

## SISKIND'S IMMIGRATION BULLETIN

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Published by Greg Siskind, partner at the Immigration Law Offices of Siskind, Susser, Haas & Devine, Attorneys at Law; telephone: 800-748-3819, 901-737-3194 or 615-345-0225; facsimile: 800-684-1267, email: [gsiskind@visalaw.com](mailto:gsiskind@visalaw.com), WWW home page: <http://www.visalaw.com>. SSHD serves immigration clients throughout the world from its offices in the US, Canada and the People's Republic of China. To schedule a telephone or in-person consultation with the firm, go to <http://www.visalaw.com/intake.html>. Writers: Amy Ballentine and Greg Siskind.

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### 1. A MESSAGE FROM SISKIND, SUSSER, HAAS AND DEVINE

Dear Readers:

As many of you know, in 1996 Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRAIRA”), one of the most draconian immigration-related pieces of legislation passed in the last half century. We know many of our readers are familiar with the law because we receive hundreds of letters a year from newsletter subscribers desperately seeking solutions to IIRAIRA’s effects. One of the effects of the law has been to make some people deportable for committing offenses as minor as shoplifting. Some of IIRAIRA’s own backers admit that the law may be overreaching in some cases and that the INS should exercise its discretion in pursuing deportations. But, unfortunately, while the INS officially endorses the idea of exercising discretion, the reality is that many people are still placed in deportation proceedings that arguably should not be. While Congress and the INS have been unable to work out a solution, some states are taking matters into their own hands. This week, we report on what Georgia is doing. The Georgia Board of Pardons is using its pardon power to keep immigrants in the country and, thanks to a recent Georgia Supreme Court decision, judges are reducing, sometimes by just a few days, sentences that trigger deportations.

In this week’s ABCs of Immigration feature, we write about the Registry, a little known route to getting a green card. The Registry allows most people who have been in the US since 1972 to qualify for a green card regardless of how they entered the US or what their current legal status is. We also report on a bill in Congress just proposed that would advance the Registry 24 years to 1996.

We also include many of our other regular features this week including Legislative Update, Border News, News from the Courts, Ask Visalaw.com, News Bytes and Government Processing Times (this week we have new times from all four Service Centers).

Based on the dramatic rise in the number of people we’ve seen in our offices across the country over the last month, the word appears to be out about Congress’ temporary extension of 245i immigration benefits. We remind readers that the law allows many people eligible for green cards to pay an \$1000 penalty fee in order to process cases in the US instead of at consulates as long as a priority date is secured before April 30<sup>th</sup>. This is particularly important for people with status violations who would be

subject to the three and ten year re-entry bars if they were required to process at a consulate. If you would like to know more about 245i, please read the summary of the new LIFE law at the Hot Topics section of our web site ([www.visalaw.com/hottopics.html](http://www.visalaw.com/hottopics.html)). If you would like to set up a telephone consultation with us to discuss the new law and how you may benefit, please go to <http://www.visalaw.com/intake.html>.

And finally, as always, we remind readers that this newsletter is published by Siskind, Susser, Haas & Devine, a law firm that represents clients throughout North America. If you are interested in scheduling a telephone consultation to discuss immigration questions you may have or to discuss the possibility of Siskind, Susser, Haas & Devine handling your immigration case, please go to <http://www.visalaw.com/intake.html>. In most cases, we are able to schedule a consultation within two days and we can often accommodate evening and weekend appointments.

Thanks again for your continued loyalty.

Greg Siskind

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## 2. LEGISLATIVE UPDATE

[H.R. 329](#), introduced by Rep. Bob Clement (D-TN) would establish an INS office in Nashville, TN.

[H.R. 348](#), the Central American and Haitian Adjustment Act of 1999, introduced by Rep. Luis Gutierrez (D-IL), would make nationals of El Salvador, Guatemala, Honduras and Haiti eligible for relief under the Nicaraguan Adjustment and Central American Relief Act, and would extend the deadline for NACARA applications until 2003. Similar bills were introduced during the last session of Congress, and met with stiff opposition from Republicans.

[H.R. 357](#), the Liberian Refugee Immigration Protection Act of 2001, introduced by Rep. Patrick Kennedy (D-RI), would allow Liberian nationals who obtained or were eligible to obtain Temporary Protected Status in the US to adjust their status to lawful permanent resident.

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Texas state legislators have introduced a bill to allow undocumented immigrant students to attend higher education institutions in the state on in state tuition. To be eligible under the bill, the child must have graduated from a Texas high school while a resident of Texas.

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### **3. FAR REACHING AMNESTY LEGISLATION INTRODUCED IN CONGRESS**

**This week Rep. Luis Gutierrez (D-IL) introduced a bill that would essentially grant an amnesty to many undocumented immigrants in the US. H.R. 500, titled the U.S. Employee, Family Unity, and Legalization Act (the USEFUL Act), it would make a number of important changes to US immigration law.**

**First, it would change the registry date from the current January 1, 1972 to February 6, 1996. The registry is a program that essentially grants amnesty to people in the US who have been in this country since before a specified date. It would also provide for updates of the registry date in the future so that in 2003 the date would be 1997, in 2004, 1998, in 2005, 1999, in 2006, 2000, and in 2007, 2001. It would make the information provided in an application for registry confidential so that it could not be used for enforcement, and would provide a penalty of up to five years in prison for making false claims on a registry application.**

**The law would eliminate the retroactive application of new grounds for deportation when the offense occurred before it was a reason for deportation and would apply this same standard to grounds of inadmissibility.**

**It would amend the definition of aggravated felony to require sentences of five years for crimes of violence, theft offenses, and several other offenses. It would also require that for other offenses to be considered aggravated felonies a sentence of at least one year actually be imposed and not simply be a possibility. The law would redefine conviction so that convictions that are expunged or otherwise removed from a person's record cannot be the basis for deportation.**

**The law would eliminate the three and ten-year bars on readmission that currently apply to people who have failed to maintain valid immigration status in the US.**

**It would amend the recently created V visa to allow spouses and children of permanent residents to enter the US to achieve family unity immediately. The current V visa provisions require that an immigrant visa application be pending for three years.**

**Many of the changes have been sought by immigration advocates since 1996, when the Illegal Immigration Reform and Immigrant Responsibility Act was passed. Bills to make similar changes have been introduced in the past, but seldom even received a hearing in the Immigration Subcommittee**

chaired by Rep. Lamar Smith (R-TX). Immigration experts doubt this bill will be passed into law, but believe it will be taken more seriously by the new chair of the Subcommittee, Rep. George Gekas (R-PA).

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#### **4. GEORGIA SUPREME COURT DECISION OFFERS HOPE FOR IMMIGRANTS CONVICTED OF MINOR OFFENSES**

Immigration advocates are looking with hope to a recent ruling by the Supreme Court of Georgia. In the case, the court ruled that a judge properly reduced the sentence for shoplifting that had been imposed on a Romanian immigrant caught committing the act. Originally sentenced to one year, Calvin Colack's sentence was reduced to 11 months and 29 days.

The one-day difference is crucial in immigration law because the Immigration and Nationality Act usually calls for the deportation of foreign nationals who have been convicted of crimes and sentenced to one year or more. More and more judges have been reducing sentences in cases like this, believing that deportation for such minor offenses is simply unfair, particularly when the immigration consequences of the sentence were never examined at the time of sentencing.

Others, however, believe that such reductions in sentences are thwarting the will of Congress. John Keeley, a research associate at the Center for Immigration Studies, an organization that examines US immigration policy, called the decision an act of "judicial activism." Keeley agreed with the notion that some of the criminal acts that were made the basis of deportation in 1996 perhaps should not have been, but said that Congress was nonetheless acting appropriately.

The Georgia Supreme Court is not the only body in the state that has responded to the issue of deporting people for minor crimes. The State Board of Pardons and Paroles has, over the past year, issued 93 pardons to help people avoid deportation. The state legislature recently enacted a law requiring that people who plead guilty be informed of the possible immigration consequences of the plea.

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#### **5. COLOMBIANS RENEW EFFORT TO GET TEMPORARY PROTECTED STATUS**

Colombian nationals in Florida are renewing their drive for Temporary Protected Status, saying that conditions in the country warrant its designation. TPS allows people from designated countries to remain in the US despite immigration violations when conditions in their home country

make deportation impracticable. According to estimates, as many as 85,000 people could benefit from TPS, 40,000 in Florida alone. A similar effort to persuade the Clinton administration to grant TPS failed.

One problem that many Colombians face is that while murders and kidnappings are rampant across the country, the crimes are seldom motivated by reasons that are grounds for asylum – race, religion, national origin, political beliefs or membership in a particular social group. Often, there is no reason at all for the terror.

While murder and kidnapping of wealthy citizens is common and relatively well known, not all occur for money. And even in cases that are motivated by money, an asylum case is difficult to prove because the Colombian government is attempting to deal with the problem, albeit unsuccessfully. To win asylum, a person must be persecuted by the government or with the consent of the government. Because the Colombian government tries to deal with the guerillas but cannot, it is more difficult for Colombian nationals to win asylum.

According to the Pan-American Coalition, which is leading the TPS effort, conditions in Colombia have deteriorated even further since last summer. Colombian nationals who have the resources to leave have been coming to the US in large numbers in recent years. However, most of them are here on temporary visas, and even though most want to return to Colombia, they fear what could happen if they go home.

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## 6. COURT ORDERS INS TO GRANT DISABLED MAN CITIZENSHIP

In a recent opinion, the Tenth Circuit Court of Appeals ordered the INS to naturalize Gustavo Galvez-Letona. The INS had refused to approve his application for naturalization because Galvez suffers from Downs Syndrome and therefore could not understand the oath of allegiance.

A district court had previously ordered Galvez to be granted citizenship, finding that the INS' denial of his application was a violation of the Rehabilitation Act, which prohibits the federal government from refusing to grant a benefit to a person solely because of a disability. The INS had argued that because understanding the oath of allegiance is essential to naturalization, it could not be waived under the Rehabilitation Act.

After the INS appealed the district court decision, Congress passed a law authorizing the waiver of the oath requirement in cases where the applicant could not understand it because of a disability. Before the Tenth Circuit,

the INS argued that Galvez was eligible for such a waiver, and that his case was therefore moot. The Tenth Circuit disagreed. After the district court order, the INS did issue Galvez a certificate of citizenship, but because of the ongoing appeal, the validity of the certificate was in doubt.

The Tenth Circuit affirmed the district court, but did not rely on the Rehabilitation Act. Because the new law passed by Congress applies to applications for naturalization filed both before and after it was passed, the Tenth Circuit, relying on the statement of the INS that Galvez was eligible for the waiver, ordered the INS to approve his application for naturalization based on that law.

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## **7. STUDY SHOWS UNDOCUMENTED POPULATION MAY BE LARGER THAN COMMONLY ASSUMED**

A recent study by economists at Northeastern University in Boston attempts to quantify the impact of undocumented immigrants in the US. Based on information gathered by the Census Bureau and the Department of Labor, the study estimates that there could be as many as 11 million undocumented immigrants living in the US, five million more than most commonly accepted estimates.

According to the study, which was prompted in part by the large disparity between the population predicted by the Census Bureau and the actual number obtained after the count, a difference of seven million, most of the additional seven million people are likely undocumented immigrants.

The economists who conducted the study say that most of the immigrants were working, and were likely a large part of the reason for the economic boom of the 1990s. Officials with the Census Bureau say that the conclusions of the study are quite possible, and also say that they probably did a better job counting undocumented residents than had been done in the past. Kenneth Prewitt, the Director of the Census Bureau during the 2000 Census, says that even in this count, as many as four million people could have been missed.

One factor that led researchers to their conclusion is the disparity between employment numbers provided by the Bureau of Labor Statistics and the Census. Over the past 30 years, the disparity has risen greatly, with more and more jobs being listed than there are people listed as employed. For example, between 1994 and 2000, the BLS listed 17.3 million new jobs, while the Census recorded only 12.1 million more people working. Some of the disparity can be explained by people working more than one job, but not the entire five million.

**Another factor in the conclusion is that the disparity between reported jobs and the number of employees is largest in states with the largest undocumented immigrant population.**

**The researchers believe that if their study is proven correct, assumptions about the 1990s economy will have to be reexamined.**

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## **8. BORDER NEWS**

**Three undocumented immigrants injured in a car accident when the Border Patrol vehicle they were being transported in rolled over are suing the agency, along with the widow of a fourth immigrant, who was killed in the accident. According to the suit, the Border Patrol acted negligently by removing the seats in a Ford Bronco and transporting the immigrants. The accident occurred on April 19, 2000 in New Mexico. The suit seeks more than \$10 million in damages.**

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**Border Patrol agents this week arrested 99 undocumented immigrants found in the back of a tractor-trailer in Texas. The immigrants, who were from Brazil, the Dominican Republic and Mexico, paid \$500 each to be transported into the US. The driver has been charged with smuggling and the immigrants all deported.**

**\*\*\*\*\***

**The Drug Enforcement Agency has agreed to pay \$1.75 million to a Mexican citizen who was paralyzed after being shot by a DEA agent two years ago. Abecnego Monje was shot on January 25, 1999 while trying to cross into the US on an inner tube on the Rio Grande.**

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**According to an internal INS report, deportations have increased by 164% since the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 was passed. Over the past five years, more than 720,000 foreign nationals have been deported from the US. By far the largest group of deportees is Mexicans. In fiscal year 2000, 149,515 Mexican nationals were deported, up from 51,002 in 1996. The INS portrays the numbers as reflecting its efficiency and concern for public safety, pointing to the number of so-called criminal aliens deported. However, immigration advocates counter this argument by noting that a large number of long-time permanent residents have been deported for minor offenses. Since its enactment, advocates have criticized the 1996 law as unduly harsh and**

removing the discretion of Immigration Judges to allow a person convicted of a crime to stay.

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## **9. NEWS FROM THE COURTS**

### **Hernandez v. Reno, First Circuit**

**In this case, the court ruled against an ineffective assistance of counsel claim and affirmed the deportation order.**

**Carlos Hernandez, a native of the Dominican Republic, entered the US as a permanent resident in 1982. In 1989, he was convicted of distributing cocaine. The INS moved to deport him. Hernandez conceded deportability and applied for a waiver of deportation. The Immigration Judge denied the waiver, finding that, on balance, the equities weighed against him. Hernandez' lawyer filed an appeal with the Board of Immigration Appeals, but failed to supply the required brief. Because of this, in 1993 the Board dismissed the appeal. In 1997 the INS notified Hernandez that he was to appear for deportation. Hernandez hired a new attorney who filed a petition for a writ of habeas corpus in district court and a motion to reopen the deportation case with the Board.**

**The district court stayed his deportation so that it could hear the merits of the case. The court did not, however, hear the merits of the case. Instead, basing its ruling on the Supreme Court case of *Reno v. American-Arab Anti-Discrimination Committee*, it found that it lacked jurisdiction to hear the case and dismissed it. Hernandez appealed to the First Circuit.**

**Before the First Circuit, the INS argued that Hernandez had failed to exhaust his administrative remedies. The court found that because of the problem with the appeal to the Board, the issue of exhaustion was essentially a merits question. A large part of Hernandez' case rested on his claim that his first lawyer was ineffective, ineffectiveness which caused his failure to exhaust his avenues of relief before the Board.**

**The court said that while in ordinary cases, ineffective counsel claims should be brought before the Board through a motion to reopen, such as that filed by Hernandez, given that his deportation was imminent, and that the motion had been before the Board for three years, the court decided to address the merits of his ineffective assistance of counsel claim.**

**The heart of Hernandez' claim was that his initial attorney mishandled his application for a waiver of deportation. The court found that, even**

assuming that the attorney was somehow negligent, Hernandez would still not qualify for a discretionary waiver of deportation. He was convicted of a serious offense and did not attempt to rehabilitate himself until his deportation became imminent. Moreover, the court found it “hard to stomach the idea that Hernandez could sit on his hands for almost five years and then say that he was unconstitutionally denied an opportunity to pursue an appeal from the denial of waiver. Knowing that he had been denied a waiver and was subject to deportation, it would seem that Hernandez had some duty – as a condition of a successful due process claim – to monitor his lawyer’s actions and assure that his appeal was being pursued.”

Therefore, the district court was upheld and the stay of the deportation order lifted.

The opinion is available online at <http://www.ilw.com/lawyers/immigdaily/cases/2001,0130-Hernandez.shtm>.

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#### Rosales-Garcia v. Holland, Sixth Circuit

In this case, the court ruled that the indefinite detention of a Mariel Cuban was unconstitutional.

Mario Rosales-Garcia, a citizen of Cuba, came to the US in 1980 during the Mariel boatlift. Following his parole into the US, he was arrested numerous times, including several theft offenses and drug possession charges. In 1986, the INS revoked his parole and he was placed in INS detention. A separate asylum application was denied and he was ordered deported. However, because Cuba refused to take him back, he remained in the US. In 1988, following a custody review, he was released into the custody of an uncle. In 1993, he was again convicted, this time of conspiracy to distribute cocaine. He was sentenced to five years and three months in prison. While in prison, the INS again revoked his parole, and upon his release from prison in 1997, he was taken into INS custody. Since then, the possibility of his release has been reviewed several times under the Cuban Review Plan, and each time it has been denied. In 1998, Rosales filed a petition for a writ of habeas corpus, arguing that his due process rights were denied because he was not allowed to be represented by an attorney at the custody review hearings and other aspects of the review proceedings.

This district court denied the application, finding that all aspects of Rosales’ detention comported with the law, and that he failed to state a constitutional claim since immigration detention is not a criminal

proceeding or punishment. It also found that due process did not require the appointment of counsel or protection of other rights in detention review hearings. Rosales appealed to the Sixth Circuit.

Following the Mariel boatlift, the US and Cuban government reached an agreement in 1984 under which Cuba would take back 100 people a month. The Cuban government suspended the agreement in 1985, but agreed to reinstate it in 1987. By 1999, about 1,400 people had been returned to Cuba. Talks have continued off and on, but deportations do not regularly occur. The US government maintains that Cuba is obliged to accept deportees. However, because the Cuban government refuses in most cases, there are currently more than 1,700 Mariel Cubans in INS detention. Because of this large number, special review procedures have been developed to determine when and if they should be released.

Before the Sixth Circuit, the INS argued that the court lacked jurisdiction to hear Rosales' appeal. The court disagreed, noting that INS challenges to appellate court jurisdiction had by and large been rejected. The INS also argued that because it had recently determined that Rosales should be released, there was no longer an active case for the court to decide. The court disagreed, in part because Rosales had not yet been released from custody, and in part because the case fell under a well-known exception to the mootness doctrine, capable of repetition yet evading review.

Moving to the merits of the case, the court noted that this was the first case in which it was directly confronted with the constitutionality of indefinite detention. The statute under which Rosales was detained provided that a foreign national cannot be released until it is determined that their release will not pose a danger to society. It contains no provision limiting the length of detention, nor does it address situations where a person cannot be deported because their home country refuses to accept them. Finding that the statute authorized indefinite detention, the court found the constitutionality of indefinite detention squarely before it.

The court found that two fundamental principles were at odds in this case – Congress's plenary power over immigration and a person's right to be free from detention in the absence of criminal charges. Rosales did not challenge Congress's power over immigration, but challenged the authority to detain him indefinitely in the absence of a criminal conviction.

The Fifth Amendment provides that the government cannot restrict a person's life, liberty or property without due process of the law. It is well settled that foreign nationals present in the US, regardless of how they got here, are entitled to some due process protection. The government argued that Rosales, because he was an excludable alien, did not have a liberty interest in being free from detention that was recognized by the

**Constitution. It based this argument on a Supreme Court case from 1953 in which the Court held that an excludable alien could be indefinitely detained without a hearing. The Sixth Circuit found that this case was not applicable to the facts at hand because it was decided during the Korean War and at the height of the fear of Communist infiltration.**

**Rosales argued that his detention violated his right to both substantive due process and procedural due process. Under substantive due process, the deprivation of liberty is constitutional only if it is narrowly tailored to serve a compelling government objective. Because deportation and immigration detention and not criminal punishment, the issue is whether Rosales' indefinite detention is excessive in relation to its purpose. The government's purpose in detaining Rosales is to protect the community, an interest that must be weighed against Rosales' liberty interest. The court found that there was a rational reason for the government to seek to detain him, and went on to ask whether, despite this, the fact that the detention was indefinite made it excessive.**

**While Rosales has an extensive criminal history, he was never convicted of a crime of violence. Also, he has completed the punishment for all of his convictions. If convicted of another crime after release, he could again be punished. Detention prior to deportation has long been accepted, but the propriety of the detention must be judged in light of the likelihood that the deportation will occur.**

**The government argued that whether Cuba would accept Rosales had no impact on the legality of his detention, a position with which the court disagreed. The court also found that the fact that Rosales received periodic review of his detention was not dispositive. There is no guarantee that he would be released, and given the broad power the INS has to decide who will be released, the court found that release would be unlikely. Weighing the need to protect the community against the slim chance that Rosales would ever be deported, the court found that his detention was excessive. Given that the government will likely never be able to deport him, the court found that the case was no longer within the plenary power aspect of immigration law – that in fact, Rosales' detention was no longer a prelude to deportation, but was punishment without a conviction. The court remanded the case with orders that Rosales be released within 30 days.**

**The opinion is available online at  
<http://laws.findlaw.com/6th/01a0033p.html>.**

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**Tapia-Garcia v. INS, Tenth Circuit**

**In this case, the court ruled that it lacked jurisdiction to hear the appeal of a deportation order.**

**Jose Tapia-Garcia, a citizen of Mexico and permanent resident of the US was convicted in 1998 of driving under the influence in an Idaho state court. He was sentenced to five years, but only spent two months in prison. In 1999, the INS began deportation proceedings. The Immigration Judge found that his DUI was a crime of violence punishable by more than one year – an aggravated felony – and thus a deportable offense. The Board of Immigration Appeals dismissed his appeal and Tapia-Garcia was deported to Mexico, where he currently resides.**

**While deportation does not eliminate the possibility of judicial review, there is still a question of whether, after deportation, there is an active case or controversy for a federal court to hear. Because the deportation has occurred, the issue is whether there are collateral consequences to the deportation. Here that consequence is that Tapia-Garcia is permanently inadmissible to the US. This, the court found, was sufficient to give it jurisdiction over the appeal.**

**There still remained, however, questions of whether the Immigration and Nationality Act removed federal court jurisdiction. In the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Congress enacted numerous provisions that stripped federal courts of their jurisdiction to hear immigration appeals. The provision at issue in this case was the permanent provision reading, “Notwithstanding any other provision of law, no court shall have jurisdiction to review any final order of removal against an alien who is removable by reason of having committed a criminal offense.” The Tenth Circuit had previously ruled that a similar, transitional, provision eliminated all federal court jurisdiction.**

**In this case, however, the Tenth Circuit found that the permanent provision was not as restrictive as the transitional provision, and allowed federal court jurisdiction to the extent that it could review the case to determine whether the person under the deportation order was in fact an alien and had in fact committed a qualifying offense.**

**Tapia-Garcia did not dispute that he was an alien, but did argue that his DUI was not an aggravated felony. Under the INA, a crime of violence is an aggravated felony. A crime of violence is defined as one that involves a substantial risk that physical force will be used against a person or property during the commission of the offense. Tapia-Garcia argued that the Idaho DUI statute encompassed both violent and non-violent offenses. The Idaho statute defined a felony DUI as being in actual physical control of a vehicle while under the influence when the person had been twice**

convicted of DUIs within the previous five years. The Tenth Circuit found that this statute was clear, and did not require them to examine the individual circumstances of Tapia-Garcia's offense.

Finding that Tapia-Garcia was convicted of a crime of violence and an aggravated felony, the court ruled that it did not have jurisdiction over his appeal and dismissed the case.

The opinion is available online at  
<http://www.ilw.com/lawyers/immigdaily/cases/2001,0124-Tapia.shtm>.

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### In re Goolcharan, Board of Immigration Appeals

In this case, the Board denied the motion to reopen as not timely filed.

The respondents, a mother and son, were granted voluntary departure on April 30, 1997. They were given until December 31, 1997 to leave the US. They did not leave, and in November 1997 the mother married a US citizen. The US citizen filed applications for immigrant visas on their behalf, which were approved in early 1998. The respondents filed a request for an extension of the voluntary departure period. On March 2, 1998, the request was denied, but the respondents were given until April 20, 1998 to leave the US. At that point, the respondents filed a motion to reopen so that they could apply for adjustment of status. The Immigration Judge denied the motion as not timely filed.

Motions to reopen must be filed within 90 days of the final administrative decision. The issue before the Board was whether this date was the date on which voluntary departure was granted or the expiration of the voluntary departure period. If the former, then the motion was untimely, if the latter, then it was timely filed. The Board found that INS regulations clearly provide that the date of an administrative order is the date on which it is issued, not the date it is to take effect.

Therefore, because the motion was not timely filed, it was denied.

The opinion is available online at  
<http://www.usdoj.gov/eoir/efoia/bia/Decisions/Revdec/pdfDEC/3442.pdf>.

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## 10. GOVERNMENT PROCESSING TIMES

### Nebraska Service Center Processing Times

Jurisdiction: Alaska, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, North Dakota, Ohio, Oregon, South Dakota, Utah, Washington, Wisconsin, and Wyoming.

The following is the Nebraska Service Center Processing Time Report for the period ending December 31, 2000:

Application/Petition Type	Date of Cases Pending Initial Adjudication	Range of Total Processing Times by Days	
		From	To
I-90 Replacement Card	11/09/00	60	90
I-90-A SAW	11/21/00	60	90
I-102 Replacement of Arrival Document	09/18/00	60	90
I-129	11/06/00	30	120
I-130 Immediate Relative	08/09/00	160	190
I-130 other	04/09/99	600	630
I-131 Advanced Parole	11/30/00	45	60
I-131 Reentry Permit	08/11/00	120	150
I-131 Ref. Travel Doc.	12/01/00	30	60
I-140 Immigrant Worker	11/21/00	60	75
I-360 Pet. for Widow/Spec. Imm.	09/22/00	100	130
I-485	09/07/99	475	505
I-485 Asylee	06/02/98	930	960

I-485 Refugee	07/12/99	560	590
I-485 HRIFA	08/01/99	500	530
I-539 Change/Extend NI Status -	09/28/00	90	120
I-724 All Waivers	11/09/00	60	90
I-730 Refugee/Asylee Relative Petition	07/13/00	180	210
I-751 Remove Conditions	08/02`150	150	180
I-765 (c)(8) Initial	12/22/00	15	30
I-765 Employment Authorization-Other	12/15/00	45	60
I-817 Family Unity	09/12/00	110	140
I-821 TPS	12/31/00	60	90
I-824 Actions on Approved Petitions	12/11/99	60	90
N-400 Naturalization – Initial Processing	Not adjudicated	370	385

Source: [American Immigration Lawyers Association](#)

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## Vermont Service Center Processing Times

Jurisdiction: Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, Washington D.C. and West Virginia.

The following is the Vermont Service Center Processing Time Report for the period ending January 29, 2001

Application/Petition Type	Processing for Initial Receipt Date	Receipt Notice Processing Time in Days From To	
<b>Business &amp; Non-Immigration Services</b>			
I-102	Current	60	90
I-129 Cap Cases	11/30/00	30	90
I-129 Extensions	11/30/00	30	90
I-140 Immigrant Worker	09/05/00	150	240
I-360 Pet for Widow/Spec Imm	09/25/00	30	90
I-539 Change/Extend NI Status	09/07/00	60	120
I-212, I-612, I-601 Waivers	Current	30	90
Legalization Quest	09/02/99		
Other Legalization (I-687, I-698)	08/11/99		
Consular Returns	Current		
<b>Family Services</b>			
I-90 Replacement Card	12/08/00	60	90
I-129(F) Fiance (e)	Current	15	21
I-130 Immed Rel	07/14/00	180	760
I-130 Preference	01/12/99	180	760
I-751 Remove Conditions	02/01/00	360	360
I-765 Employment Authorization – Other	01/02/01	60	90
I-824 Actions of Approved Petitions	01/11/01	60	90
I-360 Widow/Battered Spouse	12/26/00	30	120
Consular Returns	02/28/00		
<b>Resident Status Services</b>			
I-131	01/03/01	30	60
I-485 Adjustment	10/15/99	365	540
I-485 Adjustment – Health Care Workers	March 1997	365	540
I-765 Employment Authorization-Asylum Based	01/10/01	60	90

I-765 Employment Authorization-TPS Based	Current	60	90
I-765 Employment Authorization – Other	10/10/00	60	90
I-817 Family Fairness	Current	30	60
I-821 TPS	Current	30	60
N-600 Application for Citizenship	09/01/99	30	60
Other N-Forms (N-565,N-470, N-643)	08/15/00	30	60

Source: [American Immigration Lawyers Association](#)

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## California Service Center Processing Times

Jurisdiction: Arizona, California, Hawaii and Nevada.

(Just In Time Report)

02/02/01

Petition Type	Case Date	Data Entry
I-90	01-021	11/08/00
I-102	00-086	02/01/00
I-129 L	01-070	01/07/01
I-129 H1B COS/CN	01-043	12/04/00
I-129 H1 EOS	01-060	12/26/00
I-129 H2/H3	01-052	12/15/00
I-129 E	01-026	11/08/00
I-129 O/P/Q	01-071	01/08/01
I-129 R	01-030	11/14/00
I-129 F	01-078	01/17/01
I-130 (IR) Spouse	00-257	09/07/00
I-130 (IR) M/C	01-025	11/07/00
I-130 (IR) Other	00-185	06/06/00
I-130 Pref. Spouse	98-077	01/22/98
I-130 Pref. M/C	99-054	12/16/98
I-130 Pref. Other	98-060	12/26/97
I-131	01-066	01/03/01
I-140 A& B, E-1 – E-2	01-049	12/12/00

I-140 C E1-3	01-034	11/20/00
I-140 D E2-1	01-049	12/12/00
I-140 E E-3	01-079	01/18/01
I-140 G EW – 3	Vacant	Vacant
I-360 FPL/Widows/Widowers	01-055	01/18/01
I-360 BPL/Religious	01-075	01/12/01
I-526	01-035	11/24/00
I-539	00-115	03/13/00
I-485 Ready to Adjudicate	Varies	Varies
I-751	00-141	02/18/00
I-765 30 day	01-060	12/26/00
I-765 90 day	01-025	11/07/00
I-817(initial)	96-245	09/16/98
I-817(extensions)	97-250	09/23/98
I-824 DIVI	Vacant	Vacant
I-824 DIVII	99-159	05/12/99
I-824 DIVIII	98-159	02/27/98
I-829	98-155	02/23/98
<p>"Case date" means the fiscal year and the number of the day of the year (e.g. 001 = January 1st)          "Data entry" means the receipt date of the last case taken from the shelf assigned to the officer as of the date of the JIT Report. It does not mean that the case is adjudicated on that date.          "Work days" exclude Saturday, Sunday and holidays.</p>		

Source: [American Immigration Lawyers Association](#)

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## Texas Service Center Processing Times

Jurisdiction: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee and Texas.

The following is the Texas Service Center Processing Times Report for December 2000:

<b>Application/Petition</b>	<b>Date of Cases Pending Initial Adjudication</b>	<b>Number of Cases Pending</b>
<b>I-90 Replacement Card</b>	<b>10/27/00</b>	<b>29,299</b>
<b>I-90A SAW</b>	<b>11/03/00</b>	<b>9</b>
<b>I-102-Replace Arrival doc</b>	<b>Current</b>	<b>0</b>
<b>I-129</b>	<b>11/27/00</b>	<b>13,506</b>
<b>I-129(F) Fiancé(e)</b>	<b>11/03/00</b>	<b>1,371</b>
<b>I-130 US Citizen Petitioner – Visa Number Available</b>	<b>05/04/00</b>	<b>44,615</b>
<b>I-130 Other</b>	<b>01/21/98</b>	<b>84,503</b>
<b>I-131 Advanced Parole</b>	<b>12/31/00</b>	<b>850</b>
<b>I-140</b>	<b>08/07/00</b>	<b>11,496</b>
<b>I-360 Pet.Widow/Spec. Imm.</b>	<b>10/10/00</b>	<b>275</b>
<b>I-485 Adjustment</b>	<b>06/01/99</b>	<b>80,613</b>
<b>I-526 Investor</b>	<b>Current</b>	<b>0</b>
<b>I-539 Chg/Ext NI Status</b>	<b>08/10/00</b>	<b>25,915</b>
<b>I-724 Waivers</b>	<b>Current</b>	<b>0</b>
<b>I-751 Remove Conditions</b>	<b>01/19/01</b>	<b>162</b>
<b>I-765 EA-Asylum Based 9</b>	<b>10/13/00</b>	<b>11,447</b>
<b>I-765 EA-Other</b>	<b>10/23/00</b>	<b>9,470</b>
<b>I-817 Family Unity</b>	<b>06/01/98</b>	<b>690</b>
<b>I-821 Temporary Protected Status</b>	<b>Current</b>	<b>910</b>
<b>I-824 Actions Apprd Petitions</b>	<b>08/23/00</b>	<b>1,189</b>
<b>I-829 Remove Cond/Investor</b>	<b>12/07/98</b>	<b>283</b>
<b>N-400 Naturalization</b>	<b>Current</b>	<b>0</b>

Source: [American Immigration Lawyers Association](#)

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## 11.NEWS BYTES

After the hard fought confirmation battle over the new Attorney General, John Ashcroft, the new Department of Justice is beginning to take shape. Department officials said that one of the first orders of business will be to follow through on the Bush campaign promise to split the INS into two agencies, one for enforcement, and the other for adjudications.

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LULAC, the League of United Latin American Citizens, is moving its annual national conference from Puerto Rico to Phoenix, Arizona in an effort to draw increased attention to problems on the border, as well as what it calls an "anti-Hispanic atmosphere" in the state. The conference is scheduled for June 3-9. Both US President Bush and Mexican President Fox have expressed interest in attending. While organizers are happy about the interest expressed by the two leaders, they say that their main focus will be to address issues such as the increasing militarization of the border, individual people taking actions against border crossers, and the growing opposition to bilingual education. They are also planning on criticizing the growing trend in some border communities to try to have local law enforcement enforce immigration law.

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The state of Alabama, which recently defended its policy of giving driver's license tests in English only before the US Supreme Court, may abandon that policy even if it wins the lawsuit. Martha Sandoval, a Mexican immigrant, who claimed that the policy was discriminatory, sued the state. The trial court judge ruled in her favor, and was upheld on appeal. The reason for the state's change of heart are federal guidelines implemented shortly before former President Clinton left office that generally prevent offering public services in English only.

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A group of residents in DeKalb County, Georgia, which is near Atlanta, is pushing for the approval of a new school specifically designed for refugee children. The proposed International Community School has already been

approved by the DeKalb County Board of Education, and only needs approval from the State Board of Education. Refugee children are as likely to be ahead of US students as they are behind, but one thing they all have in common is the trauma that turned them into refugee. It is hoped the school will open in the fall of 2002. US students would also attend the school.

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Nine people were indicted in an immigrant smuggling case in California last week. Two of them were charged with kidnapping in January. In addition to the smuggling charges, six were charged with conspiracy and harboring undocumented immigrants. The charges follow four months of surveillance of a “drop house” in Santa Ana where the immigrants were held until their release was paid for.

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Mexican President Vicente Fox says that he will press the issue of an amnesty for undocumented Mexicans in the US when he meets with US President George W. Bush next week on February 16. Since taking office last December, Fox has made numerous proposals that would improve the situation of Mexicans living in the US. While one proposal in particular has met with resistance in the US – adding a free labor movement provision to the North American Free Trade Agreement – there is a growing consensus on both sides of the border that meaningful action needs to be taken.

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## 12. THE ABC'S OF IMMIGRATION – THE REGISTRY

The registry provides a way for long-term undocumented residents of the US to legalize their status. It was first created in 1929, and applied to people who had arrived in the US before 1921, but was primarily meant to benefit those whose entry records had been lost. Over the years, the registry has become a method for people who entered the US unlawfully, or who fell out of valid status, to obtain permanent residence, subject to certain limitations.

The current registry date is January 1, 1972. To qualify for the registry, the applicant must prove that they have resided in the US continuously since that date. Brief, temporary absences will not affect this, so long as the US has been the person's place of residence. If a person is deported and reenters the US, the period of residence is ended. However, if a person accepts voluntary departure, the period of residence is not terminated.

**To qualify for the registry, the applicant must demonstrate good moral character. Certain actions automatically prevent a person from showing good moral character. These include alcoholism, most drug offenders, gambling, making false statements to obtain an immigration benefit, conviction of an aggravated felony, and for any reason being imprisoned for at least 180 days.**

**Also, people who are deportable are not eligible for the registry, except for deportation grounds related to an undocumented entry and status violations. However, waivers of these grounds are available in some cases. Applicants for the registry must also not be ineligible for US citizenship. This means that the person cannot be unable to obtain naturalization due to actions taken to avoid military service.**

**Applicants will be barred from qualifying for the registry for five years after any failure to appear for a deportation hearing, failure to act on an order of voluntary departure, failure to comply with a deportation order, or failure to appear for an asylum hearing.**

**J-1 visa holders subject to the two year home residency requirement cannot apply for the Registry unless they have obtained a waiver of the requirement.**

**A person who is granted registry is considered a permanent resident as of the date of approval. A registry grant can be revoked within five years if it is determined that the applicant was not eligible.**

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### **13.ASK VISALAW.COM**

**Under the new H-1B law, how soon can I start working if I am switching to a new employer? What happens if my new H-1B is not approved?**

**If you are currently in H-1B status and are changing employment, you can start working for the new employer as soon as it files a non-frivolous H-1B change of status petition for you. The conservative approach is to wait until receiving a receipt notice from the INS before starting work with your new employer. However, the statute states that the individual can start work “upon filing” a new petition, which suggests that you can start working as soon as the petition is submitted to the INS. In this case, it would be advisable to keep some evidence of the actual filing date, like a FedEx receipt or certified mail receipt, to document the commencement of your work authorization with the new employer.**

**If your H-1B petition for the new employer is not approved, your employment authorization for the new employer ends. You will need to obtain another temporary visa status to stay and/or work in the US or return to work with the first employer.**

**Can you clarify the meaning of Section 245(i)? Will it help me get my green card faster? Can I use it to legalize my status?**

**Generally, individuals who have been out of status or unlawfully present are not eligible to adjust from a temporary status to permanent resident status in the US. Instead, their application must be processed at the US Consulate in their home country. Sometimes, this can present a problem for individuals who have been unlawfully present in the US for a period of over 180 days because if they leave the US to consular process abroad, they could be subject to either a 3 year or 10 year bar to reentry. Section 245(i) allows individuals (1) who were physically present in the US on December 21, 2000 and (2) who have filed a family-based or employment-based petition for permanent residency on or before April 30, 2001 to adjust status in the US by paying a \$1000 fee at the time their I-485 is filed, even if they normally would not be able to do so because of status problems. Section 245(i) does not do anything to shorten the time it takes to process a green card, nor does it do anything to legalize your status while your green card application is being processed. Also, it is not an “amnesty” that will get you a green card if you do not meet the requirements for a green card category (such as having a qualifying family relationship or going through the green card process with an employer).**

**Do I qualify for 245(i) if I filed a diversity visa lottery application last year?**

**No. Section 245(i) only applies to individuals who have filed a family-based or employment-based petition for permanent residency with the INS (Form I-130) or an application for labor certification with the Department of Labor (ETA 750) on or before April 30, 2001. A diversity visa lottery application, which is technically considered an application for permanent residency, does not trigger Section 245(i) because it is an application made to the Department of State, not the INS or the Department of Labor as required by the statute.**

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#### **14. DEMOTED INS EMPLOYEES SUES, CLAIMING RACE AT HEART OF DEMOTION**

**The former head of the INS office in Sacramento, California, is suing the agency over his demotion, claiming that it was motivated by racism. According to Lionel Nurse, who is black, his demotion and reassignment to the Border Patrol after ten years as the officer in charge of the Sacramento**

office was the result of racist feelings held by the former director of the INS San Francisco office, of which the Sacramento office is part. Nurse says that the San Francisco director, Thomas Schiltgen, called him “the scum of the earth.”

According to the defense, Nurse’s demotion had nothing to do with his race, but with his refusal to follow internal INS rules. The INS says that beginning in 1997, Nurse refused to follow newly issued INS directives on processing citizenship applications. The new rules were prompted by Congressional concern that the INS was naturalizing people with criminal records. Nurse claims he followed the new directive.

In his testimony, Nurse said that in 1996 he received an excellent performance review from Schiltgen. A year later, the new director of the San Francisco office, Charles DeMore, rated Nurse as only “minimally satisfactory.” He was ordered to attend naturalization processing classes. He said that after this retraining, while at a meeting of area INS officials, in which he was sitting in the last row, Schiltgen said, “Everyone seated in the rear of the auditorium is the scum of the earth.” Defense lawyers say that Schiltgen’s remarks were made in jest, and that he was only trying to get people to move toward the front of the room.

Nurse, who is still working with the Border Patrol, continues to make the same salary he did while the officer in charge in Sacramento - \$110,000. He is seeking an unspecified amount of damages.

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## **15. EFFORTS TO COLLECT MONEY OWED TO BRACERO WORKERS PICK UP STEAM**

Even as support for a new guest worker program grows in some circles, problems that arose from the guest worker program used from the 1940s to 1960s – the bracero program – continue to exist. While the abuses of workers in the program are well known, and in part contributed to its end, a lesser-known problem is that the workers are still owed millions of dollars.

Workers had money deducted from their paychecks, money that was to be put into Mexican banks. The money has been missing for decades, and the bracero workers have never seen it. The money was to have provided for their old age. Bracero workers filled a crucial role during World War Two, when many US workers went to fight in Europe and the Pacific. Nearly 2.5 million Mexican workers participated in the program.

The news that Mexican President Vicente Fox is interested in trying to track the money was met with enthusiasm by about 300 former braceros in Los Angeles. The Braceros Committee, an organization that protects the rights

of former braceros, is also considering filing a class action lawsuit against both the US and Mexico. They are also beginning a nationwide tour next month to highlight the plight of the former workers.

Through an agreement between the US and Mexican governments, ten percent of the workers' paychecks was withheld, to be given to them upon their return to Mexico. Most have never seen any of this money, now estimated at more than \$150 million.

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## **16.INS ALMOST DEPORTS US CITIZEN**

**Yousos Res, a US citizen, narrowly escaped deportation with the help of a reporter from the Orange County Register.**

**Res, 20 years old, was sent by his parents to Cambodia two years ago. They were trying to remove him from the bad influence of friends after he was arrested for shoplifting. He came back to the US a changed person. So changed that he no longer resembled the picture in his passport, leading INS officials at the Los Angeles airport to suspect him of traveling with fraudulent documents. Res says he became scared while being questioned, and gave the INS a fake name. He forgot his parents phone number, and ended up in INS detention for 24 days.**

**Res, whose parents were refugees from Cambodia, speaks English without a trace of an accent, but often has a difficult time expressing himself because of his limited intelligence. His parents knew he was to have arrived in the US, and tried to locate him, but since he gave the INS a fake name, his parents could not locate him. Fortunately, the parents learned that Res was in prison after another inmate told a visitor Res's story. The visitor then went searching for the parents.**

**The parents, who were members of a small Islamic sect in Cambodia, contacted the Council on American-Islamic Relations (CAIR), who in turn contact the INS. The INS told them that they were going to deport Res, and there was nothing that could be done about it. CAIR then contacted the Orange County Register, and a reporter located Res's arrest record, which contained his fingerprints.**

**INS spokesperson Sharon Gavin calls the incident "very strange and very sad," and says that the INS will apologize to the family. However, she also said that the primary fault for the mix-up was with Res, not the INS agents at the airport.**

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