

WASHINGTON UPDATE

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Bipartisan Student Adjustment Act Introduced in House

Representatives Chris Cannon (R-UT), Howard Berman (D-CA) and Lucille Roybal-Allard (D-CA), introduced the Student Adjustment Act of 2003 on April 9, 2003. The Student Adjustment Act would allow young people who have good moral character, have lived in the U.S. at least five years, are in school in 7th grade or above, and are under 21 years old, to adjust their status. The Student Adjustment Act also would amend the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to again permit states to determine residency for in-state tuition purposes.

The Student Adjustment Act of 2003 recognizes that some of our best and brightest students are prevented from reaching their potential. Thousands of young people each year are prevented from pursuing their dreams of going to college because they have no immigration status and, without the option of in-state tuition, lack sufficient resources. The young people who would benefit from this legislation have done nothing wrong. Yet they are being severely punished.

AILA applauds Representatives Cannon, Berman, and Roybal-Allard and the cosponsors of this important bill: Representatives Henry Bonilla (R-TX), Lincoln Diaz-Balart (R-FL), Mario Diaz-Balart (R-FL), Calvin Dooley (D-CA), David Dreier (R-CA), Luis Gutierrez (D-IL), Melissa Hart (R-PA), Steny Hoyer (D-MD), Sheila Jackson Lee (D-TX) Peter King (R-NY), Jim Matheson (D-UT), Michael McNulty (D-NY), George Miller (D-CA), Devin Nunes (R-CA), Ed Pastor (D-AZ), Rick Renzi (R-AZ), Ciro Rodriguez (D-TX), Ileana Ros-Lehtinen (R-FL), Linda Sanchez (D-CA), Chris Shays (R-CT), Chris Smith (R-NJ), Hilda Solis (D-CA), Todd Tiahrt (R-KS), Heather Wilson (R-NM), Jerry Weller (R-IL), and David Wu (D-OR).

AILA urges readers to write to these Members thanking them or their support and requesting that they urge their fellow lawmakers to co-sponsor and support the Student Adjustment Act.

Asa Hutchinson Delivers Keynote Address at AILA's Spring CLE Conference

Asa Hutchinson, Undersecretary for the Border and Transportation Security (BTS) directorate within the Department of Homeland Security (DHS), addressed AILA members on March 28, during their spring conference in Washington, D.C.

Conference attendees especially noted Hutchinson's assertion that, although he represents the enforcement side of immigration policy, he "recognize[s] and value[s] that America is a land of immigrants, and the vitality of our nation depends on the continued contribution immigrants make," as well as his statement that both the immigration services side of the DHS and the immigration enforcement bureaus, which are part of BTS, "will speak with one voice that we welcome immigrants."

Hutchinson spoke of the confusion at the "front line" of the border and discussed the steps the Bureau of Customs and Border Protection (BCBP) has taken to consolidate the various border agencies into a single unit, under one chain of command, with primary inspectors handling the general inspections process and specialized inspectors focusing on secondary inspections. When asked how the Bureau of Citizenship and Immigration Services (BCIS) and the BCBP will handle policy interpretation changes, Hutchinson stated that although the BCIS will not have a presence at the border, BCBP Commissioner, Robert Bonner, and BCIS Acting Director, Eduardo Aguirre, will create a working group to review these issues. Michael Garcia, head of the Bureau of Immigration and Customs Enforcement (BICE), would be included in these meetings when necessary.

AILA has emphasized the importance of coordinating the activities of the BCBP border enforcement bureau and the BCIS services bureau. While enforcement and adjudications come together at our ports of entry, the law establishing the new department of Homeland Security is silent on how our immigration functions would operate at our ports. It is critical that those responsible for inspections at our entry points be fully aware of, and educated about, the policies and practices of the BCIS, so that the policies and practices will not become splintered or disparate.

In describing the developments and plans for the border, Hutchinson emphasized the need for both effective organization at the border and "layering" the border with expanded technologies and increased points for security checks before applicants for entry arrive at the actual border. BTS's layering efforts will make our ports of entry the "last line of defense," said Hutchinson. Such layering includes enhanced technology and the establishment within BTS of an office to assist with visa issuance at the consulates. Hutchinson also tried to make the point that tracking foreign nationals was not uncommon by drawing an analogy to U.S. travelers abroad having to provide their passport information to hotels. He noted that such tracking was behind the entry-exit system, and that the National Security Entry-Exit Registration System (NSEERS) was a "prioritization" of the entry-exit system. Responding to concerns raised about NSEERS, Hutchinson asserted that "the NSEERS program does not target any ethnic or religious groups. That is not its intention." When informed that many attorneys have been prohibited from accompanying their clients during the special registration processing, Hutchinson replied that he would be happy to discuss the issue and if there are "misapplications of policy, then it would be appropriate to correct that by memorandum or directive."

Although Attorney General Ashcroft has depicted NSEERS as the precursor to the entry-exit program and the Bush Administration has repeatedly associated the two with each other, NSEERS is a completely different program than the entry-exit initiative reviewed and debated by

Congress. The entry-exit system was designed to be an automated system that records the entry and exit of foreign nationals. NSEERS requires registrants to respond to different questions than those asked in the entry-exit program, and register within 30 days of entry at a local immigration office and annually each year thereafter, and targets individuals based on national origin/racial/religious profiling. These requirements, as well as other restrictive aspects of NSEERS, are not part of the entry-exit design.

Hutchinson also mentioned Operation Liberty Shield, the administration's initiative that detains asylum seekers and applicants from Iraq and other countries who have been described as state-sponsors of terrorism. Regarding Operation Liberty Shield, Hutchison classified the program as a justified and unobtrusive step, stating that only one person thus far has been detained under the program. (See the article below on Operation Liberty Shield.)

As the policies and coordination efforts of the Department of Homeland Security continue to develop, AILA looks forward to the opportunity for meaningful dialogue with Hutchinson and the two enforcement bureaus that report to him.

Attorney General Delegates Immigration Authority to FBI

AILA has learned that the Attorney General, on December 18, 2002, issued an order delegating authority to the Federal Bureau of Investigations (FBI) to exercise the powers and duties of immigration officers. This order authorizes the Director of the FBI and, under his direction, Special Agents of the FBI, to exercise the functions of immigration officers for the purpose of "investigating, determining the location of, and apprehending any alien who is in the United States in violation of the Immigration and Nationality Act...or any other law or regulation relating to visas or the conditions of visas, admission of aliens or the conditions of admission, or the maintenance of status as an immigrant or nonimmigrant or in any category of nonimmigrant; or...enforcing any requirement of such statutes or regulations, including but not limited to nonimmigrant aliens subject to special registration."

This order seems to have been issued in secret, without public notice or congressional review. In fact, AILA found a copy of the order on a restrictionist website (and has been told that this, in fact, is the order that the AG issued.) AILA is concerned about the secret process by which this order was issued, as well as the expansion of authority to the FBI. As is the case with state and local law enforcement officials enforcing civil violations of immigration law, FBI agents lack training in immigration law and immigration law enforcement. Furthermore, the FBI's enforcement role will further complicate the already complicated task of coordinating the policies and practices of the different immigration bureaus within the Department of Homeland Security.

Operation "Liberty Shield" Initiated

On March 17, 2003 the Department of Homeland Security announced the implementation of a new security initiative entitled Operation Liberty Shield. Among other provisions, this fledgling initiative mandates the detention of all asylum applicants from countries where al-Qaeda or related groups are known to have operated. While the list of countries whose nationals are subject to this policy has not been released formally, press reports indicate that it would affect applicants from 33 countries and 2 territories. This directive requires such individuals to remain imprisoned until their asylum claim is heard and a final decision is reached.

Although described by the DHS as a necessary precaution to respond to a heightened threat of terrorism, the mandatory detention measure is overbroad and undermines the basic principles of

the asylum process. Asylum is a mechanism for protecting immigrants who have been seriously traumatized, abused, or tortured and who are fleeing persecution by oppressive governments. Requiring such individuals to remain jailed without recourse to judicial discretion during the often-lengthy asylum process compounds rather than alleviates the trauma of the persecuted. The procedures extant under current law adequately enable the government to establish whether an asylum seeker should be detained as a security threat. Operation Liberty Shield's detention provisions go too far.

Still another element of this operation is the "voluntary" interviews of Iraqis in the United States. The FBI plans to interview 11,000 Iraqis, targeting those with ties to the Iraqi military and those who recently visited Iraq. The stated purpose of these interviews is to gather information to identify possible terrorist threats in the U.S. and to help advance the war in Iraq, and advise the community about the FBI's responsibilities to protect members of the Iraqi community from hate crimes.

Department of Homeland Security Update

Here is the latest news related to the Department of Homeland Security:

- The Senate Governmental Affairs Committee is expected to schedule the confirmation hearing for Michael Garcia, Acting Assistant Secretary of the Bureau of Immigration and Customs Enforcement, sometime this month.
- The House Subcommittee on Immigration, Border Security, and Claims held an April 10 oversight hearing on the Bureau of Immigration and Customs Enforcement (BICE). Testifying before the subcommittee were: DHS Under Secretary of Border and Transportation Security Asa Hutchinson, Mark Krikorian from the Center for Immigration Studies, Timothy Danahey of the Federal Law Enforcement Officers Association (FLEOA), and Rich Stana of the General Accounting Office (GAO). The next *Update* will include a report on this hearing.
- Michael J. Petrucellia, on April 7, was appointed Chief of Staff and Executive Assistant Director of the Bureau of Citizenship and Immigration Services (BCIS). Mr. Petrucellia most recently served as Senior Vice President for Operations and Chief of Staff of the Export-Import Bank. Eduardo Aguirre, the Acting Director of BCIS, still officially heads the Export-Import Bank, until his confirmation at DHS.
- The House Homeland Security Committee passed by voice vote on March 28 a DHS technical corrections bill, H.R. 1416, the principle purpose of which was to substitute the Secretary of Homeland Security for the Attorney General in many sections of the Act.

Special Registration (NSEERS) Update

The deadline for the fourth (and final) special registration National Security Entry-Exit Registration System (NSEERS) call-in group is April 25. Male nonimmigrants from Bangladesh, Egypt, Indonesia, Jordan, and Kuwait need to report by that date. The deadline for the third call-in special registration for male nonimmigrants from Saudi Arabia and Pakistan was March 21.

As of March 18, 101,589 individuals from 149 countries have registered, including 47,105 at the ports of entry (POEs) and 54,484 at the district offices. The number of unlawfully present

individuals who were temporarily detained is 1,854. Presently, 87 are in custody and 57 out of 87 are detained for criminal convictions and have no bond. In addition, 5,636 Notices to Appear have been issued.

AILA opposes this ill-conceived program because it is deeply flawed in both its conception and implementation. It substitutes national origin/racial/religious profiling for effective law enforcement profiling based on intelligence information. Furthermore, people have been detained who are on the path to permanent residency, district offices have adopted disparate implementation procedures, and the government has done inadequate outreach and failed to clarify program requirements.

House Immigration Subcommittee Holds Oversight Hearing on SEVIS

The House Judiciary Committee's Subcommittee on Immigration, Border Security, and Claims held an oversight hearing on April 2 on the implementation and proposed modification of the immigration student tracking system (SEVIS). Testifying at the hearing were Johnny Williams, Interim Director of Immigration Interior Enforcement for the Bureau of Immigration and Customs Enforcement; Glenn Fine, Department of Justice Inspector General; Thomas Fischer, Former INS Atlanta District Director; and Dr. David Ward, President of the American Council on Education.

SEVIS is an Internet-based system that tracks foreign students' school admission, visa issuance, entry into the United States, registration for classes, change of address, program of study and employment verification. SEVIS was originally implemented by the services division of the INS. However, when the INS shifted into the new Department of Homeland Security (DHS), responsibility for SEVIS shifted into the Bureau for Immigration and Customs Enforcement (BICE).

SEVIS has been operational since January 1, 2003, the date mandated by the USA PATRIOT Act (P.L. 107-56), and all participating schools were required to enter new foreign students into the system by February 15, 2003. By August 1, 2003, all foreign students continuing their education in the U.S. must be entered into the SEVIS database. In order to meet that goal, SEVIS will have to handle an additional 250,000 entries a month until August. Due to the current problems with the program, however, there is concern regarding the system's ability to handle these additional entries.

The hearing highlighted several flaws in the program that impede its use and reliability including "bleeding," whereby one school's records print out at another unrelated institution, data loss, the inefficiency of batch processing, and the inability to correct errors, including typographical mistakes.

In their opening statements, both Mr. Williams and Dr. Ward stated that a properly operating SEVIS was an important step in the ability to monitor international students. In contrast, Mr. Fischer, a critic of the program, opined that SEVIS was not far-reaching enough and did not contain sufficient penalties for non-compliance.

Although SEVIS is supposed to provide a real time link between schools, the INS (now DHS) and the Department of State, Dr. Ward testified that this feature is unreliable, with information taking at least a week, for example, to be transmitted to the consulates. Dr. Ward also noted that BICE has given insufficient directions to the academic community about how to comply with SEVIS, and the SEVIS Help Desk, which BICE administers, responds only to technical questions

and can take about four weeks to answer a question regarding a single student. School officials thus have been left to interpret the regulations themselves.

In his testimony, Inspector General Fine presented findings from his report on the implementation of SEVIS. In particular, he noted that SEVIS does not adequately train BICE staff and contractors, with this lack of training creating major uncertainties in the school certification process. Mr. Fine further testified that contractors' repeated failures to collect supporting documentation from schools applying for certification under SEVIS have increased processing delays.

In his closing remarks, Williams affirmed that in order to work properly, the SEVIS program needs to have viable software, strong compliance, and an enforcement component. Williams indicated that the fees SEVIS will charge would help the program work more effectively.

Joint Senate Subcommittee Hearing Examines Border Technology

The Senate Subcommittee on Immigration, Border Security and Citizenship, and the Subcommittee on Technology, Terrorism and Government Information held a joint hearing on March 12 on "Border Technology: Keeping Terrorists out of the United States—2003." The hearing was convened to examine how the northern and southern borders are protected, the challenges in implementing border technology, and the funding issues associated with protecting the border.

Testifying at the hearing were Asa Hutchinson, Undersecretary for Border and Transportation Security (BTS); Robert Mockney, Director of Entry-Exit Program, Bureau of Immigration and Customs Enforcement; Woody Hall, Assistant Commissioner for the Office of Information & Technology, Bureau of Customs and Border Protection (BCBP); Nancy Kingsbury, Managing Director of Applied Research and Methods for the U.S. General Accounting Office; Richard Stana, Director, Homeland Security and Justice; and Stephen Flynn, Senior Fellow in National Security Studies for the Council on Foreign Relations. Issues covered during the hearing included the entry-exit program, the use of technology and intelligence at the border, personnel shortages, funding, and best practices to enhance security.

During his testimony, Asa Hutchinson indicated that while the entry-exit system was on track to be implemented in airports by the end of 2003, the department is evaluating the feasibility of meeting the 2004 deadline for implementing the entry-exit system at the top 50 high traffic land border ports and the final deadline, which would require a fully implemented entry-exit system at all ports of entry by 2005. AILA urges that the entry-exit system be adequately funded to enhance our security and allow the flow of people and goods to support our economy. The cost of a completed entry-exit system has been estimated to be billions of dollars, considering the need to purchase real estate, upgrade our facilities, develop our infrastructure and technological capabilities, and hire inspectors to manage the program. Additional costs arise from the need to fully address current staffing shortages for inspectors at ports of entry and the basic technology such as document readers needed at the ports of entry. The \$380 million appropriated in FY 2003, while a first step, is grossly insufficient.

When asked about weaknesses at the border and, in particular, the problem of alien smuggling, Hutchinson indicated that improvements in technology and increased intelligence were key to solving these problems. He noted that after September 11, border inspectors were given access to more information that was being streamlined for easier access. For example, information from the National Crime Information Center (NCIC) had been added to IDENT, the fingerprint

identification database that assists INS in the identification of repeat illegal entrants and aliens wanted by other law enforcement agencies. Hutchinson also reported that as a result of a pilot program that ran for three weeks at six locations and tested the use of border crossing cards containing biometric identifiers, 250 people had been detained. AILA supports the department's efforts to increase the interoperability of the DHS database systems and other agencies' database systems to give inspectors a more thorough review of each applicant requesting entry into the U.S. However, such a database system must include a mechanism to correct database errors.

On the issue of border personnel, Hutchinson stated that the BCBP currently has over 10,000 Border Patrol agents and expects to use FY 2003 appropriated funds to deploy 285 additional agents while simultaneously increasing surveillance technology. When asked to comment on the fact that 26 percent of border inspectors were hired in FY02 (thereby highlighting the high rate of attrition among border personnel), Hutchinson attributed much of the attrition to the creation of the Transportation Security Administration (TSA). When asked by Senator Leahy (D-VT) if his department needed more money for border personnel, Hutchinson responded that the DHS needed to organize first and then assess its budgetary needs. Senator Leahy also expressed his concern that the 3 percent budget increase for border security in FY04 was not nearly enough.

In his testimony, Stephen Flynn described how the efficient flow of border traffic increased security by allowing border agents and inspectors to detect aberrant activity. His recommendations for improving the border included expanding the use of technology-driven programs (such as the NEXUS or SENTRI programs) to separate out low-risk travelers; programs that would permit security checks away from our border; and partnerships with private industry to enhance security measures. AILA supports funding for and the implementation of pre-inspection stations and authorized pre-clearances for low-risk travelers. Clearing travelers before their voyage to the United States gives inspectors more time to scrutinize each applicant for entry, reduces delays at the border, and provides international travelers with a sense of certainty that they will be admitted into the U.S.

Tyson Foods Acquitted of Alien Smuggling Charges

On March 26, 2003, a federal jury acquitted Tyson Foods, Inc. and three of its managers of all charges related to an alleged conspiracy to import illegal immigrant workers from Mexico and Central America. This case was closely watched because it represented the first time a company this size had been targeted for criminal prosecution on these grounds. Moreover, the core issues in the case implicated a highly sensitive political issue: U.S. companies employing large numbers of foreign nationals in low-skilled, low-wage positions. Some argue that these companies intentionally hire illegal aliens to keep wages down by employing vulnerable workers over whom they can assert substantial leverage. Others maintain that there is a shortage of low skilled workers and companies simply hire whoever is willing to take these grueling jobs; it just so happens that many of the willing are immigrants.

In December 2001, after a three year INS investigation into the company's hiring practices, a grand jury handed down a 36 count criminal indictment against Tyson Foods and six of its managers. Two of the indicted managers pleaded guilty to conspiracy charges and a third manager fatally shot himself several months after the indictment was handed down. Prosecutors in the case charged that the remaining defendants knowingly employed illegal workers and actively recruited such workers as part of a scheme to meet the company's labor needs and to keep wages depressed. The government sought to seize millions of dollars it claimed Tyson Foods had gained by employing illegal workers. The individual managers faced jail time and fines if convicted. Before the case went to jury, U.S. District Judge R. Allan Edgar dismissed 24

of the 36 counts for lack of evidence. The counts on which the jury deliberated and acquitted involved conspiracy to violate immigration laws, transporting illegal immigrants, and document falsification.

This case highlights the need for comprehensive immigration reform. Businesses cannot find willing U.S. workers to fill many of their low-skilled essential worker positions. Although many foreign nationals are ready and willing to come to the U.S. to fill such positions, there is essentially no visa category under current immigration law that facilitates the matching of willing U.S. employers to foreign national essential workers. This disconnect between local economic conditions and national immigration policy leaves an employment void which must be filled, in many instances, by undocumented immigrants. Such a result plainly is contrary to our national interests. Employers are forced to make difficult subjective determinations about the validity of an applicant's employment authorization documents and the government is required to waste valuable manpower and resources in trying to enforce these ineffective laws. AILA strongly believes that comprehensive immigration reform involving an earned adjustment for undocumented workers here in the United States and a prospective visa classification for essential workers is necessary to solve this troubling dynamic.

Recently Introduced Legislation

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

House Legislation

H.R. 1631, the No Social Security for Illegal Immigrants Act of 2003, introduced on April 2 by Representative Dana Rohrabacher (R-CA), would amend Title II of the Social Security Act to exclude from creditable wages and self-employment income wages earned for services by aliens performed without work authorization in the United States and self-employment income derived from a trade or business conducted in the United States during any period for which the alien is not authorized to perform such function or service.

H.R. 1606, the Wage Equity Act of 2003, introduced on April 2 by Representative Virgil Goode, Jr. (R-VA), would amend INA §§ 218(a) and (i) to impose a limitation on the wage that the Secretary of Labor may require an employer to pay an alien who is an H-2A nonimmigrant agricultural worker.

H.R. 1567, the Citizenship Reform Act of 2003, introduced on April 2 by Representative Nathan Deal (R-GA), would attempt, via an amendment to the INA, to deny citizenship at birth to children born in the United States of parents who are not citizens or permanent resident aliens

H.R. 1519, introduced on March 31 by Representative Peter T. King (R-NY), would amend the INA to reauthorize the State Criminal Alien Assistance Program (SCAAP), which reimburses state and local government expenditures for costs incurred to imprison undocumented criminal aliens.

H.R. 1515, introduced on March 31 by Representative Jeff Flake (R-AZ), would provide for reimbursement of the unreimbursed costs of emergency medical care for aliens paroled into the United States for medical reasons.

H.R. 1464, the Immigration Security and Efficiency Enhancement Act of 2003, introduced on March 27 by Representative Joe Baca (D-CA) and 11 cosponsors, would enhance the security procedures and efficiency of the immigration, refugee and asylum, and naturalization services of the United States Government by mandating the implementation of an electronic application process utilizing certified filing entities and e-file applications. The bill would require the Secretary of Homeland Security, within 90 days of the legislation's enactment, to submit to Congress a plan for the implementation of the security and efficiency enhancements described in the legislation.

H.R. 1440, the Anti-Atrocity Alien Deportation Act of 2003, introduced on March 26 by Representative Mark Foley (R-FL) on behalf of himself and nine cosponsors, would amend the INA to provide that aliens who commit acts of torture, extrajudicial killings, or other specified atrocities abroad are inadmissible and removable. The bill would also establish within the Criminal Division of the Department of Justice an Office of Special Investigations having responsibilities under the INA with respect to all alien participants in war crimes, genocide, and the commission of acts of torture and extrajudicial killings abroad. Senator Patrick Leahy (D-VT) has introduced a companion bill in the Senate (S. 710, noted below).

H.R. 1416, introduced on March 25 by Representative Christopher Cox (R-CA), would make various technical corrections to the Homeland Security Act of 2002 (Pub. L. No. 107-296).

H.R. 1353, the Secure and Fast Entry at the Border Act of 2003, introduced on March 19 by Representative Susan Davis (D-CA), would authorize the Port Passenger Accelerated Service System (PortPASS) as a permanent program for land border inspection under the INA. In addition, the bill would extend from one year to a minimum of two years the enrollment period for the Secure Electronic Network for Travelers Rapid Inspection (SENTRI) program.

H.R. 1300, the Central American Security Act, introduced on March 17 by Representative Tom Davis (R-VA), would amend § 202 of the Nicaraguan Adjustment and Central American Relief Act (NACARA) to make certain Salvadorans, Guatemalans, and Hondurans eligible for relief under this section, and would give those individuals with applications for relief currently pending under § 203 the option of having their applications considered as applications for adjustment under § 202.

H.R. 1275, introduced on March 13 by Representative Martin Frost (D-TX), would amend the INA to change the requirements for naturalization through service in the U.S. Armed Forces. Specifically, the bill would amend INA § 328(a) to reduce from three years to two the amount of time that an individual must serve in active duty in the U.S. Armed Forces to become eligible for naturalization under this provision. The legislation would also add a new § 328(b)(4) that would prohibit the collection of fees from such applicants for the filing of a petition for naturalization or the issuance of a certificate of naturalization. Finally, H.R. 1275 would require the Attorney General, in concert with the Secretaries of State and Defense, to ensure that any applications, interviews, filings, oaths, ceremonies and other proceedings related to the naturalization of members of the Armed Forces are available through U.S. embassies and consulates and, as practicable, U.S. military installations overseas. H.R. 1275 is a companion bill to S. 789, noted below.

H.R. 1261, the Workforce Reinvestment and Adult Education Act of 2003, introduced on March 13 by Representative Howard "Buck" McKeon (R-CA), would make various amendments to the Workforce Investment Act of 1998.

H.R. 1201, the Cuban Victims of Torture Act, introduced on March 11 by Representative Ileana Ros-Lehtinen (R-FL), would posthumously revoke the naturalization of Eriberto Mederos, based on the fact that such naturalization was procured by concealment of material facts and willful misrepresentations.

H.R. 605, the Alien Child Protection and Deferred Enforced Departure Family Unity Act of 2003, introduced on February 5 by Representative Major Owens (D-NY), would provide for permanent resident status for any alien orphan physically present in the United States who is less than 12 years of age, and would provide for deferred enforced departure status for any alien physically present in the United States who is the legal and natural parent of a child born in the United States who is less than 18 years of age.

H.R. 322, the Legal Immigrant Health Restoration Act of 2003, introduced on January 8 by Representative Edolphus Towns (D-NY), would amend Title XIX of the Social Security Act to assure coverage for legal immigrant children and pregnant women under the Medicaid program and State Children's Health Insurance Program (SCHIP).

H.J. Res. 44, introduced on March 31 by Representative Mark Foley (R-FL), proposes an amendment to the U.S. Constitution to provide that no person born in the United States will be considered a U.S. citizen unless a parent is either a U.S. citizen or a lawful permanent resident at the time of the birth.

H.J. Res. 42, introduced on March 20 by Representative Ron Paul (R-TX), and similar to H.J. Res. 44, above, proposes an amendment to the U.S. Constitution that would deny United States citizenship to individuals born in the United States to parents who are neither U.S. citizens nor persons who owe permanent allegiance to the United States.

Senate Legislation

S. 845, introduced on April 9 by Senator Bob Graham (D-FL), would amend Titles XIX and XXI of the Social Security Act to provide states with the option to cover certain legal immigrants under the Medicaid program and State Children's Health Insurance Program (SCHIP).

S. 789, the Citizenship for Service Members Act of 2003, introduced on April 3 by Senators Bill Nelson (D-FL) and Barbara Boxer (D-CA), would amend the INA to change the requirements for naturalization through service in the U.S. Armed Forces. Specifically, the bill would amend INA § 328(a) to reduce from three years to two the amount of time that an individual must serve in active duty in the U.S. Armed Forces to become eligible for naturalization under this provision. The legislation would also add a new § 328(b)(4) that would prohibit the collection of fees from such applicants for the filing of a petition for naturalization or the issuance of a certificate of naturalization. Finally, S. 789 would require the Attorney General, in concert with the Secretaries of State and Defense, to ensure that any applications, interviews, filings, oaths, ceremonies and other proceedings related to the naturalization of members of the Armed Forces are available through U.S. embassies and consulates and, as practicable, U.S. military installations overseas. S. 789 is a companion bill to H.R. 1275, noted above.

S. 783, introduced on April 3 by Georgia Senators Zell Miller (D) and Saxby Chambliss (R), would amend INA § 329A to expedite the granting of posthumous citizenship to members of the United States Armed Forces.

S. 710, the Anti-Atrocity Alien Deportation Act of 2003, introduced on March 26 by Senator Patrick Leahy (D-VT) on behalf of himself and three cosponsors, would amend the INA to provide that aliens who commit acts of torture, extrajudicial killings, or other specified atrocities abroad are inadmissible and removable. The bill would also establish within the Criminal Division of the Department of Justice an Office of Special Investigations having responsibilities under the INA with respect to all alien participants in war crimes, genocide, and the commission of acts of torture and extrajudicial killings abroad. Representative Mark Foley (R-FL) has introduced a companion bill in the House (H.R. 1440, noted above).

S. 656, the Liberian Refugee Immigration Fairness Act of 2003, introduced on March 19 by Senator Jack Reed (D-RI), would provide for the adjustment to lawful permanent resident status for certain nationals of Liberia who have been continuously present in the United States from January 1, 2003, through the date of application for the bill's benefits.

S. 609, the Restoration of Freedom of Information Act of 2003, introduced on March 12 by Senator Patrick Leahy (D-VT), would amend the Homeland Security Act of 2002 to provide for the protection of voluntarily furnished confidential information.

S. 412, the Local Emergency Health Services Reimbursement Act of 2003, introduced on February 13 by Senator Jon Kyl (R-AZ), would amend the Balanced Budget Act of 1997 to extend and modify the reimbursement of state and local funds expended for emergency health services furnished to undocumented aliens.

Agencies Issue a Variety of New Regulations

Federal agencies have issued a variety of new regulations in recent weeks, impacting everything from the accuracy of data entered into the FBI's National Crime Information Center database to restrictions on the assignment of social security numbers to aliens for non-work purposes. A brief summary of these regulations follows.

Department of Justice:

FBI Data Exempted from Privacy Act's Accuracy Requirements. A March 24 Department of Justice (DOJ) final rule exempts the FBI's National Crime Information Center (NCIC) database from the Privacy Act, meaning that the FBI need no longer ensure the accuracy and timeliness of incriminating information about a particular individual before loading it into the nation's most comprehensive law enforcement database. (68 FR 14140, 3/24/03, see AILA InfoNet Doc. No. 03032642).

Department of Homeland Security:

Production or Disclosure of Official Information in Connection with Litigation. A January 27 Department of Homeland Security (DHS) interim final rule established procedures for the public to obtain the production or disclosure of official information in connection with litigation, including litigation to which the DHS is not a party. (68 FR 4070, 1/27/03, see AILA InfoNet Doc. No. 03032423).

Classified National Security Information. A January 27 DHS interim final rule established the initial elements of the agency's classified national security information regulations, delegating to the Under Secretary for Information Analysis and Infrastructure Protection the responsibility for

developing internal operating instructions on classified information. (68 FR 4073, 1/27/03, see AILA InfoNet Doc. No. 03032422).

State Department:

Expanded Definition of 'Immediate Relative'. The State Department, on March 20, finalized without change an interim rule implementing § 423 of the USA PATRIOT Act to expand the definition of 'immediate relatives' to include widows and children whose spouses/parents were the victims of the terrorist acts of September 11. (68 FR 13728, 3/20/03, see AILA InfoNet Doc. No. 03040142).

Waiver of Visa Fees for B-1 U.N. Observers. The State Department, on March 20, finalized without change an interim rule that expanded the waiver of the visa application and issuance fees for diplomats to include B-1 visas for members of observer missions to the United Nations. (68 FR 13727, 3/20/03, see AILA InfoNet Doc. No. 03032027).

Elimination of Extended Visa Validity Benefits Under Expired IMMACT Provision. A March 20 State Department final rule eliminated the extended visa validity benefit for certain aliens who qualified under § 154 of IMMACT 90. Section 154 permitted certain aliens resident in Hong Kong to extend the validity of their immigrant visa up to January 1, 2002. Since the benefit no longer exists, the agency removed the provision. (68 FR 13727, 3/20/03, see AILA InfoNet Doc. No. 03032030).

Issuance of Replacement Visas. On March 20, the State Department finalized an interim rule that updated and clarified its regulation at 22 CFR § 42.74, pertaining to the issuance of replacement visas, by deleting a citation which is no longer in force and making some additional editorial changes. (68 FR 13727, 3/20/03, see AILA InfoNet Doc. No. 03032029).

Social Security Administration:

Codification of Restrictions on Issuance of SSNs for Non-Work Purposes. A March 26 Social Security Administration proposed rule would codify restrictions on the assignment of social security numbers (SSNs) to aliens for non-work purposes by limiting such assignment to situations in which a federal statute or regulation, or a state or local law, requires the alien to have an SSN in order to receive a public benefit for which eligibility has been established. (68 FR 14563, 3/26/03, see AILA InfoNet Doc. No. 03032641).

Agency Notices:

Executive Order Addresses Classified National Security Information. Executive Order (EO) 13292, published in the Federal Register on March 28, amended EO 12958 to prescribe a uniform system for classifying, safeguarding, and declassifying national security information, including information relating to terrorism. (68 FR 15315, 3/28/03, see AILA InfoNet Doc. No. 03033141).

\$22 Million for Refugee Assistance in the Middle East. President Bush, on March 28, issued a Presidential Determination authorizing the use of up to \$22 million from the Emergency Refugee and Migration Assistance Fund to address unexpected, urgent refugee and migration needs "that are anticipated in the event of a future humanitarian emergency in the Middle East." (68 FR 15043, 3/28/03, see AILA InfoNet Doc. No. 03040142).

Notice of Class Action Judgment in *Barahona-Gomez v. Ashcroft*. The Executive Office for Immigration Review (EOIR), on March 20, published a notice in the Federal Register discussing the settlement agreement in *Barahona-Gomez v. Ashcroft*, the class action lawsuit that challenged directives that prohibited the BIA and the Immigration Judges from granting suspension of deportation after February 13, 1997, because of a concern that the 4,000 cap on the number of persons who could be granted lawful permanent residency based on suspension of deportation had nearly been reached. (68 FR 13727, 3/20/03, see AILA InfoNet Doc. No. 03032028).

MEDIA SPOTLIGHT: Members and Staff in the News

Philip Berns (Connecticut) was quoted in the April 6 edition of the *New York Times* (Connecticut Supplement) and the April 3 edition of *El Sol News* on the subject of driver's licenses for immigrants. The *Legal Times* quoted **Cora Tekach** (Washington, D.C.) in a March 31 article on Samuel Kooritzky, a Virginia attorney recently sentenced to 10 years imprisonment on charges of conspiracy, labor certification fraud, immigration fraud, and money laundering. On March 31, **Victoria Campos** (New York) was quoted in a *Newsday* story on the lengthening processing times for immigrants waiting to adjust their status.

The *New York Times* quoted **Eleanor Acer** (New York) in a March 31 story on the blanket detention of certain asylum seekers from "terrorist-sponsoring" states. **Adam Green** (Southern California), **Jackson Chin** (New York) and **Angela Bean** (Northern California) were quoted in the March 31 edition of *Newsday's* Immigration Q&A.

Tammy Fox-Isicoff (Southern Florida) was quoted in a March 28 *Associated Press* article on the FBI interviews of thousands of Iraqi nationals. **David Berger** (Southern Florida) was quoted in a March 25 *Miami Herald* story on his client, a Tibetan monk who was denied reentry after a visit to India for failing to secure a new R-1 visa abroad after having previously changed his status in the U.S. **Jacqueline Baronian** (New York) was quoted in a March 23 edition of *Newsday's* Immigration Q&A.

Paul Parsons (Texas) was quoted in a March 22 *Daily Texan* article about special registration. **Mazen Sukkar** (Southern Florida) and **Anis Saleh** (Southern Florida) were quoted in a March 20 *Miami Herald* article on the heightened scrutiny of immigrants from Arab and Muslim countries. The *Orange County Register* quoted **Faith Nouri** (Southern California) in a March 20 article on special registration.

On March 20, the *Pittsburgh Post-Gazette* quoted **Robert Whitehill** (Pittsburgh) in an article about the voluntary questioning of Iraqi nationals. **Stephen Yale-Loehr** (Upstate New York), **Cheryl Little** (Southern Florida), and **Anis Saleh** (Southern Florida) were quoted in a March 20 Ft. Lauderdale *Sun-Sentinel* article on the blanket detention of asylum seekers from certain Arab and Muslim countries.

Stephen Yale-Loehr (Upstate New York), **Kathleen Walker** (Texas), and **Tim Murphy** (Southern Florida) were quoted in a March 18 *Sun-Sentinel* article on the disruption of commerce and travel stemming from heightened security at the borders. **Jo Anne Adlerstein** (New Jersey) was quoted in a March 17 *New Jersey Law Journal* article on the transition of the INS into the new Department of Homeland Security. The *Pittsburgh Post-Gazette* quoted **Robert Whitehill** (Pittsburgh) in a March 16 article on the special registration program. **Jorgelina Araneda** (Carolinias) served as an immigration law panelist on March 16 for the Hispanic television station

CDN-TV in North Carolina during a special broadcast on immigration changes post-September 11.

Daryl Buffenstein (Atlanta) and **Madeline Wirt** (Atlanta) were quoted in a March 14 *Fulton County Daily Report* article on the Diversity Visa Lottery. **Hoang Huy Tu** (Southern California) was quoted in the March 14 edition of the *Orange County Register* on the topic of K-1 visas. **Charles Kuck** (Atlanta) was quoted in a March 12 *Atlanta Journal and Constitution* story on the government's frequent denial of the right to counsel during the call-in special registration interview process.

The Spanish language edition of the *Orlando Sentinel (El Sentinel)* quoted **Marshall Fitz** (National) in a March 8 article on the INS's transition into the Department of Homeland Security and the potential effect of this change on immigration services.

Altat Adam (Texas) was quoted in the April edition of the *Washington Report on Middle East Affairs* on the special registration program. **Sohail Mohammed** (New Jersey) was profiled in the March issue of *Corporate Counsel*, in which he discussed, among other things, the current tension between national security versus civil rights.

Carl Shusterman (Southern California) authored a piece in the Winter 2002 issue of the *Association of Staff Physician Recruiters Journal* entitled "J-1 Physicians and the Conrad Program." **Mr. Shusterman** was also quoted in a recent issue of *Modern Healthcare* on the subject of recruitment by U.S. hospitals of foreign nurses.

Ronald Zisman (Canada) penned an article for the February 12 edition of CNET's *News.com* entitled "Taking the Easy Way Out on H-1B." **Sheela Murthy** (Washington, D.C.) was quoted in a February 10 *New York Times* article on the current nursing shortage in the U.S. and the need for immigration reform that will address the health care worker shortage.

Note: Please submit all articles, letters-to-the-editor, etc. for inclusion in "Members in the News" to Judy Golub of the AILA Advocacy Department (jgolub@aila.org).

Did You Know?

Legal immigrants—immigrants with green cards—account for 31,000 of the 1.35 million soldiers, sailors, airmen and Marines on active duty....They generally enlist for the same reasons as other men and women—to receive job training, secure money for a college education or show loyalty to the United States.

--*The Atlanta Journal and Constitution*, March 19, 2003

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