

WASHINGTON UPDATE

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H-2B Update

Legislation to “Save Summer” for H-2B employers continues to be a top issue in the Senate. However, to date there is no consensus about how to proceed. Two bills already have been introduced that would increase the available numbers of H-2B visas for this fiscal year: the bipartisan “Save Summer Act of 2004” (S. 2252), introduced by Senator Kennedy (D-MA) and others, and the “Summer Operations and Services (S.O.S) Relief and Reform Act” (S. 2282), introduced by Senators Hatch (R-UT) and Chambliss (R-GA). Both Senators Kyl (R-AZ) and Sessions (R-AL) have expressed concerns with increasing the numbers of H-2B workers for this fiscal year. Both Senators are reportedly drafting their own legislative language that would include permanent changes to the H-2B program. Such dramatic reform does not belong on an emergency fix. Time is growing short and it remains critical that employers continue to reach out to their members of Congress and call for a law to Save Summer.

Sierra Club Members Reject Anti-Immigration Candidates

Sierra Club members overwhelmingly rejected an attempt by immigration restrictionists to gain control of the nation’s largest environmental group. In recent elections for the Club’s board of directors, the results of which were announced on April 21, members rejected a slate of anti-immigration candidates, selecting instead candidates endorsed by the Club’s nominating committee to fill all five open seats on the 15-member board. The issue drew a record number of members participating in the elections—171,616 out of 757,058, or almost 23 percent of the membership, compared with previous percentages in the single-digit range.

The Sierra Club Board reportedly already has three members that support an anti-immigration agenda, with two additional members that frequently ally themselves on the issue. Hence, if the

anti-immigration candidates had been successful in the election, immigration restrictionists likely would have had enough votes to tip the balance and reshape the Club's agenda to include immigration control issues.

This latest, high-profile attempt by immigration restrictionists to take control of the Sierra Club cast a spotlight on the question of whether immigration to the United States poses a significant environmental threat, and was widely seen as a referendum on the Club's neutral position on the issue. The Sierra Club's leadership believes overpopulation is a global problem and should be addressed on a global level.¹ A contingent within the Club's membership believes otherwise, however, and reportedly has been working with immigration restrictionists to convince the club's membership to take a hard-line approach on immigration issues. A 1998 referendum to persuade Sierra Club members to make immigration restriction an official policy also failed.

One Sierra Club official, prior to the release of the election results, predicted that many employees would simply leave the organization rather than work on immigration control policies. "These people have one agenda. They want to take all our resources and put [them into] one thing. We didn't come here to work on immigration," the club official said.²

Sierra Club board president Larry Fahn called the election results "a strong mandate for the board to stick to its core agenda and mission of protecting our planet.... [and] a clear repudiation of those wanting the club to get involved in the immigration debate."³

USCIS Fee Increases to Take Effect April 30

The Bureau of Citizenship and Immigration Services (USCIS) issued final regulations on April 15 to increase the cost of immigration applications and petitions. The fee hike of roughly \$55 per petition represents the largest increase in six years and will go into effect on April 30. According to the Department of Homeland Security (DHS), "[a]pplications or petitions mailed, postmarked or otherwise filed on this date require the new fee."

USCIS has stated that the new fees are needed to pay for added security measures and to reduce processing times. However, due to proposed cuts in the bureau's discretionary funding for fiscal year (FY) 2005, USCIS will have to turn to the revenue generated from the petition fee increases to support its current adjudication levels. The administration's proposed budget for FY 2005 only requests \$140 million for USCIS discretionary funding—a 41% reduction from the inadequate \$236 million included in the Administration's proposed FY 2004 budget. If the administration is serious about eliminating the backlog and reducing processing times, it will have to appropriate sufficient funds for USCIS.

At a time when the quality of service is at an historic low, fee increases of this magnitude are difficult to justify. Many businesses already are paying an additional \$1,000 premium processing fee to ensure that visa petitions will be processed in a timely manner. Those businesses unable to afford the hefty additional fee face processing times of several months. Meanwhile, the agency has increased markedly frivolous requests for information that delay adjudications and waste precious resources.

¹ *Contra Costa Times*, Mar. 23, 2004.

² *Id.*

³ *New York Times*, Apr. 22, 2004.

As USCIS loses files, errs on more and more applications, and provides no viable avenue to resolve problems, lawsuits to force action have increased. Adding insult to injury, the fee increase would force applicants to pay for these failures. The proposed budget for USCIS factors the costs of these suits into the fees by proposing a surcharge to pay for them. The Equal Access to Justice Act mandates that government agencies pay certain costs when they take a substantially unjustified position in litigation. USCIS proposes to evade this law by forcing the very people who are harmed by its actions or inaction to pay the costs of the agency's unjustified positions.

Making matters worse, the USCIS has cut off direct phone access to the Immigration Information Officers (IIOs), who had the ability to address problems and questions, including emergency case problems, and has instead established a contractor-run 800 number that has proven to be unable to address these issues. The Department also has announced that it intends to outsource the IIO function and factors into the proposed fee increase the cost of conducting an expensive study of this problematic initiative. Despite numerous problems associated with contracting out the deeply flawed 800 number system, the USCIS budget would mandate that applicants pay the costs of this study to expand this failed concept to cover all user assistance functions.

Starting with FY 2006, USCIS will adjust the immigration fees at the start of each fiscal year based upon the inflation level. USCIS plans to announce each year's new fee schedule through a notice published in the Federal Register.

Administration sources have stated their goal of covering processing costs wholly with fee revenue. Such an initiative recognizes neither current challenges nor realities, and goes in the wrong direction. Direct congressional appropriations are needed to supplement user fees: USCIS adjudications and security checks are in the national interest and such appropriations are necessary to ensure a rational and predictable funding stream.

House Judiciary Committee Considers Biometric Passport Extension Request

The House Judiciary Committee, on April 21, held an oversight hearing on whether Congress should extend the October 2004 statutory deadline requiring visa waiver program (VWP) participants to present biometric passports upon entry to the U.S. Testifying before the committee were Secretary of State Collin Powell and Secretary of Homeland Security Tom Ridge. Both Secretaries urged the committee to extend the statutory deadline until November 30, 2006. In exchange for this extension, Mr. Ridge offered to subject VWP participants to the US-VISIT program. According to Mr. Ridge, this inclusion of VWP participants in US-VISIT would continue "in perpetuity."

The Enhanced Border Security and Visa Entry Reform Act of 2002 (Pub. L. No. 107-173) requires VWP participants to present machine-readable, tamper-resistant passports that incorporate biometric and document authentication identifiers if the passport is issued after October 26, 2004. If an individual from a VWP-eligible country obtains his passport after this date and it does not contain the above-stated safeguards, the individual will be unable to participate in the VWP and will, instead, need to obtain a visa from the U.S. consulate before attempting entry to the U.S. According to Secretary Powell, failure to extend the statutory deadline could result in a 70 percent increase in the U.S. consulates' nonimmigrant visa workload. Given that visa issuance is already backlogged and under-funded, Secretary Powell expressed his concern that "[e]ven longer wait times would make it even more difficult to convince people worldwide, particularly youth, that America welcomes them and wants them here, to go to our schools, visit our museums and learn our language."

AILA strongly supported the Enhanced Border Security and Visa Entry Reform Act. However, AILA also expressed concern when Congress passed this legislation that some of the deadlines, including the one for machine-readable passports, were unlikely to be met, given technological and other difficulties. The delay in reaching this deadline is directly tied to the timing in which the International Civil Aviation Organization (ICAO) can issue standards. ICAO only recently issued partial guidance.

Such guidance is essential for the development of a single international standard for biometric passports, the need for which Secretaries Powell and Ridge affirmed during the hearing. According to Secretary Ridge, DHS currently is unable to purchase document scanners that can read all microchips contained in the new biometric passports. He noted that having an international uniform standard would increase DHS's ability to obtain scanners that can read the new passports, and expects these scanners to be available by 2006. Secretary Powell noted that a single international standard for the new biometric passports is also desirable from a foreign policy perspective. He reminded the committee that by allowing foreign countries the additional two years to develop their passport program, the systems will be interoperable with similar systems installed throughout the world. This, in turn, will increase the safety of travelers worldwide and particularly Americans overseas.

VWP participants account for about 13 million annual entries into the U.S. While extending the statutory deadline to ease the burden on U.S. consulates is necessary, given current technological capacities and the serious delays currently occurring in the visa issuance process, it is questionable whether the US-VISIT program has the capacity to manage the additional millions of new foreign nationals that will be brought into the system without serious delays at our ports of entry. Such delays will damage our economy and make our ports of entry less safe. Currently, US-VISIT has operated only during times of low international travel. Due to this low volume, the program has been able to keep delays at our nation's airports to a minimum. However, as travel volume increases with the addition of millions of travelers, delays are expected to increase substantially. In order to absorb the new burdens on the US-VISIT system, DHS must augment its staffing at the ports of entry to ensure that US-VISIT is running at full capacity.

The capacity of U.S. VISIT also is being questioned, due to its expansion this December to the 50 busiest land ports of entry. If VWP participants are included in US-VISIT at the land ports, millions of additional travelers will clog the secondary inspections lines. DHS must ensure that land ports have adequate funding and infrastructure developments necessary to handle this increased burden. In the alternative, DHS must re-examine its proposal to subject VWP participants to US-VISIT at the land ports. If such precautions are not taken, the result could be clogged land borders which in turn will stifle cross-border commerce and travel and generate security concerns. For a review of border security issues, see the testimony of Dr. Stephen E. Flynn on "U.S. & Mexico: Immigration Policy & The Bilateral Relationship" before the Senate Foreign Relations Committee on March 23, 2004: www.aila.org/fileViewer.aspx?docID=12722. For a review of US-VISIT, see the January 29, 2004 testimony delivered by Kathleen Campbell Walker on behalf of AILA before the Subcommittee on Infrastructure and Border Security of the House Select Committee on Homeland Security: www.aila.org/fileViewer.aspx?docID=12104.

Senate Subcommittee Convenes Hearing on State and Local Enforcement of Immigration Law; Heritage Foundation Releases Report Criticizing Proposal

The Senate Judiciary Committee's Subcommittee on Immigration and Border Security held a hearing on April 22 entitled "State and Local Authority to Enforce Immigration Law: Evaluating a Unified Approach for Stopping Terrorists." The witness panel, which was heavily biased

toward immigration restrictionists, included Kris W. Kobach, Professor of Law at the University of Missouri, Kansas City School of Law, former counsel to Attorney General John Ashcroft, and current candidate in a Missouri congressional primary race; Michelle Malkin, journalist and author of “Invasion: How America Still Welcomes Terrorists Criminals & Other Foreign Menaces to Our Shores”; E.J. Picolo, Regional Director of the Florida Department of Law Enforcement; and David A. Harris, Balk Professor of Law and Values at the University of Toledo College of Law.

As background, the Department of Justice (DOJ) drafted a legal opinion in 2002 that reversed a long standing agency interpretation by taking the position that states and localities, as sovereign entities, have the “inherent authority” to enforce federal immigration laws, including civil violations of immigration law. In the wake of that opinion, which remains unpublished, Representative Charlie Norwood (R-GA) introduced the Clear Law Enforcement for Criminal Alien Removal (CLEAR) Act, H.R. 2671, a bill promoting state and local law enforcement of federal immigration laws. Senators Jeff Sessions (R-AL) and Zell Miller (D-GA) have introduced parallel legislation in the Senate, the Homeland Security Enhancement Act (HSEA), S. 1906. Both bills purport to reaffirm the “inherent authority” of state and local governments to enforce civil immigration laws. Furthermore, both bills would criminalize all immigration status violations for the first time in this country’s history.

The CLEAR Act would *require* state and local police to enforce federal civil immigration laws or lose certain critical funding. The HSEA takes a slightly different tack by denying funding to states or localities that have policies or practices in place which prevent their police from enforcing such laws. Both bills would impose expansive new responsibilities on state and local police departments where resources already are stretched perilously thin. With no requirement that the police receive training in immigration law, these bills are certain to trigger civil rights abuses against citizens and non-citizens alike. Moreover, these bills would undermine rather than enhance our safety by jeopardizing critical community-based policing initiatives that are predicated on earning the trust and confidence of the served communities.

In his opening statement, Subcommittee Chairman Saxby Chambliss (R-GA) noted that three of the 9-11 hijackers had come into contact with state police in the months and days leading up to the events of September 11, the implication being that had we had legislation such as the CLEAR Act or the HSEA on the books, those individual hijackers, at least, might have been stopped.

Ranking Member Edward Kennedy (D-MA) called the Justice Department’s proposal to use state and local law enforcement agencies to enforce the immigration laws “one of the most controversial and counterproductive policies the...Department has proposed.” “Besides unreasonably burdening local law enforcement, irreparably damaging community policing, and undermining the safety of our neighborhoods,” he said, “this policy will impose heavy financial costs on state and local governments.” He stressed that good intelligence is the key to national security, adding that if local communication shuts down because immigrants are afraid to approach law enforcement officials, we will forfeit important information and jeopardize the security of our nation.

Moreover, Senator Kennedy continued, “if this policy is implemented, it would effectively create a class of criminals that would be immune to prosecution. Immigrant victims of crime or witnesses would not report crimes or seek assistance for fear of being arrested by the police. Criminals would not be held accountable for their actions, because no one will come forward.” Senator Kennedy pointed out that current law already provides ways to create effective partnerships between local law enforcement offices and federal agents. States and localities can

enter into memorandums of understanding (MOUs) with the federal government to confer civil immigration law enforcement powers on their local officers after training in immigration law. Florida and Alabama already utilize these MOUs.

Senator Jeff Sessions (R-AL), in his opening statement, sought to differentiate his bill (the HSEA) from the CLEAR Act, portraying it somewhat disingenuously as a “voluntary” program. With regard to the MOU option that Senator Kennedy mentioned, Senator Sessions opined that the MOU route was too “complicated,” adding that officers on the street shouldn’t be denied the ability to enforce our immigration laws simply because they “haven’t gone to a two-week school.”

Senator John Cornyn (R-TX) expressed interest in exploring the idea of state and local law enforcement of immigration laws, adding that he’s not convinced that voluntary cooperation with immigration officials will have the public safety consequences many police and local governments fear. However, he emphasized that community policing is a vital tool which must be preserved. Senator Cornyn’s primary concern with the proposal was financial. He seemed concerned that such a program would amount to an unfunded mandate on local law enforcement agencies. He also took issue with the provisions of the HSEA that would threaten funding under the State Criminal Alien Assistance Program (SCAAP), adding that the federal government is already “doing a very poor job living up to its responsibilities in this area.”

During his testimony, Mr. Kobach set forth his version of the legal authority he believes police have to enforce federal immigration laws, opining that such “inherent authority” flows from the states’ status as sovereign entities. He cited to the “abundant case law” which he believes goes to support this theory, and noted the absence of congressional preemption on the issue. “It is clear,” he said, “that the potential for closer cooperation with state and local law enforcement has not been fully exploited. Consequently, there has been a cost in the national security of the United States, as well as in the enforcement of immigration laws.”

Mr. Picolo testified that the Florida Department of Law Enforcement is pleased with the overall MOU approach, but added that the program has stalled somewhat in the wake of the INS’s restructuring into the DHS and the attendant personnel shifts and reassignments. In addition, he said, the MOU has not been renewed and is still under review.

Ms. Malkin claimed to have interviewed numerous state and local law enforcement officers all of whom, she stated, expressed the desire to enforce immigration laws and share information with the federal government but are currently prevented from doing so. She then cited to an incendiary list of brutal crimes that could have been averted, she claims, had state and local officers been permitted to enforce civil immigration laws.

Mr. Harris, the lone voice among the witnesses to speak against the proposed legislation, opined that the legislation would seriously hinder the work of state and local police and would fatally damage their carefully cultivated efforts at community policing. The biggest problem with the HSEA, he said, is that “in any community with a significant number of immigrants, the Act will destroy this foundation of trust upon which not just community policing, but all of local law enforcement, is predicated.” He added that he has interviewed hundreds of state and local law enforcement officers across the country in connection with a book he is writing and the overwhelming theme he hears from them again and again is “If we have to enforce immigration laws, we’ll lose the confidence of the communities we serve and protect and criminals will run free.”

As for the chilling effect that opponents of the legislation argue would result from police cooperating with federal authorities, Mr. Kobach stated that he believes it's a "myth" that undocumented aliens actually report crimes to begin with. Mr. Harris was quick to disagree, however, adding that "if you push people out of the circle of protection, they're more likely to become victims. They *will* stop communicating." Mr. Harris added that the immigration issue is a broad problem, and one that reliance on enforcement alone will not cure. "If you have only one tool—a hammer," he said, "then everything will look like a nail." The immigration issue has economic roots, he said, and must be addressed holistically.

Senator Kennedy also elicited the fact that Florida Governor Jeb Bush favors the MOU approach as opposed to a CLEAR-type expansion of state and local police authority.

To view the full testimony of the hearing witnesses, go to:
<http://judiciary.senate.gov/hearing.cfm?id=1156>.

To view AILA's Issue Packet on the CLEAR Act and the HSEA, see
<http://www.aila.org/fileViewer.aspx?docID=12346>.

In related news, the conservative Heritage Foundation released a paper the day before the hearing entitled "No Need for the CLEAR Act: Building Capacity for Immigration Counterterrorism Investigations." The Clear Act, the paper states, "takes exactly the wrong approach, inappropriately burdening state and local enforcement and providing insufficient protections for civil liberties." The paper then goes on to enumerate "four serious flaws" with the proposed legislation:

- The act has the potential to shift police priorities so that officers spend their time tracking down immigration violations instead of solving and preventing crimes within their communities. It could also undermine the immigrant communities' trust and confidence in law enforcement. Fear of deportation may make immigrants and aliens less likely to report crimes and suspicious activity. Furthermore, foreign nationals may refuse to assist in security investigations because of concerns about the immigration consequences.
- The bill may hinder law enforcement by undermining the usefulness of the FBI's National Criminal Information Center (NCIC) database. Including entries for immigrants with minor violations, whose statuses change frequently, will make it hard to keep the database current. Filling the database with records of minor immigration violators could also distract or impede police officers from using the database to obtain information about violent criminals and terrorists. The NCIC should be reserved for serious, significant immigration violations.
- It provides broad immunity protection for those who may violate an alien's or citizen's rights, thus giving the victim no recourse.
- The proposed legislation is unnecessary. Police already have the authority to arrest aliens who commit crimes, and state and local authorities can help fight terrorism using already established statutory tools.

To view the complete text of the Heritage paper, go to:
<<http://www.heritage.org/Research/HomelandDefense/em925.cfm>>

Capitol Hill Event Highlights End of Educational Dreams for Immigrant Students

Hundreds of students and advocates from around the country held a rally and mock graduation ceremony at the U.S. Capitol on April 20 in support of the DREAM Act (S. 1545) and the Student Adjustment Act (H.R. 1684). After the rally, a representative of the Department of Education was given over 65,000 signed petitions urging President Bush to support the legislation. This 65,000 figure mirrors the approximate number of children who will graduate from U.S. high schools this year and will be, without passage of the DREAM Act/Student Adjustment Act, denied the ability to continue their education. These children, who were raised in the U.S. and who have overcome considerable obstacles, will be denied the opportunity to follow their dreams and continue their education after graduation due to inflexible federal immigration laws. Our country cannot afford to lose the economic and social contributions these children have to offer.

The DREAM Act/Student Adjustment Act would remedy this situation by eliminating a 1996 federal restriction that discourages states from providing in-state tuition to these students. The legislation also would provide a mechanism to allow immigrant students who have spent their formative years in the U.S. and have good moral character to apply for legal residency.

AILA strongly supports the passage of this bipartisan legislation that provides deserving students with the opportunity to apply for legal status and continue their education, and urges Congress and the Administration to support a measure worthy of these deserving children. The dreams of these children should not end at high school graduation. By providing the opportunity for these children to go to college and gain legal status, America will both strengthen its economic foundation by creating a more educated work force and introduce justice and fairness to our immigration system.

American Sociological Association Hosts Immigration Panel Discussion

The American Sociological Association, on April 19, hosted an enlightening panel discussion entitled “A Nation of Immigrants: Current Policy Debates Meet New Social Science Research.” The discussion covered current research on immigration to the U.S. and the implications for immigration policy debates. Panelists were: Professor Douglas S. Massey, Princeton University; Professor Rogelio Saenz, Texas A&M University; and Professor Victor Nee, Cornell University.

Professor Massey emphasized how current policy debates ignore the basic facts. In particular, he highlighted several misconceptions about the driving forces behind international migration, including: “(1) Migration is caused by rapid population growth; (2) migration is caused by poverty and a lack of development in the home country; (3) migrants move mainly in response to wage differentials; (4) most migrants intend to settle permanently; and (5) increasing the costs of entry will reduce migration.” The consequence of failing to entertain the facts has been the development of incoherent and counterproductive immigration policies. In particular, changes to immigration policy based on these misconceptions have led to a sharp decline in return migration, the decline in wages for *legal* migrants, wasted resources on militarizing the border, and the tragic loss of life.

Professor Nee refuted allegations made in a recent article by Samuel Huntington that Latino immigration is different in kind from prior waves of immigration. Huntington argued that Latinos refuse to assimilate to American culture and therefore pose a threat to America’s identity and integrity as an “Anglo-Protestant” culture. Professor Nee cut that argument down at its

premise by demonstrating persuasively that assimilation is, in fact, taking place. He argued that the research reflects a familiar pattern of “intergenerational assimilation, evidenced in a shift to English-speaking, broad trends of socioeconomic mobility and gradual incorporation into the American mainstream.”

Professor Saenz discussed the demographics of Latino immigration. He identified changes in the distribution patterns of Latinos immigrating to the U.S. with increasing settlement in the Midwest and South, and highlighted the prominence of Mexicans in the current U.S. foreign-born population. He noted shifts in the age/sex composition of Latino immigrants, and in the labor patterns of Latino immigrants. Interestingly, he pointed out that nearly half of all Latino immigrant workers are employed in 20 industries. Among the most significant industrial niches for Latino immigrant workers are: construction, restaurants and other food services, landscaping, traveler accommodations, automotive repair, and private households.

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. 4174, the Voter Citizenship Verification Act, introduced on April 20 by Representative Phil Gingrey (R-GA), would amend the National Voter Registration Act of 1993 to require an individual to provide proof that he or she is a citizen of the United States as a condition of registering to vote in elections for federal office. Under the legislation, a driver’s license may not be treated as a document that provides proof of citizenship unless the state issuing the license required the individual to provide proof of the individual’s U.S. citizenship as a condition of receiving the license.

H.R. 4141, the Border Infrastructure and Technology Integration Act of 2004, introduced on April 2 by Representative Jim Kolbe (R-AZ), would, among other things: require the DHS to study the technology, equipment and personnel needed to address security within the U.S. and submit a report to Congress with recommendations; authorize discretionary accounts for the Bureau of Customs and Border Protection (CBP) field offices to develop innovative inspection techniques and technologies; mandate the development of pilot programs to utilize both aerial and ground surveillance technologies to enhance U.S. border security; require DHS to develop a plan to improve coordination among federal, state and local agencies on matters relating to border security; call for the establishment of a system to monitor the border for signs of bioterror attacks; and authorize appropriations for DHS’s Directorate of Science and Technology. Senator John McCain introduced a similar bill in the Senate (S. 2295).

H.R. 4082, the Cesar E. Chavez Congressional Gold Medal Act, introduced on April 2 by Representative Joe Baca (D-CA), would award a congressional gold medal on behalf of Cesar E. Chavez in recognition of his service to the nation.

H. Res. 601, introduced on April 21 by Representative Rahm Emanuel (D-IL), would recognize the importance of designating the Republic of Poland as a program country for purposes of the Visa Waiver Program under INA § 217, and would urge the Secretary of Homeland Security and the Secretary of State to assist Poland in qualifying for such program.

Senate Legislation

S. 2324, the Visa Waiver Program Compliance Amendments of 2004, introduced on April 20 by Senator Saxby Chambliss (R-GA), would extend the deadline on the use of technology standards for the passports of visa waiver participants. Specifically, the bill would extend for another two years (until November 30, 2006) the deadline for Visa Waiver Program countries to issue the new machine-readable, biometrically enhanced passports mandated by the Enhanced Border Security and Visa Entry Reform Act of 2002 (Pub. L. No. 107-173). The legislation would also extend by the same two years the deadline for the Department of Homeland Security to install at all U.S. ports of entry the necessary equipment and software to “read” the new passports. However, the legislation would not extend the deadline (currently set at October 26, 2004) for the installation at all ports of entry of the equipment and software necessary to read the new machine-readable visas issued by the U.S.

S. 2295, the Border Infrastructure and Technology Integration Act of 2004, introduced on April 7 by Senator John McCain (R-AZ), would, among other things: require the DHS to study the technology, equipment and personnel needed to address security within the U.S. and submit a report to Congress with recommendations; authorize discretionary accounts for the Bureau of Customs and Border Protection (CBP) field offices to develop innovative inspection techniques and technologies; mandate the development of pilot programs to utilize both aerial and ground surveillance technologies to enhance U.S. border security; require DHS to develop a plan to improve coordination among federal, state and local agencies on matters relating to border security; call for the establishment of a system to monitor the border for signs of bioterror attacks; and authorize appropriations for DHS’s Directorate of Science and Technology. Representative Jim Kolbe introduced a similar bill in the House (H.R. 4141).

Recent Rulemaking and Other Activity in the Federal Agencies

Federal agencies issued just one new regulation since our last *Update*, a summary of which appears below. Additional details on this new regulation are contained in article number two in this *Update*.

Department of Homeland Security

The Department of Homeland Security’s (DHS’s) Bureau of Citizenship and Immigration Services (USCIS) issued a final rule on April 15 adjusting the fee schedule of the Immigration Examinations Fee Account (IEFA) for immigration benefit applications and petitions, as well as the fee for capturing biometric information of applicants or petitioners who apply for certain immigration benefits. The rule raises the immigration benefit application fees by approximately \$55 per application, and increases the biometric fee by \$20. In addition, on January 24, 2003, and February 27, 2003, the former Immigration and Naturalization Service published two interim rules that first adjusted fees lower based on section 457 of the Homeland Security Act of 2002, and then readjusted the fees to preexisting levels, based upon the repeal of section 457. Accordingly, this final rule adopts the two interim rules as final without change, and adopts the fee structure that was proposed on February 3, 2004. This final rule is effective April 30, 2004. Applications or petitions mailed, postmarked, or otherwise filed, on or after this date require the new fee. (69 FR 20527, 4/15/04, see AILA InfoNet Doc. No. 04041463).

MEDIA SPOTLIGHT: Members and Staff in the News

Mario Russell (New York) was quoted in an April 26 *Newsday* question and answer article about immigration. **James Eiss** (Upstate New York) was quoted in an April 25 *Newsday* article about the risks undocumented immigrants take when they agree to take part in smuggling rings to pay off their debts. **Judy Golub** (National) was quoted in an April 25 *Orlando Sentinel* article about the USCIS's backlog and how increased immigration fees will not alleviate the current backlog crisis. **Steven Thal** (Minnesota/Dakotas) was quoted in an April 24 *St. Louis Daily Record* article about his client who won an appeal before the U.S. Court of Appeals for the Eighth Circuit on the issue of whether the Board of Immigration Appeals can deny a petitioner's claim of asylum based on the lack of formal, documented evidence of his having been arrested illegally by officials from his country of nationality. **Judy Golub** (National) was quoted in an April 24 *Washington Post* article about the federal government granting a group of Virginia State Police officers the power to enforce immigration law.

Carol Edward (Washington State) was quoted in an April 23 *Seattle Post-Intelligencer* article about her clients who appealed a decision to deny their asylum petition to the U.S. Court of Appeals for the Ninth Circuit but were denied on the grounds that their fears did not amount to persecution. **Stuart Symington, Jr.** (Missouri/Kansas) was featured in an April 23 *St. Louis Dispatch* article about being honored by the American Jewish Committee's Institute of Human Relations at a dinner on June 8th, for which he will receive the John D. Levy Award.

John Gallagher (Southern California) had a letter to the editor published in the April 22 edition of the *Christian Science Monitor* which criticized that paper's editorial on the CLEAR Act by stating: "Your suggestion to enlist local law enforcement will do nothing more than make life even more miserable and restricted for 1 in 15 American workers here who are already living in the shadows. What is needed is a generous way for long-term residents to legalize." **Mark Knapp** (Pittsburgh) was featured in an April 22 *Associated Press* article about an appeal to the U.S. Court of Appeals for the Third Circuit filed on behalf of his client, a Canadian Amish man who is facing deportation because he refuses, due to his religious beliefs, to have his photograph taken for legal residency purposes. **Mark** was also quoted in an April 22 *New York Times* article about the same client.

Beth Stickney (New England) was featured in an April 21 *Portland Press Herald* article about her client who faces deportation. **John Estrella** (National) was quoted in an April 21 *Valley Morning Star* article about the DREAM Act.

Richard Reinhart (Central Florida) was quoted in an April 20 *Bradenton Herald* article about the high standards immigrants must meet in order to qualify for a business visa. **John Estrella** (National) was quoted in an April 20 *Newsday* article about the DREAM Act. **Brent Renison** (Oregon) was featured in an April 20 *Seattle Post-Intelligencer* article about his client, Ian McEwan, a famous British author who was detained at the Canada-U.S. border, and subsequently received a rare letter of apology from the Department of Homeland Security for being "erroneously" prevented from entering the U.S.

Vic Goel (Washington, DC) was quoted in an April 19 *ComputerWorld* article about a proposed exemption from the H-1B visa cap. **Stanley Cohen** (New York) was quoted on April 19 in both the *Washington Post* and the *Associated Press* article about his client, Mousa Abu Marzook of the Islamic Resistance Movement, who is being accused of investing in a Maryland housing development in part to make money for the group's activities. **Cheryl Little** (Southern Florida)

was quoted in an April 19 *Miami Herald* article about the sixth annual fundraising dinner of the Miami-based Florida Immigrant Advocacy Center (FIAC), which is headed by Ms. Little.

Romy Schmalz (Washington State) was quoted in an April 19 *Seattle Times* question and answer article about immigration. **Crystal Williams** (National) was quoted in an April 19 *Congressional Quarterly* article about the new online service that BCIS is providing to immigrants to track their immigration applications.

The Associated Press quoted **Laura Lichter** (Colorado) in an April 16 article about Operation Compliance. **Laura Lichter** (Colorado), **John Reardon** (Colorado), and **Judy Golub** (National) were quoted in an April 16 *Denver Post* article about Operation Compliance. **Cheryl Little** (Southern Florida) was quoted in an April 14 *Sun-Sentinel* article about the generational difference in preference for English language programming or Creole language programming between older and younger Haitian immigrants. **Judy Golub** (National) was quoted in an April 16 *El Paso Times* article about increased immigration fees. **Kathleen Campbell Walker** (Texas) was quoted in an April 16 *Washington Times* article about President Bush's immigration proposal being blamed for increased apprehensions of immigrants along the U.S. – Mexico border.

The *San Jose Mercury News* quoted **Jon Wu** (Northern California) in an April 14 question and answer article about immigration. **Jim Tom Haynes** (Washington, DC) was quoted in an April 14 *Washington Post* article about his client who faces deportation after she accepted a plea agreement for embezzling \$3,000. **Greg Siskind** (Mid-South) was quoted in an April 14 *Washington Times* article about the H-2B visa cap. **Greg** was also quoted in an April 13 *Associated Press* article on the same topic.

Doug Weigle (Ohio) was quoted in an April 13 *Cincinnati Enquirer* article about his client, a wife and mother of U.S. citizens, who faces deportation because of a 1990 drug conviction. *The Detroit Free Press* quoted Namir Daman in an April 13 article about an Iraqi national who served alongside U.S. Marines in Iraq but whose asylum application was subsequently denied. **Deborah Notkin** (New York) was quoted in an April 13 *Journal News* article about *notarios*.

Cynthia Aziz (Carolinas) was featured in the *Times-Picayune* on both an April 12 and April 9 about her Cuban client Jose Silva, who had his green card taken in 1961 because he pled guilty to a crime after a passenger in his car was found with marijuana. Immigration officials ordered him deported, but the imposed embargo meant they couldn't send him back to Cuba. **Crystal Williams** (National) was quoted in an April 12 *Los Angeles Times* article about the increase in immigration application fees. **John Wilson** (New England) was interviewed in an April 12 *New Hampshire Public Television* broadcast about the H-2B cap.

Newsday quoted **Manuel Vargas** (New York) in an April 11 question and answer article about immigration. **Grisel Ybarra** (Southern Florida) was featured in an April 9 *Miami Herald* article about her client, Javier Morales, whom she successfully defended against criminal charges for attacking U.S. Coast Guard officers while rafting from Cuba to the U.S. **Ann Kanter** (Northern California) was quoted in an April 8 *Sacramento Bee* article about her clients, bilingual day-care center operators, who have sponsored their sister to come to the U.S. and have been waiting for four years for her petition to wind its way through the system. **Allan Wernick** (New York) was quoted in an April 11 *New York Daily News* article about a proposal to allow legal immigrants to vote in New York City elections.

Kim Salinas (Colorado) and **Judy Golub** (National) were quoted in an April 8 *Denver Post* article about Ms. Salinas' client, Edgar Chocoy, a 16-year-old Guatemalan, who was killed by his

former gang after being deported to Guatemala even though he had applied for asylum stating he would be killed if sent back. **Joren Lyons** (Northern California) was quoted in an April 8 *San Francisco Chronicle* article about his clients, members of the Cuevas family, who received a three-month stay of deportation in order to get their affairs in order.

Doug Wachholz (Washington, DC) had a column on immigration issues published in the April 2 edition of *El Tiempo Latino* in which he quoted **John Estrella** (National) concerning the DREAM Act and the Student Adjustment Act. **Jeff Josephs** (Colorado) and **David Shomloo** (Oregon) were quoted in a March 8 *Counterpunch* article about aggravated felonies and the effect these charges have on an immigrant's status.

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).

Immigration Works! From the Grassroots

Several members from AILA's New England chapter have taken to the internet to garner support for proposed legislation that will temporarily increase the H-2B cap (S. 2252 and H.R. 4052). **Dick Wilde** (New England), **George Bruno** (New England), **John Wilson** (New England), and **Susan Goff** (New England) are leaders of the grassroots effort "[Save New Hampshire's Summer](#)." Amb. Bruno has created a website that is devoted to getting the word out about the negative impact the H-2B cap will have on New Hampshire's economy, and how visitors can advocate for "Save the Summer" legislation. Links are provided so that visitors can easily write to their Senators and Representatives in support of the H-2B legislation. In addition, the website also links to AILA's materials on the issue. Finally, working with coalition members such as the New Hampshire Lodging and Restaurant Association, their efforts have produced many results in the media. Mr. Wilson was interviewed in a broadcast for New Hampshire Public Television, and articles have appeared in the *Manchester Union Leader* and the *New York Times* highlighting the negative impact the H-2B cap will have on the summer tourist season, as well as the proposed legislation's remedy. Well done!

Meanwhile, out in Colorado, Chapter Chair **Jeff Joseph** was instrumental in helping to defeat state legislation that would have required the Governor to enter into a contract with the Attorney General with the purpose of requiring state law enforcement officers to enforce federal civil immigration laws. The Colorado Senate soundly voted down the measure (SB 210) on April 23 with the Democrats, joined by some Republicans, united in opposition to the bill. **Jeff's** efforts included educating lawmakers about why such legislation is ill-advised, and testifying before both the Democratic Caucus and the Senate State Affairs Committee. Great work, Jeff!

Upcoming Hearing and Other Events

April 29, Thursday: 10 a.m., 2141 Rayburn House Office Building. The Border Security and Claims Subcommittee (Chairman Hostettler, R-IN) of the House Judiciary Committee will hold an oversight hearing titled "The Diversity Visa Program, and Its Susceptibility to Fraud and Abuse." The annual Diversity Visa program makes permanent residence visas available to persons meeting the simple, but strict, eligibility requirements. Applicants for Diversity Visas are chosen by a computer-generated random lottery drawing. The visas, however, are distributed among six geographic regions with a greater number of visas going to regions with lower rates of immigration, and with no visas going to citizens of countries sending more than 50,000 immigrants to the U.S. in the past five years. Within each region, no one country may receive

more than seven percent of the available Diversity Visas in any one year. Contact: 202-225-5727.

Did You Know?

“Some argue that we should raise the drawbridge and not allow in any more foreign visitors. They are wrong. Such a move would hand a victory to the terrorists by having us betray our most cherished principles. For our own nation’s well being, and because we have so much to give, we must keep our doors open to the world....Openness is fundamental to our success as a nation, economically, culturally and politically. Our economy will sputter unless America remains the magnet for entrepreneurs from across the world. Our culture will stagnate unless we continue to add new richness to our mosaic. And our great national mission of spreading freedom will founder if our own society closes its shutters to new people and ideas.”

--Secretary of State Colin Powell, *Wall Street Journal* Commentary, April 21, 2004

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