Tentative List of Pending Amendments to S. 1639

The "grand bargainers" have now finalized a package of 27 amendments that will be considered during debate on the Secure Borders, Economic Opportunity, and Immigration Reform Act (S. 1639). This document provides a brief summary of the outstanding amendments and AILA's position. As the debate unfolds and votes are taken, this document will be updated to reflect the status of each amendment. Amendments that are still pending are listed first, followed by a list of amendments that the Senate has voted to table (thus effectively killing these amendments).

PENDING AMENDMENTS[1]:

Division VII Baucus-Tester Amendment (p. 131) – **SUPPORT** – to remove unworkable Real ID compliance provisions from Title III of S.1639 and eliminate a proposal requiring every worker in America have a Real ID-compliant driver's license by 2013 to get any new job. Because deployment of the Employment Eligibility Verification System (EEVS) in Section 302 is a trigger for the other reforms in the bill, the EEVS must be implemented in a timely fashion. But the success of the EEVS turns on the states issuing REAL-ID compliant licenses, something that will not happen in the near future (if ever). In fact, several states have already passed legislation stating their intention to not comply with the requirements of REAL ID. By removing the Real ID compliance provisions and reinstating existing driver's license requirements, the Baucus/Tester amendment remedies this bureaucratic mess. Status: On 6/27/07, a motion to table this amendment failed 45-52, temporarily halting further votes on amendments. This amendment is still pending.

Division VIII Baucus-Grassley-Obama Amendment (p. 132) – **SUPPORT** – to provide protections for all workers against the dangers inherent in the massive new employment eligibility verification system (EEVS) proposed in S. 1639. The amendment strikes and replaces Title III of the underlying bill and includes protections for wrongful termination of employment, identity theft, discrimination, and bad apple employers who would abuse or manipulate the system. The proposed EEVS program would impact every single employer and every single worker in the U.S. The results of a poorly-designed EEVS are potentially devastating. Work authorized individuals – including U.S. citizens – could be denied employment because of an error in a government database or because an employer uses the system incorrectly. SA 1441 would mitigate the potential dangers inherent in the implementation of a new, large-scale EEVS program. Status: Pending.

[1] Because these amendments were filed as a single "clay pigeon" amendment, they do not have individual amendment numbers, but are instead referred to by division numbers. To help identify the separate amendments within the clay pigeon, we have provided the page numbers where each can be found in the clay pigeon text (available on InfoNet at http://www.aila.org/content/default.aspx?docid=22748).

Division IX Domenici Amendment (p. 200) – **NEUTRAL** – to provide for the appointment of 27 additional district judges in California, Texas, New Mexico, Arizona, Florida, New York, and Minnesota. Status: Pending.

Division X Chambliss Amendment (p. 206) – **NEUTRAL** – to prevent the Administration from entering into a Social Security totalization agreement without approval by Congress. Status: Pending.

Division XI Graham/Kyl/Martinez Enforcement Amendment (p. 213) – **OPPOSE** – to litter the bill with a broad array of unnecessary, unworkable, anti-due process provisions. This draconian "omnibus" enforcement amendment would, among other things: require DHS to mandatorily detain individuals who overstay their authorized period of admission by 60 days or otherwise violate the conditions of their status; permanently bar visa violators from all immigration benefits; and accelerate the touch back requirement making Z visa applicants return home before receiving Z status.[2] Status: Pending.

Division XII McCaskill Amendment (p. 247) - **OPPOSE** – to temporarily bar repeat violators who hire undocumented workers from federal contracts. This amendment pertains to employers who are found to be repeat violators of the prohibition against hiring undocumented immigrants. Employers found to be repeat violators would be barred from federal contracts for a period of five or more years, with limited exceptions for national defense or national security reasons.

In addition, the McCaskill Amendment includes provisions added by Senator Durbin that will impact the H-1B and L-1 programs. The Durbin provisions affect wage determinations and cap the percentage of H-1B employees who can be paid at "skill level 1" at 30%. The Durbin provisions also create new outplacement restrictions and job posting requirements. Status: Pending.

Division XIII Cantwell Amendment (p. 262) – **SUPPORT** – to address some of the bill's changes to the H-1B program by striking the presumption of "immigrant intent" and restoring the "degree equivalency" provision. This amendment also doubles the H-1B exemption to 40,000 for individuals who have earned a master's degree or higher at a U.S. institution of higher education; creates a new H-1B exemption of 20,000 individuals who have earned a master's degree or higher in a STEM field outside the U.S.; and caps at 50,000 the H-1B exemption for workers who are employed at higher education institutions, nonprofits, or government research organizations.

In addition to making improvements to the H-1B provisions in the base bill, this amendment would phase out employer-sponsored green card system over the first five fiscal years after enactment, rather than implement a new untested point system immediately. The amendment also reserves 20,000 green cards out of the worldwide

[2] Presently, the amendment still contains some positive H-1B provisions but those measures and others were broken out as a separate amendment sponsored by Senator Cantwell (see below). It remains unclear if these duplicative provisions will be dropped from the Graham amendment.

ceiling for each of the first 5 fiscal years to be awarded to the current EB-1 Priority Worker category. Status: Pending.

Division XIV Coleman Amendment (p. 272) – OPPOSE – This amendment is very similar to the local law enforcement amendment (SA 1158) offered by Senator Coleman to S. 1348, which failed by a vote of 48-49 during the first week of debate. The amendment would prohibit states and localities from preventing their employees from inquiring about the immigration status of those they serve if there is "probable cause" to believe the individual being questioned is undocumented.

This amendment differs from SA 1148 in that it creates an exception for health care and education providers. Despite this limited improvement, the amendment still runs counter to long-standing community policing practice and would eliminate state and local control over policing policies. Many cities, counties, and police departments have decided that it is a matter of public safety NOT to ask about immigration status. For instance, in a public letter opposing Senator Coleman's amendment, Minneapolis Chief of Police Tim Dolan states, "We have learned that the best approach to guarding public health and safety is *not* to ask about immigration status when people report crimes that in no way relate to their immigration status." Policies that prevent inquiries about immigration status are not "sanctuary" ordinances, but rather laws intended to help maintain the trust of local communities and thereby facilitate the critical work of local law enforcement agencies. If local agencies deem it necessary, current law offers ample opportunity for local police to opt in for ICE enforcement, receive immigration law training, and participate in an MOU, and S. 1639 actually enhances these opportunities. The Coleman amendment would place unnecessary restrictions on state and local agencies that would not help, but hinder the efforts of local police to keep our communities safe. Status: Pending.

Division XV Byrd Amendment (p. 274) – OPPOSE - to impose an additional $500 fee for each individual seeking a Z visa or adjustment of status under the legalization program in Title VI of the bill. This fee is intended to fund enforcement efforts, which all Senators support, but it is both unnecessary and so financially burdensome that it could actually undercut national security. S. 1639 already provides $4.4 billion to fund a set of border security "trigger" measures that must be met before the Z visa program is implemented. The bill also imposes very high fees for applications for Z visas, Z visa renewals, and adjustment to lawful permanent resident status. Raising these fees further is simply unnecessary and may have the unintended effect of discouraging immigrants from regularizing their status. Status: Pending.

Division XVI Thune Amendment (p. 276) – OPPOSE - to bar probationary benefits for Z visa applicants until triggers are met. Under S. 1639 as currently proposed, Z visa applicants qualify for probationary Z visa status after passing an initial background check. Probationary status would confer interim work authorization, interim protection from deportation, and temporary suspension of their classification as an unauthorized alien. No individual will receive full-fledged Z visa status until he or she undergoes thorough security checks AND the triggers conditions are met. Withholding probationary benefits until the trigger conditions are met will do nothing to enhance the extensive

security and enforcement provisions already included in the bill. On the contrary, allowing undocumented immigrants to get right with the law as early as possible benefits all of us. Status: Pending.

Division XVII Sanders-Grassley Amendment (p. 277) – **OPPOSE** – to prohibit companies from sponsoring workers for any visas if there has been a notice or a "mass layoff" under the Worker Adjustment and Retraining Notification Act in the past year, or if there will be a layoff in the next six months. This amendment could prevent struggling companies from regaining competitiveness and contributing the American economy. The amendment would deny visas to executives coming from abroad to help with the turnaround of the company and to researchers working on new products that would save or create future jobs. Moreover, employees currently working on temporary visas would presumably be prohibited from adjusting status to permanent residence, even if they are in a profitable sector of the business, separate from the one in which layoffs occurred. This amendment is overbroad, far-reaching, and will have unintended consequences that harm U.S. competitiveness. Status: Pending.

Division XVIII Alexander Amendment (p. 278) – **OPPOSE** - to fund educational programs for prospective citizens and require an oath of allegiance and renunciation for naturalization. This amendment would create a voucher-based ESL program and provide grants to organizations to "promote the patriotic integration of prospective citizens." However, as proposed, these programs do not offer significant new services to help immigrants integrate, nor do they provide sufficient oversight to ensure that government funding is used effectively to educate prospective citizens.

More importantly, this amendment would require DHS and the Department of State to notify a foreign embassy when one of their nationals has become a U.S. citizen, thereby renouncing allegiance to the foreign country and swearing allegiance to the U.S. These reporting requirements could pose a grave danger to friends and relatives of immigrants from countries that are not friendly with the U.S., particularly in the case of refugees and asylees. Unfriendly governments could use notification of renouncing allegiance to punish, persecute torture, imprison, or otherwise take retribution on friends or family members remaining in the foreign country. This amendment would thus do far more harm than good, providing little in the way of education assistance in exchange for potentially placing family members of refugees and asylees in danger. Status: Pending.

Division XIX Brown Amendment (p. 291) – **OPPOSE** – to expand recruitment requirements for Y-1 employers. The bill already requires employers to list the specific job opportunity with the state employment agency for 90 days before the date of the employer's application for a Y-1 worker. This amendment would further require employers to document use of the employment service to advertise *all similar job vacancies* during the 90-day period prior to the date of its application, and to post all similar job opportunities with the employment service for one year after filing an application. These excessive requirements could undermine one of the central goals of immigration reform by creating a bureaucratic and unworkable new worker program that does not meet the needs of American employers. An effective and streamlined Y-1

program is essential to any reform that aims to prevent undocumented immigration in the long term. Status: Pending.

Division XX Levin Amendment (p. 294) – SUPPORT – to protect Iraqi refugees fleeing persecution based upon their membership in minority religious groups. This amendment would grant a rehearing of denied applications for asylum or withholding of removal, on the basis of changed country conditions, for Iraqi refugees who are members of religious minorities. The amendment would also place Iraqi religious minorities in the "Priority 2" refugee category, in order to expedite their applications and provide them protection in the U.S. Status: Pending.

Division XXI Isakson Amendment (p. 296) – **OPPOSE** – to preempt state or local laws that require businesses to provide shelters or designated areas for use by contactors or persons seeking employment. Specifically, this amendment attempts to ban a pending Los Angeles city council decision to use local land use laws to require construction of worker centers. The amendment would place an unprecedented limitation on the ability of cities and localities to address a local concern through the traditional land use process. Moreover, this amendment is non-germane and inappropriate in this bill, as worker centers serve all kinds of workers, both immigrant and native born. Status: Pending.

Division XXII Schumer Amendment (p. 298) – **OPPOSE** - to require creation of a tamper-proof biometric social security card. [***MORE ANALYSIS FORTHCOMING***]. Status: Pending.

Division XXIII Ensign Amendment (p. 304) – OPPOSE – to further restrict access of immigrants and their dependents to social security benefits. [***MORE ANALYSIS FORTHCOMING***]. Status: Pending.

Division XXIV Leahy Amendment (p. 307) – SUPPORT – to protect scholars who have been persecuted in their home countries on account of their beliefs, scholarship, or identity. Scholars and their spouses and children would be granted nonimmigrant status for two years, which could be renewed once for a two year period. This amendment would provide relief for at a minimum 2,000 persecuted scholars per year from around the world. Status: Pending.

Division XV Graham "Side-by-Side" to Boxer Amendment (p. 310) – OPPOSE – to enhance role of state and local police in enforcement of immigration laws. This amendment allows DHS to share any information collected under the bill with state and local police, including information furnished by Z visa applicants. Adds broad categories of individuals to the NCIC for state and local police arrest, including people who have final removal orders, voluntary departure agreements, revoked visas, or who are confirmed to be unlawfully present. As with the Coleman amendment, this expanded role for state and local police in enforcing immigration laws runs directly counter to the wishes of state and local police. The amendment also would erect barriers to naturalization by allowing the use of classified evidence and allowing DHS to deny naturalization applicants based on the individual's past conduct at any time rather than

only considering conduct in the last five years, among other new restrictions. Status: Pending.

Division XXVI Boxer Amendment (p. 323) – OPPOSE – to reduce the Y visa cap by number of Y workers who overstay. This amendment would require DHS to report annually to Congress on the number of Y nonimmigrant visa holders that do not report at a port of departure and return to their foreign residence at the end of their authorized period of stay. DHS would then be required to reduce the number of available Y visas for the next year by the number of Y holders who did not return to their foreign residence. The structure of the Y visa program is already deeply flawed but instead of addressing those flaws (e.g. eliminating the 1 year home return requirement between 2 year work periods or creating a meaningful path to permanent residence), this proposal would make the program still more dysfunctional. Status: Pending.

Division XXVII Manager's Package (p. 324) - [***ANALYSIS FORTHCOMING***]. Status: Pending.

AMENDMENTS TABLED OR WITHDRAWN:

Division I Hutchison Amendment (p. 1) – OPPOSE - to accelerate the "touchback" requirement from the time of applying for adjustment to LPR status, as it currently stands in S. 1639, to the time of applying for the Z visa. This amendment would require Z-1 visa applicants to "perfect" their applications by filing a supplemental certification in person at a U.S. consulate abroad within two years of being awarded a secured identification card (probationary Z visa status). The amendment also requires spouses of principal Z visa applicants to "touch back," thereby forcing families either to risk separation or to bring any children with them to their country of origin. The earlier touchback timing could also prove prohibitively expensive for families who may require more than two years to gather sufficient funds not only to pay for the application and processing fees associated with the Z visa, but also to pay for the costs of a trip home. Given the risks and the costs involved, Senator Hutchison's touchback program would drastically reduce the numbers of undocumented immigrants willing to come forward and register, thereby undermining one of the central goals of immigration reform. Status: The Senate voted 53-45 to table (kill) the amendment on 6/27.

Division II Webb Amendment (p. 116) – OPPOSE - to overhaul the legalization eligibility criteria in a way that would significantly diminish the pool of qualified applicants. This amendment creates a subjective "roots-based" evaluation process tied to factors such as: whether an individual has immediate relatives living in the U.S.; the length of time an individual has lived in the U.S.; whether an individual owns property or a business in the U.S.; work history; and proficiency in English. The amendment also requires that individuals maintain continuous physical presence in the U.S. for four years prior to the date of enactment of the underlying bill, in order to qualify for adjustment from Z visa status. Together these two provisions would exclude a significant proportion

of the current undocumented population from earning legal status. Status: The Senate voted 79-18 to table (kill) the amendment on 6/27.

Division III Bond Amendment (p. 121) – **OPPOSE –** to prohibit green cards for Z visa holders. This amendment would strike one of the most critical provisions of S. 1639 by denying the current undocumented population a chance to achieve lawful permanent resident status. Instead of allowing hardworking immigrants to emerge from the shadows and integrate fully into American society, this amendment would consign the current undocumented population to perpetual temporary status. In doing so, this amendment would create a two-tiered society and repeat the mistakes of other countries that have failed to assimilate newcomers. The United States is an immigrant nation, and one of the ways we maintain our country's character is by encouraging immigrants to become citizens and full participants in our democracy. An amendment that bars millions of immigrants from ever becoming full-fledged members of American society benefits no one. Status: The Senate voted 56-41 to table (kill) the amendment on 6/27.

Division IV Dodd/Menendez Amendment (p. 122) – **SUPPORT –** to increase the number of immigrant visas for parents of U.S. citizens and the length of time parents can remain in the U.S. on the newly minted nonimmigrant parent visitor visas. Under current law, parents of U.S. citizens are defined as immediate relatives, along with spouses and minor children, and are exempt from annual numeric caps. S. 1639 removes them from this category, subjects them to an annual cap of 40,000 green cards, and creates a new temporary visa category for parents but would limit their stay to 30 days. The Dodd amendment promotes family unity by increasing the annual cap on green cards for parents of U.S. citizens to 90,000 and by extending the permissible duration of stay for parents from 30 days to 180 days. Status: The Senate voted 56-41 to table (kill) the amendment on 6/27.

Division V Kyl "Side-by-Side" to Dodd/Menendez Amendment (p. 129) – OPPOSE – This "side-by-side" was proposed as an alternative to the Dodd/Menendez amendment on parent visas and is basically a rehash of the onerous provisions contained in the underlying bill. As in S.1639, the side-by-side caps the number of immigrant visas available to parents of U.S. citizens to 40,000 annually; however, under the amendment, if any of the 87,000 visas allocated to spouses and children of LPRs are not used, the unused visas *may* be available to parents. The amendment would also lower the threshold for denying nonimmigrant parent visas to individuals from countries with significant numbers of visa overstayers. Under the amendment, if it is determined that more than 5 percent of nonimmigrant parent visa holders overstay their period of authorized admission, the Secretary may deny visas to individuals from those countries. In S. 1639, the threshold for denying visas is set at 7 percent. Status: This amendment was withdrawn from consideration after the Dodd/Menendez amendment was tabled, on 6/27.

Division VI Menendez-Obama-Feingold Amendment (p. 130) – SUPPORT – to help preserve family unity by increasing points awarded in the merit-based preference system for family ties in the U.S. As currently proposed, the merit-based point system in S. 1639 awards a maximum of 100 points and would not give any points for family relationships

unless a 55-point threshold is met in the other categories (such as employment, education, English and civics). It also awards different points for different family relationships and only gives a paltry additional two points to people who lawfully submitted their green card applications on or after May 1, 2005, only to see their application arbitrarily rejected by this legislation. This amendment removes the 55-point minimum, gives an equal ten points for each recognized family relationship, and increases the points awarded for filing an application on or after May 1, 2005, to five points. This amendment would increase the maximum points possible for the family category from ten to fifteen points. Status: The Senate voted 55-40 to table (kill) the amendment on 6/27.