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REAL ID, Business Immigration Provisions Enacted as Part of Emergency Appropriations Bill

President Bush signed into law the “Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005” (Pub. L. No. 109-13, H.R. 1268) on May 11. This Act includes several immigration-related provisions, including the so-called REAL ID Act. This ill-conceived measure was incorporated into the Act as a result of promises secured by Representative Sensenbrenner from the Administration and House Republican leadership. This misguided legislation contains a treasure trove of anti-immigrant provisions, none of which will make this nation more secure, including provisions that:

- Prevent people fleeing persecution from obtaining relief;
- Make our highways more dangerous and undermine our security;
- Impose guilt by association
- Restrict judicial review for the first time since the Civil War, barring the court doors to immigrants;
- Waive all laws related to construction of fences at our borders, thereby granting unprecedented authority to a federal agency;

The new law also eliminates the annual cap on the number of asylees who are eligible to adjust their status to permanent residence and eliminates the annual cap on the number of persons who can be granted asylum because they were subjected to coercive population controls. While this is

obviously welcome and long overdue, it is little consolation against a backdrop of provisions that will make it nearly impossible for many asylum seekers to find relief here in the future.

Click here to view a section-by-section summary and analysis of the bill:

<http://www.aila.org/fileViewer.aspx?docID=18433>.

To learn more about the judicial review provisions, please click here:

<http://www.aila.org/fileViewer.aspx?docID=18537>.

To view a chart of the driver's license provisions prepared by the National Immigration Law Center, please click here: <http://www.aila.org/fileViewer.aspx?docID=18701>

In addition to the REAL ID provisions, the new law contains several business immigration provisions, including:

H-2B Emergency Relief: By voting overwhelmingly (94–6) to add the “Save Our Small and Seasonal Businesses Act of 2005” to its version of the supplemental bill, the Senate helped ensure the passage of this important short-term fix critically needed by American employers of H-2B workers. Now that the measure has been signed into law, the Act will provide needed, albeit limited, relief for this fiscal and next by exempting from the cap those H-2B workers who have successfully used the program during one of the past three years. Because provisions in the Act required DHS to implement this exemption within 14 days of enactment, the agency worked diligently to issue guidance and begin petition processing on schedule. In order to help reduce implementation-related delays, Congress also exempted certain provisions of the new law from the Administrative Procedures Act requirements and other rulemaking processes. Such a speedy implementation is essential to help provide relief to the many small and seasonal employers who were previously unable to hire the workers they needed for this upcoming summer and fall seasons.

In exchange for the temporary relief from the cap, the Act also makes some permanent changes to the H-2B program. These changes include: creating a \$150 anti-fraud fee; reallocating the 66,000 H-2B cap so that no more than 33,000 numbers can be used during the first 6 months of the fiscal year; increasing sanctions for employers who misuse the program; and requiring DHS to submit to Congress reports on H-2B program usage as well as statistics regarding the countries of origin of, occupations of, and compensation paid to aliens working pursuant to the H-2B program.

New Temporary Visa: The Senate passed without a recorded vote a measure offered by Senate Majority leader Bill Frist (R-TN) that creates a new temporary E-3 program for Australian nationals who will perform services in a specialty occupation. Unlike other E visa programs, the E-3 category will require a labor attestation and will be capped annually at 10,500, not including spouses and children. The language did not specify an effective date and DHS has yet to issue information on when this program will become operational.

Recapture of Unused Employment-Based Visa Numbers: As modified and passed behind the closed doors of the Senate and House conference committee, this provision provides for the recapture of unused employment-based immigrant visas by placing visa numbers unused from fiscal years 2001-2004 in a “bank” for use in future fiscal years when the demand for employment-based immigrant visas in the EB-1, 2, and 3 categories exceeds the annual quota. This measure places a limit of 50,000 on the total number of visas that may be used from the “bank” and reserves these visas for immigrant worker petitions based on Schedule A immigrants

(Nurses, Physical Therapists, and Performing Artists of Exceptional Ability) and their family members accompanying or following to join them.

The original language of this amendment, offered in the Senate by Senators Schumer (D-NY), Hutchison (R-TX) and Kennedy (D-MA), would have made available all the unused numbers from 2001-2004 and would have allocated 50% of the available numbers to Schedule A occupations.

Bipartisan Comprehensive Immigration Reform Bill Introduced in the House and Senate

Our current immigration system is broken and needs reform. Only comprehensive reform will make immigration safe, orderly, legal and controlled. Such reform is essential to our national security so that we know who is here and can keep out those who mean us harm, and would replace an illegal flow with a legal immigration flow.

Comprehensive immigration reform will make legality the norm. It would bring hard working immigrants out of the shadows to be reviewed and scrutinized by our government, create a legal flow by which needed workers can enter and leave the U.S., shut down black markets that represent a weak spot in our security, facilitate family reunification, and help us maximize our enforcement efforts. Proposals that fail to embrace these three components and seek only to increase enforcement of the current unworkable system will only perpetuate and exacerbate current problems.

On May 12, 2005, Senators John McCain (R-AZ) and Edward Kennedy (D-MA), and Representatives Jim Kolbe (R-AZ), Jeff Flake (R-AZ), and Luis Gutierrez (D-IL) and others introduced the Secure America and Orderly Immigration Act of 2005 (S. 1033/H.R. 2330). S. 1033/H.R. 2330 would reform our immigration laws so that they would enhance our national security and address the concerns of American businesses and families. The legislation would go a long way toward addressing the problems that have plagued our current immigration system. Among other things, it would:

- Create a national strategy for border security and enhanced border intelligence;
- Establish a break-the-mold new essential worker visa program (the H-5A visa);
- Promote family unity and reduce backlogs;
- Provide a mechanism by which eligible undocumented immigrants present in the U.S. on the date of the bill's introduction could adjust to temporary nonimmigrant (H-5B) status with an initial period of stay of 6 years;
- Seek to protect individuals from immigration fraud;
- Create new enforcement regimes;
- Promote circular migration patterns.

The bill also would: reauthorize the State Criminal Alien Assistance Program for fiscal years 2005 through 2011 and provide that such funds may only be used for correctional purposes; facilitate civics integration by authorizing the establishment of the United States Citizenship Foundation, as well as a competitive grant program to fund civics and English language classes; promote access to health care by extending the authorization of federal reimbursement for hospitals that provide emergency care to undocumented immigrants and by adding H-5A and H-5B workers to the list of persons for whom hospitals may be reimbursed; require periodic reports to Congress on the use of the worker programs established under the bill; provide for the distribution of fees and fines paid by H-5A and H-5B applicants; include H-5A and H-5B

workers in the class of individuals protected under the INA's anti-discrimination provisions; and provide special immigrant status for certain women and children at risk of harm.

For more details about this legislation which AILA strongly supports, please go to:
<http://www.aila.org/fileViewer.aspx?docID=18546>

American Voters Support Common-Sense Immigration Reform

New public opinion research released on April 7, 2005 by AILA and the National Immigration Forum demonstrates American voters' overwhelming support for comprehensive, bipartisan immigration reform, much like the recently introduced Secure America and Orderly Immigration Act of 2005 (S. 1033/H.R. 2330). Support for this proposal is strong along party lines, regional lines and demographic lines.

American voters support a system that combines toughness with fairness, and provides a path to citizenship with reasonable requirements, implements an effective guest worker program, and reunites families. Voters want a system that rewards immigrants who come here to work hard, pay taxes, and learn English. The following are key findings from this nationwide survey of "likely" voters.

- There is overwhelming and intense support among likely voters for the proposed outlines of bipartisan legislation on immigration reform. Fully 75% of likely voters favor a proposal that has the following components:
 - Registration of undocumented workers as temporary guest workers,
 - Provides temporary work visas for seasonal and temporary workers,
 - Provides newly registered workers with a multi-year process for legal residency and eventual citizenship,
 - Provides newly registered workers with no preferential treatment for citizenship,
 - Provides tougher penalties for workers or employers who violate these laws, and
 - Puts a priority on reuniting close family members.
- Support for this proposal is solid across party lines – 78% of Republicans, 77% of Independents, and 70% of Democrats are supportive; and regional lines – 77% of Red State voters, 79% of Blue State voters, and, 72% of Purple State voters are supportive; and demographic lines – 78% of whites, 67% of African Americans, and 70% of Hispanics are supportive.
- In thinking about the impact this proposal could have on the upcoming Congressional elections, 69% of likely voters indicate that they would be more likely to support a Congressional candidate who supported this type of immigration proposal.
- More than three-in-four likely voters agree on these statements framing the immigration reform debate:
 - “The immigration system is broken and needs to be fixed.”
 - “If an immigrant has been in this country working, paying taxes, and learning English, there should be a way for them to become a citizen.”
 - “Fixing our immigration system to make it safe, legal, and orderly will make us more secure from terrorists.”

The Tarrance Group and Lake, Snell, Perry, and Mermin conducted this poll between March 20-22 of 800 likely voters nationwide and drafted the above summary of survey results. For details on the public opinion research, please go to: <http://www.aila.org/fileViewer.aspx?docID=18192>

Senators Cornyn and Kyl Announce Proposed Enforcement-Only Provisions

Senators John Cornyn (R-TX), Chair of the Senate Immigration, Border Security, and Citizenship Subcommittee, and Jon Kyle (R-AZ), Chair of the Senate Terrorism, Technology and Homeland Security Committee, issued in late May the enforcement-related provisions that they indicated would be included in legislation they are expected to introduce later this summer, the Comprehensive Enforcement and Immigration Reform Act of 2005 (CEIRA). While citing the need for comprehensive reform, it is troubling that the Senators issued an enforcement-only proposal. Enforcement, without appropriate reform of our immigration system, will fail. The two must be developed in conjunction with each other to succeed.

In the press conference they held when issuing these proposals, the Senators indicated that they are now looking at a “work-and-return” program to encompass their immigration reform proposal. Such an approach is fundamentally flawed. A guest-worker program that requires all workers to return home, in and of itself, cannot be considered comprehensive reform. Such an approach ignores the significant problems in the current system—namely, those who are residing now in the U.S. but who do not have lawful status, and families who must endure lengthy separations. It is unrealistic to assume that significant numbers of undocumented people will step forward and register for a program which, at the end of the day, would force them to leave their jobs and families. A program that includes no real possibility for temporary workers to earn permanent resident status if they meet the eligibility requirements will not generate full participation and will hurt our economy. People will simply choose not to participate, or take the risk and go back into the shadows if the laws do not change before the time period of the program expires. It also is unrealistic to assume that families will endure decades of separation. To enhance our security, we need immigration laws that acknowledge the needs of American business, reunite families, and allow us to find out who is living in the United States. A work and return-type approach simply fails on these counts.

That this approach is deeply flawed was made clear during the hearings Senator Cornyn has held in the past few months, some in conjunction with Senator Kyl. In testimony before both Subcommittees, AILA Member and West Point Associate Professor of Law Margaret Stock underscored the need for comprehensive reform, as set forth in the Secure America and Orderly Immigration Act of 2005 (S. 1033/H.R. 2330). To view Professor Stock’s testimony, go to: <http://www.aila.org/fileViewer.aspx?docID=18638>

House Gang Bill Expands Definition of Aggravated Felony; Limits Utility of Criminal Database by Requiring Inclusion of Immigration Status Violators

The House of Representatives passed “The Gang Deterrence and Community Protection Act of 2005” (H.R. 1279) on May 11 by a vote of 279-144. Among other troubling provisions, this bill would expand the definition of the federal “crime of violence” and, by extension, the aggravated felony definition for immigration law purposes. Because Representative Sensenbrenner (R-WI) added this provision to the bill in a manager’s amendment, there was no opportunity for debate or to strike this provision during House floor consideration. The bill also would require DHS to provide the National Crime Information Center (NCIC) with information about all individuals

who have a final order of removal, a grant of voluntary departure, or who have “overstayed their visa.”

Current law defines a “crime of violence” as one that involves a substantial risk that physical force will be used against person or property. Representative Sensenbrenner’s provision would expand the crime of violence definition to include nonviolent, negligent acts or omissions – such as driving under the influence – that place another person or property at risk of injury, even if no injury actually occurs. Expanding this definition likewise expands the class of crimes treated as aggravated felonies for immigration purposes. Crimes so classified carry incredibly harsh immigration-related consequences, including mandatory detention and removal – even for longtime lawful permanent residents. AILA strongly opposes further expanding the class of crimes treated as aggravated felonies in immigration law.

The other problematic provision—requiring that all civil immigration status violators be listed in the NCIC database—will do nothing to reform our broken immigration system. Instead, it will undermine the integrity of that law enforcement database by loading it up with information that is notoriously inaccurate and in perpetual flux. If this provision becomes law, a surge in erroneous detentions and other rights violations will follow. This is simply another band-aid enforcement proposal when what we need is comprehensive reform of our immigration laws. AILA strongly opposes this measure.

To register your opposition to these misguided provisions, please click here: http://capwiz.com/aila2/mail/oneclick_compose/?alertid=7641051

DHS Implements New H-1B Exemption

On May 12, U.S. Citizenship and Immigration Services (USCIS) began accepting new FY2005 H-1B petitions in accordance with the relief provided by the H-1B Reform Act of 2004. This Act was included as part of the Omnibus Appropriations Act for Fiscal Year 2005 (Pub. L. No. 108-447). The new law adds a limited exemption of 20,000 to the annual 65,000 H-1B numerical cap for foreign nationals who graduate with an advanced degree from a U.S. university.

The limited relief included in the H-1B Reform Act of 2004 is inadequate and will likely be exhausted prior to the end of the fiscal year. Anticipating that employers will file more H-1B exemption petitions than there are visas available, USCIS stated in its implementation guidance that it will automatically convert into an FY2006 petition any petition processed after the 20,000 limit is reached, unless notified otherwise. For such petitions, the foreign nationals cannot begin work pursuant to their H-1B visas until October 1, 2005, the first day of FY 2006.

As the U.S. economy improves and demand increases, U.S. employers will need more access to these highly educated foreign professionals. The American economy could suffer if such access is not provided. In the short term, limitations on access would prevent employers from fully utilizing the special skills of these highly educated foreign professionals. In the longer term, such rigidity would limit our labor market supply of these available professionals, thereby hampering our economic vitality. The result will be American jobs lost and American projects losing out to foreign competition. Congress needs to support an H-1B program that reflects our nation’s need for these professionals and allows U.S. employers’ access now and in the future to the talents of these highly educated foreign professionals.

House Considers Ill-Advised Immigration-Related Provisions in DHS Bills

The House of Representatives passed Department of Homeland Security Appropriations and Authorization bills on May 18 and May 19, respectively. A number of troubling immigration amendments relating to state and local enforcement of federal civil immigration laws surfaced during debate over these provisions. For a summary of these measures and House action on them, please click here: <http://www.aila.org/contentViewer.aspx?bc=10,911,6717,9481>

Senate Votes to Reauthorize SCAAP Funding

The Senate voted on May 23 to reauthorize appropriations for the State Criminal Alien Assistance Program (SCAAP)—a program that reimburses states and localities for the costs of incarcerating undocumented criminal aliens—after President Bush failed to include money for the program in his proposed fiscal 2006 budget. Sponsored by Senator Dianne Feinstein (D-CA), the measure (S. 188) would authorize “such sums as may be necessary” for the current fiscal year, \$750 million for fiscal year 2006, \$850 million for fiscal year 2007 and \$950 million annually for fiscal years 2008 through 2011.

The Senate passed the measure by unanimous consent after approving an amendment that would require that certain funds be used for correctional purposes only. The measure was then referred to the House. The House Judiciary Committee has yet to consider the House companion measure (H.R. 557) introduced by Representative Jim Kolbe (R-AZ) on February 2.

House Committee OKs Special Immigrant Status for Certain Translators

The House Judiciary Committee on May 18 approved by a voice vote legislation that would provide special immigrant status to a limited number of Iraqi and Afghan nationals who have served as translators for the U.S. Armed Forces.

The measure (H.R. 2293), sponsored by Representative John Hostettler (R-IN), would provide up to 50 immigrant visas per fiscal year to nationals of Iraq or Afghanistan who have served as translators with the U.S. military for at least 12 months. The spouses and minor children of these individuals would also be eligible for visas. The visas issued under this section would count against the special immigrant cap.

Lawmakers rejected by a vote of 10-19 a proposal by Ranking Member John Conyers (D-MI) that would have eliminated the 50 person-per-year cap for the special immigrant status visas.

The measure now moves before the full House for further consideration.

House Holds Hearing on Flawed Employment Verification Bill

The House Subcommittee on Immigration, Border Security, and Claims on May 12 held a hearing on H.R. 98, the “Illegal Immigration Enforcement and Social Security Protection Act of 2005.” Introduced by Representative David Dreier (R-CA), the bill would create a new biometric tamper proof social security card as well as a nationwide employment eligibility database that employers would be mandated to use. Non-compliance with the program could cost employers up to \$50,000 per violation.

Testifying in support of the measure were Representatives David Dreier (R-CA) and Silvestre Reyes (R-TX); and T.J. Bonner, President, National Border Patrol Council. Marc Rotenberg,

Executive Director of the Electronic Privacy Information Center (EPIC), was the sole dissenting witness, opining that the Dreier proposal would turn the SSN into a de facto national identifier and would increase the risk of identity theft. He added that the mission of the DHS would be expanded dramatically should the legislation pass.

H.R. 98 is deeply flawed. Most notably, this enforcement-only measure fails to provide employers with any type of legal channel for future workers (although Representative Dreier did state that he would support the use of a guest worker program in conjunction with this proposal). Reform of this magnitude to the employment eligibility verification process should be undertaken only in the context of comprehensive immigration reform that would create a legal channel for future workers and provide a means by which the undocumented population can earn legal status.

In addition, the workability of the bill's employment verification system is predicated upon the erroneous assumption that social security card issuance to foreign nationals is an expedient process. The truth is that many foreign nationals often wait weeks to obtain a social security card. Equally flawed is the bill's failure to provide for any privacy restrictions or confidentially provisions on the part of employers. And perhaps most importantly for creating a workable system, the bill does not require that the information in the databases be accurate and updated in a timely manner—a problem that plagues the current employment verification pilot program.

Families for Peaceful Tomorrows Oppose REAL ID Act in Capitol Hill Event

The Families for Peaceful Tomorrows, a non-profit organization of family members of those killed on September 11th united to develop and advocate nonviolent options and actions in the pursuit of justice, held a press conference on April 12 to oppose the REAL ID Act, stating that: "We also have a special responsibility to point out measures that use our concern about this nation's safety and security to promote an entirely different agenda. Sadly, that is the case with the REAL ID,....H.R. 418 will not make us safer."

Providing the voice from those most directly impacted by the tragedy of September 11, members of Peaceful Tomorrows presented their concerns before television and newspaper reporters, specifically highlighting the Intelligence Reform legislation and the 9/11 Commission report which had pointedly stated that immigration-related measures included in H.R. 418 should not be considered within intelligence reform legislation.

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. 2687, the Amerasian Naturalization Act, introduced on May 26 by Representative Zoe Lofgren (D-CA), would amend the INA to provide for the automatic acquisition of citizenship by certain Amerasians.

H.R. 2628, introduced on May 25 by Representative Jeff Flake (R-AZ), would amend Section 303 of the Enhanced Border Security and Visa Entry Reform Act of 2002 to extend for another year certain deadlines pertaining to machine-readable, tamper-resistant entry and exit documents.

H.R. 2592, the Haiti Compassion Act, introduced on May 24 by Representative Alcee Hastings (D-FL), would designate Haiti under INA § 244 in order to render nationals of that country eligible for temporary protected status.

H.R. 2513, introduced on May 19 by Representative Jim Ryun (R-KS), would amend INA § 337 to prescribe the oath or affirmation of renunciation and allegiance required to be naturalized as a citizen of the United States. A Senate companion bill (S. 1087) was also introduced on May 19.

H.R. 2367, the Visitors Interested in Strengthening America (VISA) Act of 2005, introduced on May 16 by Representative Bob Filner (D-CA), would amend the INA to permit certain Mexican children, and accompanying adults, to obtain a waiver of the documentation requirements otherwise required to enter the United States as a temporary visitor.

H.R. 2330, the Secure America and Orderly Immigration Act, introduced on May 12 by Representatives Jim Kolbe (R-AZ), Jeff Flake (R-AZ), and Luis Gutierrez (D-IL), would reform our immigration laws so that they enhance our national security and address the concerns of American businesses and families. For additional details on this bill, see article number 2 in this *Update*.

H.R. 2293, introduced on May 11 by Representative John Hostettler (R-IN), would provide special immigrant status under INA § 101(a)(27) for nationals of Iraq or Afghanistan who have served as translators with the United States armed forces for a minimum of 12 months and who otherwise meet the eligibility criteria.

H.R. 2092, the Save America Comprehensive Immigration Act of 2005, introduced on May 4 by Representative Sheila Jackson Lee (D-TX), would, among many other things, increase the allocation of family-based immigrant visas; provide age-out protection for children; provide earned access to legalization; provide adjustment of status for certain children; update the registry provisions; and enhance border security.

H.R. 2055, the Family Reunification Act of 2005, introduced on May 3 by Representative Barney Frank (D-MA), would amend the INA to permit certain long-term permanent resident aliens to seek cancellation of removal under such Act.

H.R. 2049, the Federal Contractor Security Act, introduced on May 3 by Representative Marsha Blackburn (R-TN), would require certain Federal service contractors to participate in a pilot program for employment eligibility confirmation.

H.R. 1986, introduced on April 28 by Representative Virgil Goode (R-VA), would amend title 10 of the United States Code, to authorize the Secretary of Defense to assign members of the Army, Navy, Air Force, and Marine Corps, under certain circumstances and subject to certain conditions, to assist the Department of Homeland Security in the performance of border protection functions.

H.R. 1912, the Emergency Immigration Workload Reduction and Homeland Security Enhancement Act of 2005, introduced on April 27 by Representative Sam Graves (R-MO), would basically shut down this country's immigration program by "temporarily suspending" both the immigrant and nonimmigrant visa programs, adjustment of status, the visa waiver program, and temporary protected status renewals, among other things.

H.R. 1823, introduced on April 26 by Representative Robert Andrews (D-NJ), would amend the Immigration and Nationality Act to extend the provisions governing “V” nonimmigrant status for spouses and children of permanent resident aliens awaiting the availability of an immigrant visa, and would reduce the period that the immigrant visa petition must have been pending in order to render the alien eligible for a V visa.

H.R. 1805, introduced on April 21 by Representative Louise Slaughter (D-NY), would establish the position of Northern Border Coordinator in the Department of Homeland Security.

H.R. 1804, introduced on April 21 by Representative Jim Ryun (R-KS), would prescribe the oath of renunciation and allegiance for purposes of the Immigration and Nationality Act. The bill is similar to H.R. 2513, noted above.

H.R. 1770, introduced on April 21 by Elton Gallegly (R-CA), would require employers at critical infrastructure sites to participate in the pilot program for employment eligibility verification. Employers covered under the legislation would be those that employ individuals working in a location that—(I) is a Federal, State, or local government building, a military base, a nuclear energy site, a weapon site, or an airport; or (II) contains critical infrastructure (as defined in section 1016(e) of the Critical Infrastructure Protection Act of 2001 (42 U.S.C. 5195c(e))), as determined by the Secretary of Homeland in regulations. The bill would also authorize additional uses of the employment eligibility confirmation system.

H.R. 1737, the HRIFA Improvement Act of 2005, introduced on April 20 by Representative Kendrick Meeks (D-FL), would amend the Haitian Refugee Immigration Fairness Act of 1998 to benefit individuals who were children when this act became law.

H.R. 1717, introduced on April 20 by Representative Robert Andrews (D-NJ), would require the Secretary of the Treasury to mint coins in commemoration of the 100th anniversary of the start of Korean immigration into the United States.

H.J. Res. 46, introduced on April 28 by Representative Ron Paul (R-TX), proposes an amendment to the Constitution of the United States that would deny United States citizenship to individuals born in the United States to parents who are neither United States citizens nor persons who owe permanent allegiance to the United States.

Senate Legislation

S. 1124, introduced on May 25 by Senator Richard Lugar (R-IN), would amend Section 303 of the Enhanced Border Security and Visa Entry Reform Act of 2002 to postpone by one year the date by which countries participating in the visa waiver program shall begin to issue machine-readable tamper-resistant entry passports.

S. 1119, the Diversity Visa Fairness Act of 2005, introduced on May 25 by Senator Saxby Chambliss (R-GA), would permit certain aliens to remain eligible for a diversity visa beyond the fiscal year in which they applied for the visa.

S. 1104, the Immigrant Children’s Health Improvement Act of 2005, introduced on May 23 by Senator Hillary Clinton (D-NY), 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 and State Children’s Health Insurance Programs (SCHIP).

S. 1087, introduced on May 19 by Senator Lamar Alexander (R-TN), would amend INA § 337 to prescribe the oath or affirmation of renunciation and allegiance required to be naturalized as a citizen of the United States. A House companion bill (H.R. 2513) was also introduced on May 19.

S. 1033, the Secure America and Orderly Immigration Act, introduced on May 12 by Senators John McCain (R-AZ), Edward Kennedy (D-MA) and others, would reform our immigration laws so that they enhance our national security and address the concerns of American businesses and families. For additional details on this bill, see article number 2 in this *Update*.

S. 1006, the State Criminal Alien Assistance Program II, introduced on May 11 by Senator Jon Kyl (R-AZ), would reimburse States and local governments for indirect costs relating to the incarceration of illegal criminal aliens.

S. 816, introduced on April 15 by Senator Harry Reid (D-NV), would establish the position of Northern Border Coordinator in the Department of Homeland Security.

Recent Rulemaking and Other Activity in the Federal Agencies

The Department of Homeland Security has issued several new regulations and notices in recent weeks, impacting everything from H-1B visas to Soviet Scientists. A brief summary of these items follows.

Department of Homeland Security

USCIS Expands Direct Mail Program to Include I-90s. The Department of Homeland Security's (DHS's) U.S. Citizenship and Immigration Services (USCIS) published a notice in the Federal Register on May 27, announcing that the Direct Mail Program is expanded to include processing of applications to renew or replace Permanent Resident Cards. Effective May 31, Form I-90 must be filed at a designated lock-box facility for initial processing, instead of at the local USCIS office, Service Center, or Application Support Center. (70 FR 30768, 5/27/05, see AILA InfoNet Doc. No. 05052760)

USCIS Publishes Regulations on Allocation of Additional H-1B Visas. USCIS published an interim rule on May 5 implementing certain changes made by the Omnibus Appropriations Act for Fiscal Year (FY) 2005 to the numerical limits of the H-1B nonimmigrant visa category and the fees for filing of H-1B petitions. The interim rule also notifies the public of the procedures USCIS will use to allocate, in FY 2005 and in future fiscal years starting with FY 2006, the additional 20,000 H-1B numbers made available by the exemption created pursuant to that Act. In addition, the interim rule amends and clarifies the process by which USCIS, in the future, will allocate all petitions subject to numerical limitations under the INA, and notifies the public of additional fees that must be filed with certain H-1B petitions. The rule took effect May 5, 2005. Comments must be submitted by July 5, 2005. (70 FR 23775, 5/5/05, see AILA InfoNet Doc. No. 05050518).

DHS Proposes to Amend Petitioning Requirements for O and P Nonimmigrant Classifications. The DHS issued a proposed rule on April 28 that would amend the petitioning requirements for O and P nonimmigrant classifications, allowing an O or P petitioner to file a Form I-129 up to one year, but not earlier than 6 months, before the date of the petitioner's need for the alien's services. Comments are due by June 27. (70 FR 21983, 4/28/05, see AILA InfoNet Doc. No. 05042840).

DHS Interim Rule Classifies Certain CIS Scientists as Employment-Based Immigrants. The DHS issued an interim rule on April 25, implementing changes to the Soviet Scientists Immigration Act of 1992 (SSIA) (Pub. L. No. 102-509), made by the Foreign Relations Authorization Act, Fiscal Year 2003 (Pub. L. No. 107-228). The SSIA, as amended, reinstates the authority to allot visas under section 203(b)(2)(A) of the Immigration and Nationality (Act) to eligible scientists or engineers of the independent states of the former Soviet Union and the Baltic states with expertise in nuclear, chemical, biological, or other high-technology field or defense projects. This rule amends the DHS regulations to codify the new sunset date of September 30, 2006 and the new numerical limit of 950 visas (excluding spouses and children if accompanying or following to join). The rule also modifies the evidence eligible scientists or engineers must submit to establish their expertise or work experience in such high technology fields or defense projects. The rule took effect upon publication. Comments are due by June 24. (70 FR 21129, 4/25/05, see AILA InfoNet Doc. No. 05042560).

MEDIA SPOTLIGHT: Members and Staff in the News

Enrique Arevalo (Southern California) and **Gloria Curiel** (Southern California) were featured in a May 31 *Los Angeles Times* article about their radio and television immigration shows and the positive influence they have had in the Latino community. **Marshall Fitz** (National) was quoted in a May 31 *Baltimore Sun* article about the recently passed REAL ID Act that will make it more difficult for people trying to escape foreign torture because of their ethnicity, race or religion. **Steve Ladik** (Texas) was featured in a May 30 *Texas Lawyer* article about the National Center for Refugee and Immigrant Children and the pro bono work done by lawyers on behalf of immigrant children.

Carl Shusterman (Southern California) was quoted in a May 29 *Los Angeles Times* article about the lack of work-site enforcement of immigration laws. **Cyrus Mehta** (New York) and **Lynn Neugebauer** (New York) were quoted in a May 29 *Newsday* question and answer article about immigration. **Indu Liladhar-Hathi** (Santa Clara) and **James Wolf** (Northern California) were quoted in a May 29 *San Jose Mercury News* question and answer article about immigration.

Chris Stender (Arizona) was quoted in a May 28 *Arizona Republic* article about Arizona's latest anti-smuggling initiative, which uses computer analysis to periodically target all Western Union transactions over \$750. **Eduardo Soto** (Southern Florida) was quoted in a May 28 *Miami Herald* story about his client, whom the Venezuelan government is seeking to extradite on charges that he is a Cuban militant accused of bombing an airliner.

Randall Drew (New England) and **Mona Movafaghi** (New England) were featured in a May 28 *Union Leader* article about their clients who were charged by police with criminal trespassing in an effort to enforce federal immigration laws. **Jeremiah Stuchiner** (Nevada) was quoted in a May 28 *Associated Press* article about his clients who have applied for asylum after having crossed the U.S. border. **Sean W. Lew** (Carolinas) was quoted in a May 28 *News & Record* article about the arrest of undocumented workers at Smith Reynolds Airport in Greensboro. **Meetesh Patel** (Washington, DC) was featured in a May 27 *Daily Record* article about being an internet blogger on immigration issues.

Richard Herman (Ohio) was quoted in a May 26 *Plain Dealer* article about a dispute between local police and immigrant cab drivers who feel they are being singled out for tickets and fines. **Dan Kowalski** (Texas) was quoted in a May 25 *The Nation* article about America's anti-immigrant movement. **Mary Dutcher** (Northern California) was quoted in a May 24 *San Jose Mercury News* article about U visas. **Julie Dinnerstein** (New York) was quoted in a May 24 *New*

York Times article about her clients who are facing deportation as a result of the controversial “call-in” special registration program.

Mark Nesbit (Ohio) was quoted in a May 23 *Columbus Dispatch* article about the potential effects of the REAL ID Act. **Marc Van Der Hout** (Northern California) was quoted in a May 23 *Recorder* article about Brad Seligman who is heading an ongoing discrimination case against Wal-Mart, the biggest employment class action in U.S. history. **Susan Cohen** (New England) was quoted in a May 22 *Boston Globe* article about the Ipswich, NH police chief who is trying to enforce federal immigration laws by citing undocumented immigrants with criminal trespassing.

Marshall Fitz (National) was quoted in a May 20 *Broward Daily Business Review* article about the REAL ID Act. **Ira Kurzban** (Southern Florida) and **Eduardo Soto** (Southern Florida) were quoted in a May 20 *St. Petersburg Times* article about Mr. Soto’s client, whom the Venezuelan government is seeking to extradite on charges that he is a Cuban militant accused of bombing an airliner. **Mr. Soto** and **Leopoldo Ochoa** (Southern Florida) were also quoted in a May 18 *Miami Herald* article on the same topic, as was **Christina Perez Gonzales** (Southern California) in a May 18 *Los Angeles Times* article. **Mr. Soto** was quoted in a number of publications on the same story.

Eric Fisher (Colorado) was quoted in a May 19 *Associated Press* article about “The Save Our Small and Seasonal Businesses Act,” which was recently signed into law as part of the emergency supplemental. **Robert Kolken** (Upstate New York) was quoted in a May 19 *Buffalo News* article about a large number of undocumented immigrants who were deported due to criminal activity. **Carrye Washington** (Southern California) was quoted in a May 19 *Inland Valley Daily Bulletin* article about California Assemblyman Ray Haynes’ proposal to create a state immigration police force to help patrol the border and enforce immigration laws. **Marshall Fitz** (National) was quoted in a May 19 *Inland Valley Daily Bulletin* article about whether states have the inherent authority to enforce federal immigration laws.

Judy Golub (National) was quoted in a May 17 *Chicago Tribune* article about the temporary increased access to H-2B workers included in the supplemental. **Marshall Fitz** (National) was quoted in a May 17 *National Law Journal* article about how the REAL ID Act does not permit immigrants to seek habeas corpus review of deportation orders. **Melanie Goldberg** (Michigan) was featured in the May 2005 edition of *Citizen Lawyer* about her career as an immigration lawyer.

Al Zucaro (Southern Florida) and **Larry Behar** (Southern Florida) were quoted in a May 16 *Sun-Sentinel* article about how the Southern Florida region has become a magnet for international businesses and conventions. **Karen Musalo** (Northern California) was quoted in a May 16 *San Francisco Chronicle* article about the implications of the REAL ID Act on persons seeking asylum. **Ann Robertson** (Carolinas) was quoted in a May 15 *News & Observer* article about how the REAL ID Act will create more obstacles for asylum petitioners.

Nan Gan (Santa Clara) and **Mark Silverman** (Northern California) were quoted in a May 15 *San Jose Mercury News* question and answer article on immigration. **Madeline Welch** (Philadelphia) was quoted in a May 14 *News Journal* article about a proposed local ordinance that sought to fine undocumented immigrants and businesses that hired them.

Paul Soreff (Washington) was quoted in a May 13 *Olympian* article about the REAL ID Act. **Glenda Bunce** (Carolinas) was quoted in a May 13 *The State* article about new local centers that help immigrants attain literacy in their native language. **Judy Golub** (National) was quoted in a

May 13 *Washington Post* article about the introduction of the “Secure America and Orderly Immigration Act of 2005,” (S. 1033/H.R. 2330).

Zulma Martinez (Philadelphia) was quoted in a May 12 *Associated Press* article about the Elsmere, Delaware town council that rejected a proposed ordinance that would have allowed local authorities to fine people who can’t provide proof of citizenship. **Lisa Seifert** (Washington) was quoted in a May 12 *Olympian* article about the REAL ID Act. **Angelo Paparelli** (Southern California) was quoted in a May 12 *Orange County Register* article about the 24-hour detention and subsequent refusal of entry of an Indian couple because CBP data did not show they had the proper paperwork.

Judy Golub (National) was quoted in a May 11 *The Capital* article about the passage of the “Save our Small and Seasonal Businesses Act.” **Jeanne Butterfield** (National) was quoted in a May 11 *Newsday* article about the REAL ID Act. **Ms. Butterfield** was also quoted in a May 11 *Washington Post* article on the same topic.

Marshall Fitz (National) was interviewed on the May 10 *Thom Hartman Radio Show* about the implications of the REAL ID Act and immigration reform. **Jeanne Butterfield** (National) was interviewed on the May 9 *NPR’s Diane Rehm Show* about the REAL ID Act. **Noah Leavitt** (Michigan) had an article published in the May 9 edition of *Findlaw.com* about the REAL ID Act. **Scott Mossman** was interviewed on a May 8 broadcast of the *Karel Show on KGO ABC Radio* about the REAL ID Act.

Richard Hobbs (Santa Clara) was featured in a May 8 *San Jose Mercury News* article about his tireless activism on behalf of immigrants, youths and women. **Jeanne Butterfield** (National) was quoted in a May 8 *New York Daily News* article about the negative impact the REAL ID Act could have on immigrants. **Crystal Williams** (National) was quoted in a May 8 *Lexington Herald Leader* about the post-9/11 impact on college basketball programs and how difficult it is for schools to bring over legitimate players. **Jacqueline Baronian** (New York) was quoted in a May 8 *Newsday* question and answer article about immigration.

Richard Brown (Ohio), **David Leopold** (Ohio) and **Margaret Wong** (Ohio) were quoted in a May 7 *Cleveland Plain Dealer* article about the additional 20,000 H-1B visas now available. **Greg Siskind** (Mid-South) and **Jeanne Butterfield** (National) were quoted in a May 6 *San Diego Union-Tribune* article about the constitutionality of having state border troops. **Randy Feldman** (New England) was quoted in a May 6 *Telegram & Gazette* article about the need for comprehensive immigration reform. **Kerry Doyle** (New England) was quoted in a May 6 *Telegram & Gazette* article about in-state tuition for undocumented students.

Benjamin Bratter (New York) was quoted in a May 5 *New York Times* article about the negative impact the REAL ID Act will have on law-abiding immigrants. **Matthew Dunn** (New York) was quoted in a May 5 *New York Sun* article about the huge backlog of applications for green cards and citizenship in the New York City area. **Solange Altman** (Northern California) was quoted in a May 4 *Fresno Bee* article about the recent passage of the REAL ID Act and the negative impact it will have on future asylum seekers. **Marshall Fitz** (National) was also quoted on the same topic, in both a May 4 *New York Sun* article a May 4 *Congressional Quarterly* article.

Roy Petty (Texas) was quoted in a May 3 *Dallas Morning News* article about a Dallas woman who is being sued by the Texas attorney general for defrauding immigrants. **Jeanne Butterfield** (National) was interviewed on the May 3 broadcast of *Lehrer News Hour* about the REAL ID Act. **Judy Golub** (National) was quoted in a May 3 *Associated Press* article about the proposed

legislation that attached to the Emergency Supplemental that will temporarily lift the H-2B cap. **Ms. Golub** was also interviewed for a May 3 broadcast of *RTE (Irish National News)* about immigration reform.

Carl Shusterman (Southern California) and **Raul Godinez** (Southern California) were quoted in a May 2 *Los Angeles Times* article about the nationwide trend to appeal to the federal judiciary on behalf of their clients seeking asylum. **Jodi Goodwin** (Texas) and **Judy Golub** (National) were quoted in a May 2 *Newsday* article about the escalating crackdown on undocumented immigrants, with beefed-up immigration and law enforcement agencies cooperating more closely and sharing more sophisticated databases. **Jonathan Ginsberg** (Washington, DC) was quoted in a May 2 *Washington Post* article about visa restrictions imposed by the U.S. government following the Sept. 11, 2001 terrorist attacks. **Erich Straub** (Wisconsin) was quoted in a May 1 *Milwaukee Journal-Sentinel* article about the stepped up scrutiny of immigrants since the terrorist attacks of Sept. 11, 2001.

Carl Shusterman (Southern California) had an article published in the April 29 edition of *Unique Opportunities* about international medical graduates knowing their visa options if they want to work in the United States. **Thomas Elliot** (Washington, DC) was quoted in an April 28 *Associated Press* article about his client who the government says was a Nazi death camp guard during World War II. **Judy Golub** (National) was quoted in an April 28 *Fresno Bee* article about the REAL ID Act. **Jeanne Butterfield** (National) was quoted in an April 28 *Scripps Howard News Service* article about the REAL ID Act.

Lynn Neugebauer (New York) was quoted in an April 27 *Newsday* question and answer article about immigration. **Jeanne Butterfield** (National) was quoted in an April 27 *Copley News Service* article about the border vigilantes. **Judy Golub** (National) was quoted in an April 27 *Cox News Service* article about the REAL ID Act. **Jonathan Ginsburg** (Washington, DC) was quoted in an April 27 *Newhouse News Service* about the post-9/11 impact on entertainers who need visas to enter the U.S. **Julia Hendrix** (National) was quoted in an April 26 *Press Enterprise* article about an anti-immigrant rally in Washington, DC.

Vance Winningham (Texas) was featured in an April 24 *Sunday Oklahoman* article about his work as an immigration attorney. **Judy Golub** (National) was quoted in an April 24 *Press Enterprise* article about an anti-immigrant rally in Washington, DC. **Zachary Nightingale** (Northern California) was quoted in an April 21 *Sacramento Bee* article about his client, Eddie Zheng, who is detained pending his deportation to China based on an aggravated felony charge.

Eugene Glickman (New York) was quoted in an April 20 *New York Daily News* article about an immigrant who was a legal resident for 23 years, applied for citizenship but whose case was closed. **Judy Golub** (National) was quoted in an April 20 *Newsday* article about the need for comprehensive immigration reform. **Ms. Golub** was also quoted in an April 20 *San Francisco Chronicle* article about the REAL ID Act.

David Sperling (New York) had an op-ed printed in the April 19 edition of *Newsday* about the highly publicized raids carried out on Long Island against Hispanic gang members and sexual predators. **Maurice Goldman** (New York) and **Allan Wernick** (New York) were featured in an April 19 *New York Daily News* article about Citizenship Now, the week-long popular community service project that provides free immigration advice. **Sohail Mohammed** (New Jersey) was quoted in an April 19 *Bergen Record* article about his “sensitivity enhancement” session on the subject of Islam. **Tom Griffin** (Philadelphia) was quoted in an April 19 *Boston Globe* article about Haiti’s political chaos and the effect of the chaos on the people who live there.

Brent Renison (Oregon) had a letter to the editor published in the April 18 edition of the *Oregonian* about allowing in-state tuition and driver's licenses for undocumented immigrants. **Judy Golub** (National) was quoted in an April 18 *Inter Press Service* article about the immigration poll sponsored by AILA and the National Immigration Forum.

Tim Wichmer (Missouri/Kansas) was quoted in an April 17 *Belleville News Democrat* about his clients who pled guilty to sexually assaulting a 12-year-old girl and who voluntarily agreed to deportation to the United Kingdom. **Randall Caudle** (Northern California) was quoted in an April 17 *San Jose Mercury News* question and answer article about immigration. **Cheryl Little** (Southern Florida) was quoted in an April 17 *Palm Beach Post* article about the history of the Mariel refugees.

Denyse Sabagh (Washington, DC) had a letter to the editor published in the April 15 edition of the *Washington Times* about the controversy surrounding the attachment of the REAL ID Act to the emergency supplemental. **Robert Cohen** (Ohio) had an op-ed published in the April 15 edition of the *Dayton Daily News* about the negative impact the REAL ID Act. **Kerry Doyle** (New England) had a letter to the editor published in the April 15 *Nashua Telegraph* urging Senators to reject the REAL ID Act. **Charles Kuck** (Atlanta) was quoted in an April 14 *Austin American-Statesman* about the need for border security. **Judy Golub** (National) was quoted in an April 14 *Associated Press* article about the REAL ID Act.

Charla Haas (Mid-South) was quoted in an April 13 *Associated Press* article about a six-year veteran trooper with the Tennessee Highway Patrol who has been suspended because he is not a U.S. citizen. **Ms. Haas** also was quoted in an April 13 *The Tennessean* article about the same issue. **Michael Bander** (Southern Florida) was quoted in an April 13 *Miami Herald* article about Jack Bulger, who helped steer the Miami immigration office through the Elian Gonzalez controversy, the post-9/11 terrorist investigation and the agency's absorption into the Department of Homeland Security.

Robert Gibbs (Washington State) was quoted in an April 13 *Associated Press* article about a Mexican immigrant who is fighting to stay in the United States after Washington Governor Gary Locke pardoned him last fall. **Melanie Chaput** (New England) was quoted in an April 13 *Associated Press* article about the InfoPass System. **Jeanne Butterfield** (National) was quoted in an April 12 *Inland Valley Daily Bulletin* article about how difficult it is for immigrants to navigate the complicated immigration system. **John Ovink** (Central Florida) was interviewed on an April 10 broadcast of *WMAU* to discuss immigration issues. **Carl Shusterman** (Southern California) had an article published in the March 25 edition of *HealthLeaders* about how U.S. immigration policy negatively impacts healthcare.

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

Did You Know?

Although little noticed by the press, the 2005 *Economic Report of the President* – which was submitted to Congress on February 17, 2005 – prominently highlights the critical importance of immigration to the U.S. economy. The fact that the report devotes an entire chapter to the topic of immigration underscores both the extent to which immigration has become a driving force in the economy and the degree to which immigration policy affects the nation's economic prospects. The data compiled in the report, as well as a wide array of data from other sources, illustrate that

immigration has become the key to growth of the U.S. labor force and that immigrants provide a net fiscal benefit to the U.S. economy. However, current immigration policies fail to account for either of these facts and set limits on immigration that fall well below actual labor demand.

-- Walter A. Ewing, Ph.D., "The Economics of Necessity: Economic Report of the President Underscores the Importance of Immigration," Immigration Policy Center, May 2005.

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