViewer.aspx?docID=11993>. To view our FAQ, go to: <http://www.aila.org/fileViewer.aspx?docID=12005>.

The AgJobs legislation takes a two-pronged approach to achieving a stable and legal, agricultural work force. The legislation’s long-term focus is on streamlining the H-2A guest worker program to make it more practical, secure and fair, while short-term relief is provided through the bill’s earned adjustment program. The bill thus recognizes that immigration reform must include both a legal means by which employers can hire foreign workers in the absence of available U.S. workers and a means to legitimize the status of those immigrants already present in the U.S. who have been supporting our economy with their labor.

Appearing at the press conference along with Senators Kennedy and Craig and Representative Berman were United Farm Workers President Arturo Rodriguez, Bishop Thomas Wneski of Orlando, Florida and Chair of the U.S. Conference of Catholic Bishops Migration Committee, Cecilia Muñoz, Vice President for Policy at the National Council of La Raza,, and Bob Dolibois, Executive Vice President of the American Nursery & Landscape Association.

In urging passage of the bill, Senator Craig stated:

We need to identify the undocumented persons in the country, treat them humanely and reasonably, and bring them out of the underground economy. We need to face facts and realize that entire sectors of our economy are dependent on the labor of these workers—the vast majority of whom want nothing more than to work under decent conditions at jobs that, quite frankly, American citizens often do not want....With AgJobs, we could begin immediately to improve our homeland security—and especially ensure the safety and security of our food supply—by knowing who is planting and harvesting our crops, where those workers came from, and where they are working.

Senator Kennedy, who took the podium after Senator Craig, echoed the latter's statements, adding that "If the President is serious about immigration reform, we're prepared to work with him [and] the best place to start is with this agriculture jobs bill. With President Bush's support, it's very likely that Congress could pass this bill quickly."

Representative Berman pointed out the unlikelihood of a comprehensive immigration reform package passing Congress this year, given the brief time remaining in the legislative session but stressed that the more narrowly tailored AgJobs proposal can pass this year with the right momentum behind it. Moreover, he added, the eventual passage of a comprehensive approach to immigration reform would be much more likely to occur if AgJobs passes this Congress.

Mr. Dolibois called the current situation in the agricultural sector "untenable and worsening." He suggested that opponents of the legislation were using the "amnesty word" to stop dialogue on the bill. "With full knowledge that what we seek is not amnesty," said Mr. Dolibois, "we challenge those who are quick to use the amnesty word as a dialogue-killing weapon, with the following: *isn't tolerating the status quo the worst possible amnesty of all?*" Bishop Wenski echoed sentiments similar to the other speakers, observing in conclusion, "They (farm workers) don't break the law...the law is breaking them."

### **Subcommittee Hearing on Guestworkers Highlights Ties Between Restrictionist Groups**

The House Judiciary Committee's Subcommittee on Immigration, Border Security, and Claims held an oversight hearing on March 24 to discuss how an influx of millions of guest workers would impact working Americans and Americans seeking employment. The hearing took an interesting detour when Subcommittee member Chris Cannon (R-UT) questioned several of the restrictionists on the witness panel about their organizations' ties to notorious anti-immigrant ringleader John Tanton. The restrictionist-heavy witness list included Mark Krikorian, Executive Director, Center for Immigration Studies, Frank Morris, Chairman of the Board, Diversity Alliance for a Sustainable America, and Roy Beck, Executive Director, NumbersUSA Education and Research Foundation. Muzaffar Chishti, Director, Migration Policy Institute, New York University School of Law also testified.

While all except Mr. Chishti in this unbalanced hearing touted the restrictionist principles of driving out undocumented aliens and increasing the rates of deportation, Mr. Chishti countered that such approaches are unworkable and undesirable. Given the size of the current undocumented population living and working in America, he noted that it would take decades to deport these individuals and the efforts would simultaneously log-jam the court systems and turn the U.S. into “Fortress America.” Mr. Chishti suggested instead that we need workable immigration reform that would protect U.S. workers by providing equal wage rates and benefits to foreign workers. He recommended that the subcommittee consider an immigration overhaul that extends legal permanent resident status to the existing immigrant population, regulates future flows of immigrants consistent with labor market needs, and reflects American values of family unity and fairness.

AILA supports the views expressed by Mr. Chishti. If new immigration programs are going to work, they must be comprehensive and address the symptoms of our broken immigration system. Reform must provide a method by which hard working undocumented aliens can earn legal status, create new worker programs to manage the future flows of immigrants, and promote family unity and an efficient immigration system. Such reform would protect immigrant workers from reduced wages and exploitation, provide businesses with the workers they need, and enhance our national security by allowing the government to focus its enforcement efforts on those who mean to do us harm. To view AILA’s Issue Paper on Comprehensive Immigration Reform, go to: <http://www.aila.org/fileViewer.aspx?docID=9840>.

The highlight of the hearing occurred when Representative Chris Cannon (R-UT) grilled the witnesses from ProjectUSA and the Center for Immigration Studies (CIS) about their connections to John Tanton, founder of the Federation of American Immigration Reform (FAIR). Both of the witnesses admitted that their organizations were aided and incubated and, in the case of CIS, created by Tanton.

According to a 2002 report by the Southern Poverty Law Center, Tanton not only is the founder of FAIR, but is also characterized as the founding father of the modern anti-immigration movement. According to the report, “the vast majority of American anti-immigration groups—more than a dozen in all—were either formed, led, or in other ways made possible through Tanton’s efforts.” The report goes on to state that many of these groups, in turn, are associated with white supremacist and hate groups. To view the Southern Poverty Law Center’s report, see AILA InfoNet Doc. No. 02071545. *Restrictionist Watch*, a newsletter produced by AILA, includes more information on restrictionist activities. To view the most recent edition, go to: <http://www.aila.org/contentViewer.aspx?bc=10,911,4637,5027>.

### **H-1B Legislation Introduced**

On April 2, just hours before the House of Representatives broke for a two-week recess, Representatives Lamar Smith (R-TX); John Carter (R-TX); Jeff Flake (R-AZ); Steve Chabot (R-OH); Bob Goodlatte (R-VA); and Howard McKeon (R-CA) introduced the “American Workforce Improvement and Jobs Protection Act” (H.R. 4166).

H.R. 4166 would increase modestly U.S. employers’ access to H-1B foreign professional workers by creating a permanent exemption from the H-1B cap for graduates of U.S. universities who have earned a Master’s or higher degree. However, this exemption would be capped at 20,000 per year.

In addition to expanding access to H-1B workers, H.R. 4166 would also attempt to end the debate over the L visa program by incorporating provisions contained in pending L visa legislation sponsored by Senator Saxby Chambliss (R-GA) (S.1635). This language would provide for narrowly tailored modifications to the L visa category while recognizing the importance of the L-1 visa to the U.S. economy. Specifically, the language would target L-1B visa holders and prevent them from being stationed primarily at the worksite of a third party in cases where they would not be controlled and supervised by the petitioning employer, or where their placement at the third party site was 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. Additional provisions would reinstate the one-year work requirement for L-1 blanket petitions and require the Department of Homeland Security to maintain statistics on the L program.

In exchange for these benefits, H.R. 4166 would subject U.S. employers to additional fees and attestations. Specifically, the legislation would make permanent the \$1,000 H-1B training fee and the non-displacement and recruitment attestations for H-1B-dependent employers, both of which expired at the end of fiscal year (FY) 2003. In the past, these additional requirements were placed on the H-1B program in exchange for an increase in the cap. H.R. 4166 also would impose a new \$500 “fraud detection and prevention fee” on H-1B and L applications. In addition to the fees and employer attestations, H.R. 4166 would also make permanent the Department of Labor Investigative authority that sunset at the end of FY 2003.

While AILA recognizes that H.R. 4166 moves in the right direction by providing increased access to H-1B professionals and including L visa provisions that we support, the bill’s H-1B provisions should include an uncapped exemption from the cap for graduates of U.S. Master’s and PhD programs. Such an uncapped exemption is appropriate given the benefits these graduates produce for the U.S. economy and the need to retain in this country U.S. educated talent, rather than sending them abroad to our competitors.

AILA also strongly supports an exemption for federal, state and local government workers, including teachers. If a government agency (any federal, state or local government entity, including school districts), working on behalf of the citizens under its jurisdiction, requires a foreign worker, it is not beneficial to the interests of the governmental entity to restrict its ability to hire that person. Government agencies will almost always be governed by policies or statute or some hiring restrictions that makes hiring a U.S. citizen preferable. In addition, if a government agency feels it is necessary to hire a foreign national, it should not be competing with the private sector for H-1B numbers. Nor should the government deplete the pool of H-1Bs, depriving U.S. businesses of economic opportunity.

For more information on H-1Bs, please review AILA’s issue packet on the subject and testimony delivered before the Senate Judiciary Committee by AILA member Steve Yale-Loehr on “Examining the Importance of the H-1B Visa to the U.S. Economy.”

<http://www.aila.org/fileViewer.aspx?docID=9852> [Issue Packet]

<http://www.aila.org/fileViewer.aspx?docID=11196> [Testimony]

### **Senate Foreign Relations Committee Examines U.S./Mexico Relations**

The Senate Foreign Relations Committee, on March 23, held a full committee hearing entitled “U.S. and Mexico: Immigration Policy and the Bilateral Relationship.” Witnesses on three separate panels included Senators John McCain (R-AZ), Larry E. Craig (R-ID), and Richard J. Durbin (D-IL); Roger Noriega, Assistant Secretary of State, Bureau of Western Hemisphere

Affairs; C. Stewart Verdery, Assistant Secretary of Homeland Security, Office of Policy and Planning, Border and Transportation Security; Eduardo Aguirre, Director, Bureau of Citizenship and Immigration Services; Stephen E. Flynn, Council on Foreign Relations; Demetrios G. Papadimitriou, Co-director, Migration Policy Institute; and Arturo A. Valenzuela, Director, Center for Latin American Studies, Georgetown University.

Convened by Committee Chairman Richard Lugar (R-IN) as a means to “elevate the issue” of immigration reform, this timely hearing saw Republican and Democratic Senators on the Committee criticize President Bush for not doing more to push for comprehensive immigration reform. Senator Lugar questioned the Administration’s leadership by saying “we are all needing some guidance as to the priorities the White House has on this issue.” Senator Chuck Hagel (R-NE) stated that the President’s proposal “gets us only 5 percent there” and that he was “at a loss” to understand where the Bush Administration has worked with Congress on the reform issue. Senator Christopher Dodd (D-CT) stated: “I’ve been around long enough to know when the Administration really wants something...and when they’re kind of lukewarm.” He added that he didn’t sense any “real energy” from the Administration behind this proposal.

Eduardo Aguirre, Director of the Bureau of Citizenship and Immigration Services (BCIS), responded to the criticism by saying that the Administration is “looking toward the Congress to frame the legislation that can be brought to the Administration.”

Senator Craig stated that the problems in our current immigration system “truly cry out for a solution, sooner rather than later.” He went on to discuss the merits of the bipartisan AgJobs bill, S. 1645, that he sponsored. Senator Durbin spoke about the immediate need to pass the bipartisan DREAM Act, S. 1545. He read stories from children in his home district whose lives were put on hold because they lacked immigration status. Senator McCain spoke passionately about the urgent need for immigration reform and how our broken immigration system has resulted in over 200 immigrant lives lost in Arizona alone since last year. He read newspaper reports of the gruesome death of a young girl trying to cross the desert. He also stated that he didn’t believe Congress would act on immigration reform this year.

Of particular interest was the testimony of Stephen Flynn from the Council of Foreign Relations. His testimony, “Rethinking the Role of the U.S. Mexican Border in the post-9/11 World, urged a reexamination of conventional notions of border control as not only necessary in a “transformed post 9/11 environment,” but also a long overdue response to the evolution of commercial and social patterns of interaction throughout North America. He cautioned that “Stepped-up efforts to harden the border are a flawed, even counterproductive, approach to advancing important security and public policy interests.” He proposed that we need to embrace the kind of “smart border” initiatives already being embraced on the northern border. Such initiatives require “a risk-management approach to policing cross-border flows.” To view Mr. Flynn’s complete testimony, go to: <http://www.aila.org/fileViewer.aspx?docID=12722>.

### **Senate Immigration Subcommittee Holds Hearing on Securing our Borders and Immigration Reform**

The Senate Judiciary Committee’s Subcommittee on Immigration, Border Security, and Citizenship held a hearing on April 1 entitled, “Securing our Borders under a Temporary Guest Worker Program.” Testifying at the hearing were: Robert Bonner, Commissioner – U.S. Customs and Border Protection, the Department of Homeland Security (DHS); C. Stewart Verdery, Assistant Secretary for Border and Transportation Security Policy and Planning at the DHS; Donna Bucella, Director of the Terrorist Screening Center; Daniel Griswold of the Cato

Institute; and Margaret Stock, testifying for AILA and in her capacity as an expert on national security law.

Most Senators at the hearing focused on the fact that the status quo is unacceptable, with Subcommittee Chair Saxby Chambliss (R-GA) focusing on the need to control our borders, and Senator Edward Kennedy (D-MA) highlighting concerns about inadequate coordination at DHS and asking for updates on the implementation of the Border Security and Visa Entry Reform Act (which was signed into law in 2002). In her comments, Senator Dianne Feinstein (D-CA) emphasized the primacy of addressing this nation's security needs and the fact that our borders are "not in the shape they need to be in." Senator Feinstein pressed Commissioner Bonner on the need to integrate our databases at our border and extracted a pledge from him that this integration would take place seven months after funding for this initiative was appropriated.

Both Commissioner Bonner and Assistant Secretary Verdery praised the President's immigration reform proposal as key to fulfilling our security mandate. Both also focused on the US VISIT program and explained their request to extend for two years the October 26 biometric passport requirement. (To view AILA's Press Release on the Bush proposal, go to: <http://www.aila.org/contentViewer.aspx?bc=9,594,4404>. See also article no. 9 in *Update* on passport and US VISIT extensions.)

Both Dan Griswold and Margaret Stock highlighted the linkage between securing our borders, enhancing our security, and immigration reform. Griswold reiterated that "Mexican migration is not a threat to national security" and focused on how our "obsession" with "keeping Mexicans from crossing our Southwest border illegally has not served our national security interests. It has diverted resources and attention away from efforts to identify and keep out people who truly intend to do us harm." He also spoke of the Enhanced Border Security and Visa Entry Reform Act as a bill "aimed at the right target – keeping terrorists out of the United States," and called for "real immigration reform" that would enhance our security by legalizing and regularizing the movement of workers across the U.S.-Mexican border and encouraging millions of undocumented workers to make themselves known to the authorities.

In her testimony, Margaret Stock underscored that we need comprehensive immigration reform to meet our security needs, and the needs of American businesses and families. Such reform includes an earned adjustment for those who are here and contributing, a "break-the-mold" worker program; and family backlog reduction. In her testimony, she also made the following points:

- **First, we secure our borders best by enhancing our intelligence capacity.** National security is most effectively enhanced by improving the mechanisms for identifying actual terrorists, not by implementing harsher immigration laws or blindly treating all foreigners as potential terrorists. Policies and practices that fail to properly distinguish between terrorists and legitimate foreign travelers are ineffective security tools that waste limited resources, damage the U.S. economy, alienate those groups whose cooperation the U.S. government needs to prevent terrorism, and foster a false sense of security by promoting the illusion that we are reducing the threat of terrorism. Reforming our immigration laws will help us to identify those who seek to enter our country or are already residing here.
- **Second, we need to make our borders our last line of defense.** The physical borders of the United States should be our last line of defense because terrorism does not spring up at our borders. In fact, we need to re-conceptualize how we think about our "borders," because in our modern world they really start at our consulates abroad. The Enhanced Border Security



and Visa Entry Reform Act of 2002, a law that AILA actively supported, is based on that assumption and must be actively implemented.

- **Third, comprehensive immigration reform is an essential component of enhanced security.** Our current immigration system is an obstacle to enhancing our security because it is dysfunctional. We currently allocate massive resources in a futile attempt to enforce a system that simply does not work. Our enforcement efforts could be far more effective if our laws made sense. A new “break-the-mold” guest worker program is an essential component to sensible reform that would help enhance our security and secure our borders because it would legalize the flow of people who enter our country. However, it is insufficient by itself. We also need to offer to those who are residing here AND working, paying taxes, and otherwise contributing the opportunity to earn their permanent legal status. We also need to recognize that blood is thicker than borders and deal squarely with the issue of family reunification and family backlog reductions so that nuclear families are not separated for up to twenty years by our dysfunctional laws. S. 2010, the Immigration Reform Act of 2004, introduced by Senators Chuck Hagel (R-NE) and Tom Daschle (D-SD), is the only initiative introduced to date that includes all three components necessary for comprehensive reform.

Go to <http://www.aila.org/newsViewer.aspx?bc=273&docID=12677> to view Margaret Stock’s complete testimony.

### **House Immigration Subcommittee Examines Oath of Renunciation and Allegiance**

The House Judiciary Committee’s Subcommittee on Immigration, Border Security, and Claims convened a hearing on April 1 to consider legislation that would prescribe the oath of renunciation and allegiance for the purposes of the Immigration and Nationality Act (H.R. 3191). The two issues under consideration were the modernization of the language of the oath and the question of who should be in charge of amending the language. H.R. 3191 would mandate that the oath be reviewable only by an Act of Congress, rather than by agency rule. Department of Homeland Security (DHS) officials postponed revising the oath last year, given opposition to any changes.

Subcommittee Chair John Hostettler (R-IN) opened the hearing by reviewing the five principles behind the oath: (1) support for the Constitution; (2) renunciation of prior allegiances; (3) defense of the Constitution and the laws of the United States against all enemies; (4) true faith and allegiance to the Constitution and laws; and (5) a commitment to bear arms or perform noncombatant service when required by law.

Representative Jim Ryun (R-KS), H.R. 3191’s sponsor and the first witness to testify, said that, while he is in favor of modernizing some of the oath’s archaic language, only Congress should change the oath and that such modernization must be achieved without comprising the intent of the language. He appeared concerned primarily with the addition of the words “where and if lawfully required” in connection with the requirement to defend the Constitution. He asked rhetorically in what circumstances are we *not* required to defend the Constitution. Another issue that he sees with the proposed oath language is that it only calls for renouncing one’s allegiance to foreign states. He observed that the threats facing our country are no longer simply geopolitical, but come from groups such as al Qaeda, as well. He thus suggested that we need strong language mandating renunciation of all foreign sovereignties.

Alfonso Aguilar, Chief of the Office of Citizenship within the DHS’s U.S. Citizenship and Immigration Services (USCIS), testified next, noting that 455,000 immigrants became new U.S.



citizens last year and urging the importance of fostering among these individuals a sense of allegiance to their new country. Mr. Aguilar believes that the best way to change the oath would be through a formal administrative regulatory process so that the public can provide input. In response to a question from Representative Marsha Blackburn (R-TN) as to the reasons for changing the oath, Mr. Aguilar responded that the proposed changes would make it more comprehensible so that individuals can follow the requirements of the act and understand to what they are pledging allegiance. For example, the revised oath would drop such words as “abjure” and the reference to renouncing allegiances to any “prince, potentate, state or sovereignty.”

Dr. John Fonte, a Senior Fellow at the Hudson Institute who testified on behalf of the “Citizenship Roundtable”—an alliance of the Hudson Institute and the American Legion, stated that the American Legion opposes any and all changes to the oath of renunciation and allegiance that would either dilute or eliminate its five core principles. The group also believes that the civics portion of the naturalization examination should include questions on the meaning of the oath.

Subcommittee Ranking Member Sheila Jackson Lee (D-TX) observed that “the current oath’s dated language, archaic form, and convoluted grammar prevents it from being widely understood by new citizens.” She believes the language of the oath should be updated to make it meaningful to the people being naturalized so that it becomes “a living expression of culture that grows and evolves.”

#### **DHS Requests Extension of Biometric Passport Requirement; Extends US VISIT to Visa Waiver Program Travelers**

The Departments of Homeland Security (DHS) and State (DOS), on April 2, announced that the Administration has asked Congress to pass legislation that would extend for two years the October 26, 2004 deadline for Visa Waiver Program (VWP) countries to have machine-readable passports (which include biometric identifiers) and for DHS to have readers for these passports at all ports of entry. Without this extension, citizens of visa waiver countries that fail to meet the deadline would have to obtain visas to enter the U.S. It is feared that the additional visa applications would overwhelm consular posts and dramatically hurt the U.S. travel and tourism industry.

The October 26 deadline was included in the Enhanced Border Security and Visa Entry Reform Act of 2002. The provision mandates that countries in the VWP program have in place programs to issue their nationals machine-readable passports that incorporate biometric identifiers. (The International Civil Aviation Organization (ICAO) sets the standards to which the VWP countries should have to comply. However, few countries will be able to meet that deadline, partly because ICAO only recently issued partial guidance.)

An estimated 13 million visitors from Visa Waiver countries enter the U.S. annually. The following 27 countries are currently in the VWP: Andorra, Austria, Australia, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom.

Along with requesting a two-year extension of the October 26, 2004 deadline, DHS also announced that by September 30, 2004, VWP travelers who arrive at airports and seaports will be enrolled in US VISIT. Thus, foreign nationals from the Visa Waiver countries will be digitally fingerprinted and photographed at U.S. ports of entry. While Administration officials have

indicated that this expansion of the program will not increase processing times at our ports of entry, it is hard to see how it will not, given no plans for additional staffing or lanes. Furthermore, important issues remain to be addressed about US VISIT that generate concern including: inadequate funding, databases that are not interoperable, and lack of clarity about the program's true capabilities and feasibility. Such concerns need to be addressed before US VISIT is extended by the end of this year to the 50 largest land ports of entry. It also is important to ensure that US VISIT is not used as a substitute for increasing our intelligence capacity. Security experts agree that our national security is best enhanced by increasing intelligence and database security checks performed outside the country. DHS should examine ways to expand the use of pre-inspection stations and authorize pre-clearances for low-risk travelers. By clearing travelers before their voyage to the United States, inspectors will have more face time with applicants and could better scrutinize each applicant for entry. Such practices would reduce delays at the border and allow inspectors more time to do their job. Pre-clearances also would provide international travelers with a sense of certainty that they will be admitted into the U.S.

For more information about US VISIT please review the testimony delivered by Kathleen Campbell Walker on behalf of AILA on January 28, 2004 before the Subcommittee on Infrastructure and Border Security of the House Select Committee on Homeland Security. (<http://www.aila.org/fileViewer.aspx?docID=12104>).

### **Recently Introduced Legislation**

The following is a brief description of newly introduced, immigration-related legislation, in reverse chronological order and by chamber. AILA will report further on these bills if and when they move through the legislative process.

#### House Legislation

H.R. 4166, the American Workforce Improvement and Jobs Protection Act, introduced on April 2 by Representative Lamar Smith (R-TX), would amend the INA with respect to H-1B and L nonimmigrants. Specifically, the bill would: (1) exempt from the H-1B cap aliens who have earned a Masters or higher degree from a U.S. university (limited to 20,000 annually); (2) make permanent the non-displacement and recruitment attestations for H-1B-dependent employers, and the \$1,000 filing fee for H-1B applications, both of which sunset on September 30, 2003; (3) impose a new \$500 "fraud detection and prevention fee" on H-1B and L applications; and (4) impose several new restrictions on the L visa category.

H.R. 4156, introduced on April 2 by Representative Jerry Moran (R-KS), would improve access to physicians in medically underserved areas by extending the Conrad State 30 Program for a period of five years and giving individual states greater flexibility in how they implement the program. The bill would also exempt J-1 waived physicians from the H-1B visa cap. H.R. 4156 is a companion bill to S. 2302.

H.R. 4064, the Federal Contractor Security Act, introduced on March 30 by Representative Marsha Blackburn (R-TN), would amend § 402(e)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to require certain federal service contractors to participate in a pilot program for employment eligibility confirmation.

H.R. 4052, the Save the Summer Act of 2004, introduced on March 29 by Representative William Delahunt (D-MA), would increase the H-2B cap for fiscal year (FY) 2004 by 40,000

visas and would implement reporting requirements similar to those mandated for the H-1B program. Senator Edward Kennedy (D-MA) introduced companion legislation in the Senate (S. 2252).

H.R. 4041, introduced on March 25 by Representative Bob Goodlatte (R-VA), would amend the Immigration and Nationality Act to waive, in fiscal year 2004, the numerical limitation applicable to a nonimmigrant described in section 101(a)(15)(H)(ii)(b), if the employer petitioning on behalf of the nonimmigrant employed such a nonimmigrant in fiscal year 2003.

H.R. 4035, the SSI Extension for Elderly and Disabled Refugees Act, introduced on March 25 by Representative Benjamin Cardin (R-MD), would amend section 402 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 to provide a two-year extension (through fiscal year 2007) of supplemental security income (SSI) in fiscal years 2005 through 2007 for refugees, asylees, and certain other humanitarian immigrants.

H.R. 4018, introduced on March 23 by Representative Ed Case (D-HI), would amend the Immigration and Nationality Act to assure that immigrants do not have to wait longer for an immigrant visa as a result of a reclassification from family second preference to family first preference because of the naturalization of a parent or spouse.

H.R. 4011, the North Korean Human Rights Act of 2004, introduced on March 23 by Representative Jim Leach (R-IA), while not an immigration bill per se, contains an entire title (Title III) on protecting North Korean refugees.

#### Senate Legislation

S. 2302, introduced on April 7 by Senator Kent Conrad (D-ND), would improve access to physicians in medically underserved areas by extending the Conrad State 30 Program for a period of five years and giving individual states greater flexibility in how they implement the program. The bill would also exempt J-1 waived physicians from the H-1B visa cap. S. 2302 is a companion bill to H.R. 4156.

S. 2258, the Summer Operations and Services (SOS) Relief and Reform Act, introduced on March 30 by Senator Orrin Hatch (R-UT), would amend temporarily the INA's provisions regarding numerical limitations on H-2B workers. Specifically, the bill would amend INA § 214(g) to provide that any alien who has already been counted towards the H-2B cap within the two years prior to the approval of a (new) H-2B petition will not again be counted toward the cap. The bill would also delegate to the Secretary of Labor any authority to investigate fraud or misrepresentation on the part of an alien or an employer in connection with an H-2B visa. The legislation would take effect retroactive to October 1, 2003 and would expire on October 1, 2004.

S. 2252, the Save the Summer Act of 2004, introduced on March 29 by Senator Edward Kennedy (D-MA), would increase the H-2B cap for fiscal year (FY) 2004 by 40,000 visas and would implement reporting requirements similar to those mandated for the H-1B program. Representative William Delahunt (D-MA) introduced companion legislation in the House (H.R. 4052).

S. Res. 325, a Senate Resolution introduced on March 29 by Senator Rick Santorum (R-PA), would express the sense of the Senate regarding the creation of refugee populations

in the Middle East, North Africa, and the Persian Gulf region as a result of human rights violations.

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

Federal agencies have issued a variety of new regulations and notices in recent weeks, impacting everything from FOIA procedures to funding for refugee programs. A brief summary of these items follows.

#### Department of Justice

OSC Announces Funding for Programs to Combat Immigration-Related Unfair Employment Discrimination. The Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC), in a March 23 Federal Register notice, announced the availability of funds for grants to conduct public education programs about the rights afforded potential victims of employment discrimination and the responsibilities of employers under the anti-discrimination provision of the Immigration and Nationality Act. Grants may range in size from \$35,000 to \$100,000. The OSC will accept proposals from applicants who have access to potential victims of discrimination or whose experience qualifies them to educate workers, employers and the general public about the anti-discrimination provision of the INA. The agency welcomes proposals from diverse nonprofit organizations providing information services to potential victims of discrimination and/or employers, such as local, regional or national ethnic and immigrants' rights advocacy organizations, labor organizations, trade associations, industry groups, professional organizations, or other nonprofit entities, including state and local government agencies. Applications are due by May 7. (69 FR 13584, 3/23/04, see AILA InfoNet Doc. No. 04032510).

#### Department of State

DOS Proposes Changes in Access to Information Regulations. The State Department proposes revisions to its regulations governing access by the public to information, to reflect changes made with the Freedom of Information Act, the Privacy Act, Executive Order 12958 on National Security Information, and the Ethics in Government Act. Comments must be received on or before June 29. (69 FR 16841, 3/31/04, see AILA InfoNet Doc. No. 04033163).

DOS Amends U.S. Passport Regulations. A March 26 State Department interim final rule amends the U.S. passport regulations at 22 CFR to clarify that revoked, lost, or stolen passports are invalid. The rule also requires specified photographs and personal appearance of all applicants not eligible to apply by mail (including minors under 14, unless specifically waived). The interim final rule took effect upon publication. Comments must be received no later than April 26. (69 FR 15669, 3/26/04, see AILA InfoNet Doc. No. 04032611).

DOS Redesignates, Designates Terrorist Organizations. The Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, redesignated the Al-Aqsa Martyrs Brigade, Asbat al-Ansar, and the Salafist Group for Call and Combat, and designated Ansar al-Islam, as "terrorist organizations" pursuant to INA § 219, effective March 22. (69 FR 13347, 3/22/04, see AILA InfoNet Doc. No. 04032217).

## Department of Health and Human Services

ORR Publishes Notice of Available Funds for Services to Torture Victims. The Office of Refugee Resettlement (ORR) of the Department of Health and Human Services (HHS), on March 22, provided notice of a funding opportunity to support programs that provide services to torture victims. Services may be for medical, psychological, social and legal needs. Activities may also include training and professional development for health care providers who are outside the treatment centers or programs supported by this announcement. Applications are also invited for one cooperative agreement for technical assistance to programs providing services to torture victims and training and development of service providers. The ORR expects to award 25-30 grants. Applications are due by May 21. (69 FR 13307, 3/22/04, see AILA InfoNet Doc. No. 04032215).

ORR Announces Proposed Allocations to States of FY 2004 Refugee Social Service Funds. The ORR published a notice in the Federal Register on March 19, setting forth the proposed allocations to states of fiscal year (FY) 2004 funds for refugee social services under the Refugee Resettlement Program (RRP). The ORR has available \$152,217,586 in FY 2004 refugee social service funds. Comments on the notice are due by April 19. (69 FR 13056, 3/19/04, see AILA InfoNet Doc. No. 04032511).

## Department of Labor

DOL Proposes Revisions to FOIA Regulations and Implementation of Electronic FOIA. The DOL proposes updating its Freedom of Information Act (FOIA) procedures to streamline existing procedures, reflect certain changes in FOIA procedural requirements since the current regulations were issued, and to clarify DOL procedures. Comments must be received on or before May 14. (69 FR 16739, 3/30/04, see AILA InfoNet Doc. No. 04033063).

## Executive Action

President Amends Executive Order Implementing Trafficking Act. President Bush, with Executive Order 13333 of March 18, 2004, amended a prior Executive Order implementing the Trafficking Victims Protection Reauthorization Act of 2003 by addressing the Senior Policy Operating Group's and the Secretary of State's authorities and responsibilities. (69 FR 13455, 3/23/04, see AILA InfoNet Doc. No. 04032314).

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

*The Boston Globe* quoted **Harvey Kaplan** (New England) in an April 7 article about his clients, advocates of the Brazilian Immigrant Center, who face deportation. **Joanna Carson** (National) was quoted in an April 7 *Boston Globe* article about the H-2B cap. **Paul Suhr** (Carolinas) was quoted in an April 7 *Associated Press* article about his client, an 11 year old girl who trekked from Honduras to the U.S. to be with her father and who now faces deportation. **Paul** was also quoted in an April 2 *News and Observer* article on the same topic. **Grisel Ybarra** (Southern Florida) was quoted in an April 7 *Miami Herald* article about her client who is charged with attacking federal officers. **Daniel Kowalski** (Texas) was quoted in an April 7 *Washington Post* article about how the Department of Homeland Security prevented Ian McEwan, a British author, from entering the United States on grounds that he did not have the proper visa to give lectures.

**Joren Lyons** (Northern California) was quoted in an April 6 *San Francisco Chronicle* article about his clients, members of the Cuevas family, who are seeking a three-month extension of

their scheduled deportation. The Cuevas family overstayed tourist visas in 1986 unbeknownst to the children who are now attending college. **Michael Brooks-Jimenez** (Texas) was quoted in an April 5 *Daily Oklahoman* about the potential pitfalls of the CLEAR Act. **Kim Salinas** (Colorado) was quoted in an April 5 *Denver Post* article about her client, a 16 year old Guatemalan boy who sought asylum because he was feared being killed by a gang of which he was a former member. He was deported back to Guatemala and was ultimately killed by that gang.

**Hector Esquivel** (Carolinas) was quoted in an April 5 *Post and Courier* article about the contribution that Latino immigrants have made to the economy. **Charles Kuck** (Atlanta) and **Blanca Roig** (Southern Florida) were quoted in an April 5 *Sun-Sentinel* article about “notarios” who mishandle immigration cases, causing the deportation of unsuspecting immigrants. **David Shomloo** (Oregon) was quoted in an April 4 *Miami Herald* article about his client who faces deportation to Norway based upon a 10-year-old conviction for possessing marijuana plants.

**Jack Pinnix** (Carolinas) was quoted in an April 4 article in *the News and Observer* about an investigation of a local attorney which is a personal tragedy and generates concern for the welfare of her clients. **Michael Patrick** (New York) was quoted in an April 4 *Newsday* article about the harsh treatment that immigrant detainees face. On the same day, **Michael Patrick** and **Arturo Santiago Suarez-Silverio** (New Jersey) were quoted in a *Newsday* article about Mr. Suarez’ client, a Canadian veterinarian who faces deportation based on two relatively minor drug convictions that date back to 1997 and 1992. **Allan Wernick** (New York) had his immigration column, which featured questions about President Bush’s immigration proposal, published on April 4 in the *Sun-Sentinel*. **Douglas Stump** (Texas) was quoted in an April 4 *Oklahoman* question and answer article about immigration.

**Javier Maldonado** (Texas) was quoted in an April 3 *San Antonio Express-News* article about immigrants across Texas who are now eligible to take part in a class-action lawsuit seeking to force the government to hand over their already-approved residency documents. **Farhad Sethna** (Ohio) was quoted in an April 2 *Akron Beacon Journal* article about his client who faced deportation after he tinkered with the date three years ago to get his prescribed painkiller for chronic headaches a couple of days early. **Mark Knapp** (Pittsburgh) was featured in an April 2 *Associated Press* article about his Amish client whose immigration application was denied because he refused to be photographed due to his religious beliefs.

**Paul Parsons** (Texas) and **Judy Golub** (National) were quoted in an April 2 *Austin American-Statesman* article about visa backlogs. **Paul** was also featured in an April 2 *San Antonio Express-News* article about immigrants who must fill out the “supplemental rental application for non-U.S. citizens.” **Kim Pedersen** (Northern California) was quoted in an April 2 *Contra Costa Times* article about her client, a Nigerian woman who underwent female genital mutilation before coming to the United States and is now facing deportation. *The Daily Record* quoted **Ivan Yacub** (Washington, DC) in an April 2 article about the U.S. Court of Appeals for the 4<sup>th</sup> Circuit’s affirmance of the decision denying political asylum to his clients, a Guatemalan woman and her family.

**Brent Renison** (Oregon) was featured in an April 2 *Oregonian* article about his client, Ian McEwan, a famous British author who was denied entry into the U.S. **Brent** was also quoted on the same subject in an April 2 *Seattle Times-Intelligencer* article and an April 1 *Associated Press* article.

**Priscilla J. Cortez** (Northern California), **Mary Dutcher** (San Diego), and **Hazel G.S. Marinero** (Santa Clara), were quoted in a March 31 *San Jose Mercury News* immigration question-and-answer column. *The Detroit News* quoted **Noel Saleh** (Michigan) and **Robert Birach** (Michigan) in a March 30 article about immigrants with deportation orders and gaps in immigration enforcement. **Mark Leblang** (Texas) was featured in a March 30 *Tulsa World* article about a forum on immigration at which he was a speaker. *The Denver Post* quoted **Marshall Fitz** (National) in a March 31 front page article about USCIS's pilot program in Denver to immediately detain immigrants as soon as they are ordered deported. **Shakun Drew** (Washington, DC) was quoted in a March 31 *Wall Street Journal* editorial about protestors who surrounded Karl Rove's home and demanded the immediate passage of the DREAM Act.

**Paul Balducci** (Atlanta) was quoted in a March 29 *Augusta Chronicle* article about a 15-year-old high school student who faces deportation after having lived in the U.S. since she was two years old. **Crystal Williams** (National) and **Carl Shusterman** (Southern California) were quoted in a March 29 *Los Angeles Times* article about the growing backlog of immigrant paperwork. **Stephen Manning** (Oregon), **Neha Chandola** (Washington), and **Philip Smith** (Oregon) were quoted in a March 29 *Seattle Times* article about permanently barred immigrants and how they are separated from their families in the U.S. *WEHC-TV* featured **Stephen Brent** (Upstate New York) in a March 29 broadcast about how criminal records could prevent ferry riders from entering the U.S. or Canada. **Attracta Kelly** (Carolinas) was featured in a March 29 *NBC 17* broadcast about the ability of a child to remain in the U.S. if the parent is not a legal resident or has not applied for a visa on behalf of his or her child.

*The New York Times* quoted **Philip Berns** (Connecticut) in a March 28 article about Connecticut state lawmakers' consideration of legislation that would place a limit on how long some noncitizens can use a driver's license. **John Ovink** (Central Florida) was quoted in a March 28 *Tampa Tribune* article about his client who faces deportation. **Debra Dowd** (Washington, DC) was quoted in a March 27 *Daily Press* (Newport News, VA) article about the H-2B visa cap. **Tammy Fox-Isicoff** (Southern Florida) was quoted in a March 26 *Sun-Sentinel* article about three Cuban refugees who floated to Florida on inner tubes.

**Michael Brooks-Jimenez** (Texas) was featured in a March 25 *Daily Oklahoman* article about Leadership Oklahoma City current affairs luncheon on diversity in which he participated as a panelist. **Isaias Torres** (Texas) was quoted in a March 25 *Houston Chronicle* article about USCIS's decision to allow immigrants who were barred from amnesty programs to apply to become legal residents. **Judy Golub** (National) was quoted in a March 25 *Raleigh News and Observer* article about use of the word "undocumented" or "illegal" to describe immigrants. *The Chicago Daily Law Bulletin* quoted **Carlina Tapia-Ruano** (Chicago) in a March 25 article about how lawyers should be mindful of federal immigration laws when representing noncitizens in criminal cases.

*The Associated Press* and the *Times-Picayune* quoted **Lawrence Fabacher** (Mid-South) in two separate March 24 articles about a client who sought to have a visa approved for his sister so that she can donate stem cells to help fight her brother's leukemia. **Michael Considine** (Northern California) was quoted in a March 24 *Sacramento Bee* article about the State Assembly of California committee that approved three measures that would tighten the regulatory reins on immigration consultants.

**Wilson Wong** (Southern California) was featured in a March 23 *Press Enterprise* article about receiving an award for prettiest yard in the town of Loma Linda. *The Seattle Post-Intelligencer* quoted **Christopher Strawn** (Washington) and **Matt Adams** (Washington) in a March 23 article



about DHS's decision to reject Mr. Strawn's client's request to have an attorney present at an immigration interview.

**Philip Berns** (Connecticut) was quoted in a March 22 *Hartford Courant* article about Connecticut officials seeking to tighten rules granting driver's licenses to noncitizens. *The Honolulu Advertiser* published an article on March 22 about an anti-war and civil liberties rally which featured a sign displayed by the Hawaii Chapter of AILA stating that 2,310 immigrants had been detained under the Bush administration. *The Texas Lawyer* published an op-ed written by **William Fong** (Texas) about the impact of President Bush's immigration reform proposal.

*The New York Daily News* quoted **Allan Wernick** (New York) in a March 21 article about the new USCIS program, InfoPass, which allows people to set up immigration appointments online. **Heather MacKenzie** (Carolinas) was quoted in a March 21 *Post and Courier* article about the use of Social Security numbers by undocumented immigrants.

**Albert Armendariz** (Texas) was quoted in a March 20 *El Paso Times* article about the efficiency of the El Paso USCIS office. A March 20 *South Florida Sun-Sentinel* article quoted **Al Zucaro** (Southern Florida) in an article about how new measures aimed to boost homeland security after the Sept. 11, 2001, terror attacks also can stunt business, slowing trade and investment. **Glenda Bunce** (Carolinas) and **Julia Hendrix** (National) were quoted in a March 20 *Augusta Chronicle* article about Ms. Bunce's client, a 15 year old high school student who has lived in the U.S. for 13 years, who faces deportation because she is an undocumented minor. **Jorge Rivera** (Southern Florida) was quoted in a March 20 *Miami Herald* article about an immigrant who was ordered deported despite the fact that he is a TPS holder.

**Leon Wildes** (New York) was featured in a March 19 article about a new off-Broadway play that he is co-producing. The play is about law, politics and his unlikely client-attorney relationship with the late John Lennon. **Jaime Barron** (Texas) was quoted in a March 19 *Fort Worth Star-Telegram* article warning immigrants to be wary because they may become victims of fraud in the wake of President Bush's immigration reform proposal. **Ronald Klasko** (Philadelphia) was quoted in a March 19 *Sun-Sentinel* article about the H-2B visa cap and the effects it has on seasonal employers. **Mark Leblang** (Texas) was quoted in a March 19 *Tulsa World* article about the fallout from recent comments made by Oklahoma State Representative Bill Graves (R-Oklahoma City) in which he stated: "We do have a lot of Mexicans and Hispanics that want to come here and live, and, frankly, I think we're getting too many." **John Estrella** (National) was quoted in a March 13 *Valley Morning Star* article about the DREAM Act.

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

### **Did You Know?**

The Southern Poverty Law Center, a non-profit pro-civil rights organization based in Alabama, has issued a report that examines anti-immigration groups. The report classifies many of these organizations as racial hate-based groups, and explains how many of these so called "grassroots organizations" were founded and funded. The report reveals that the organizations are actually run by a small group of individuals and the membership numbers are highly inflated. To view the report, visit: <http://www.splcenter.org/intel/intelreport/article.jsp?pid=180>

## **CONTRIBUTORS**

Judith Golub, Senior Director of Advocacy and Public Affairs  
Marshall Fitz, Associate Director of Advocacy  
Danielle Polen, Legislative Counsel  
Joanna Carson, Business Immigration Associate  
John Estrella, Senior Policy Associate  
Julia Roane Hendrix, Media Relations Associate  
Rossana Lo, Advocacy Assistant  
Alexis Ivory, Law Student Intern  
Alfonso Lievano, Law Student Intern

**American Immigration Lawyers Association**  
918 F Street, N.W.  
Washington, D.C. 20004  
202-216-2403

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