

Siskind's Immigration Bulletin  
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Siskind Susser serves immigration clients throughout the world from its offices in the US, Canada, Mexico, Argentina 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>. Editor: Greg Siskind. Associate Editor: Esther Schachter. Contributors: Arda Beskardes, Paola Palazzolo, Maryam Tanhaee and Megan Turngren.

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1. Openers

Dear Readers:

From time to time we depart from our normal ABCs feature and include a flow chart that helps explain immigration law in a more visually useful fashion. For the next several weeks, readers who like flow charts will be in for a treat. We have developed a series of new charts covering J-1 home residency waivers. The first one this week is a decision tree that helps one determine if the J-1 home residency requirement applies. In future weeks, we'll provide charts showing how to get waivers through hardship waivers, no objection letters, persecution claims and hardship claims.

Immigration has also been one of the week's major news stories in the US. As if Wal-Mart did not have enough to cover in its battle with the government on alleged immigration violations, now some of the workers picked up in the raids are suing Wal-Mart for labor law violations.

The US Supreme Court will hear a case involving the government's rights to detain alleged terrorists in Guantanamo without charge and without access to a lawyer. The decision could have a major effect on the ability of the government to exercise so-called "emergency" powers that restrict the rights of immigrants.

We also report on two inter-connected stories - the smuggling of children into the US and efforts to get real immigration reform in this country. In recent weeks, a great deal of attention has been focused on alien smuggling and the increasingly violent toll it is taking on the smuggled immigrants as well as the communities where the "coyotes" are operating. The smuggling problems are increasing support around the US for comprehensive immigration reform that would create a real system for immigrants to legally enter the US. Mexican government officials have been visiting with US officials in DC and in border states to promote this idea. While there will be no major changes in the next few months, real reform is starting to look like a real possibility.

We're pleased this week to carry a Gary Endelman column this week. Gary's columns are always insightful and we're sure you will enjoy reading his thoughts this week about illegal immigration.

Finally, as always, we remind readers that we're lawyers who make our living representing immigration clients and employers seeking to comply with immigration laws. We would love to discuss becoming your law firm. Just go to <http://www.visalaw.com/intake.html> to request an appointment or call us at 800-748-3819 or 901-682-6455.

Regards,

Greg Siskind

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## 2. The ABC's Of Immigration – J-1 Flowchart Part I: Section 212(e)

This is the first in a series of flowcharts for J-1 visa holders with a two-year home residency requirement. The first flowchart, linked below, shows how to determine whether or not the Section 212(e) Home Residency Requirement applies to a J-1 visa holder in certain cases.

Does the J-1 Section 212(e) Home Residency Requirement Apply:  
<http://www.visalaw.com/03nov3/section212e.pdf>

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3. Ask Visalaw.com

*If you have a question on immigration matters, write [Ask-visalaw@visalaw.com](mailto:Ask-visalaw@visalaw.com). We can't answer every question, but if you ask a short question that can be answered concisely, we'll consider it for publication. Remember, these questions are only intended to provide general information. You should consult with your own attorney before acting on information you see here.*

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Q - I'm a Canadian citizen working on an H visa that is expiring at the end of 2004. It says on your website that I can get a TN visa when the H expires. If I do that, can I re-apply for H status after a year or must I leave the country for a year before re-applying for an H visa? The reason why I ask is that my current employer promised me a Green Card which they have since reneged and I understand the H visa is the visa you want when you are applying for permanent status.

A - You can apply for the TN, but you must be physically outside the US for a year to get six more years of H-1B status.

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Q - I have a question about GC lottery. I am not married right now, but plan to get married in August 2004. In case I win the Lottery, will my spouse be able to go to USA with me? Or may be I should mention him as a spouse in Green Card application right now, even though he is not a spouse at the moment?

A - Your spouse would be able to enter with you. You would not mention him in the application you are submitting now unless the marriage had already taken place. As long as you can document that the marriage took place after the lottery application was submitted, you will be fine in not mentioning your fiancé.

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Q - What is the normal procedure for O1 visa holder to apply for green card? Do I still need to go through RIR in DOL? Or apply directly for I140 and I 485?

A - The O-1 is a very similar to the EB-1 green card category. The required evidence is nearly identical. However, the USCIS does not consider itself bound by its decision in an O-1 case and it is not unusual for a person to be in O-1 status and yet be denied EB-1 extraordinary ability status. Examiners frequently apply a tougher standard in the green card case. However, if you are an O-1, I would typically recommend trying the EB-1 and if that does not work, look at getting a labor certification. Of course, there are always factors in an individual case that may cause one strategy to be favored over another so I would consult with your immigration lawyer on this. Your lawyer can interview you properly to determine what are the

best options. If you lack a lawyer and would like a consultation with me, please call my office at 800-748-3819 or go to [www.visalaw.com/intake.html](http://www.visalaw.com/intake.html).

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Q - If I take the training program of EMS (Paramedic) that will begin in January in my Community College, and I will begin as a volunteer trainee, can I get a student visa with that, or is it not be possible?

A - Most of the time training programs like that do not offer F-1 student visas. I would definitely check with the community college to see if it is an option, but my guess is that it will not be. You may also want to do a search for institutions that are offering EMS training with an M-1 (vocational training) visa. That is usually the appropriate visa for certificate trainings like that, but I am not aware of any schools that offer EMS training and an M-1 visa at the same time.

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Q - I am running export business of hand tools. I am having 5 years multiple business visa of the USA. I arrived in the USA in 2001 & was given stay for 2 months, then I extended my visa from immigration department for 6 months more, but by mistake I stayed in the USA for 2 days more than my stay. Kindly reply to me that whether I can travel on this visa again or I will get problem on entering the USA.

A - Under the US immigration laws, if you stay in the US longer than your authorized period, the visa that you used to enter the US is automatically terminated under Section 222(g) of the Immigration Act. 222(g) is triggered even if you stay one extra day. Under 222(g), not only is your visa cancelled, but you will also have to apply for all your future visas at an American Consulate at your home country. You cannot benefit from third country national processing in Canada or Mexico unless you are a citizen of those countries. Therefore, if you wish to return to the US, you are required to apply for a new visa at an American Consulate in your home country.

Here is the text of the law for your information:

INA Section 222:

(g)(1) In the case of an alien who has been admitted on the basis of a nonimmigrant visa and remained in the United States beyond the period of stay authorized by the Attorney General, such visa shall be void beginning after the conclusion of such period of stay.

(2) An alien described in paragraph (1) shall be ineligible to be readmitted to the United States as a nonimmigrant, except -

(A) On the basis of a visa (other than the visa described in paragraph (1) issued in a consular office located in the country of the alien's nationality (or, if there is no office in such country, in such other consular office as the Secretary of State shall specify); or

(B) Where extraordinary circumstances are found by the Secretary of State to exist.

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Q - I am currently holding a H-1B Visa. I am interested in a part-time MBA program. Can I keep my H-1B status while I am studying part-time?

A - Yes, you can. But you will not be able to work on-campus or accept a graduate/teaching/ research assistantship, etc.

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Q - I am currently working in the US on H1B visa. This summer my company has filed Labor Certification petition as a first step towards my GC. Earlier, even before beginning to work in the US, I started my Canadian PR process. Last week my Canadian PR application was approved, and I was asked to send my passport for immigration visa stamp. Question: Will having Canadian immigration visa stamp in my passport jeopardize my US 'green card' application in any way? (I understand that I cannot be PR in both USA and Canada).

A - It should not be a problem as long as you maintain permanent residency in the US once your green card here is approved. The article on our web site at <http://www.visalaw.com/01jan4/12jan401.html> should be helpful in understanding how to maintain permanent residency in the US.

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#### 4. Border News

Department of Homeland Security officials will be traveling to Indonesia in the upcoming months in order to ensure a speedier application process. Visitors from Indonesia, especially students, should start to see speedier visa approvals.

While decisions concerning visa applications will remain with officers at the consulate, the incoming DHS officials will serve as a resource for the consular officers. The DHS officers should provide "expert advice to consular officers regarding security threats relating to the adjudication of visa applications or classes of applications, review visa applications and conduct investigations involving visa matters," according to a statement by J. Adam Ereli, Deputy Spokesman of the Department of State, as quoted on the U.S. embassy website.

The new process is being implemented to try to improve the number of Indonesian students in America. The U.S. has experienced a 10 percent drop in the number of Indonesian students visiting since the Sept. 11 terror attacks.

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The U.S. embassies at Abu Dhabi and Vancouver began taking fingerprints of visa applicants earlier this month. The system will be implemented at all the 260 stations around the world by October 26 of next year.

Fingerprinting will affect the 26,000 Vancouver citizens who wish to enter the U.S. to work or study, but not those who want to travel to the U.S. for vacation. Machines have been installed in the Consulate at Dubai, where the process has already begun. By 2004, visa holders will be required to again be fingerprinted once they enter the U.S.

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A raid this week on various small businesses in Northern California left 31 people facing deportation when they appear before an immigration judge this week. The undocumented workers, from India, Mexico, Pakistan, Nepal, and El Salvador, were detained on various immigration charges, including overstaying non-immigrant visas and illegal entry into the U.S.

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USA Today reported on Wednesday, November 5 that the FBI believes that an al Qaeda operative entered the United States before the September 11 attacks to serve as the "20<sup>th</sup> hijacker" but left before the attack. FBI officials, however, stated that the operative never entered the United States and was denied access at the border.

FBI officials continue to look into reasons as to why one of the four hijacked planes carried only four hijackers while the others carried five, totaling 19.

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## 5. News From The Courts

### Perez-Ajanel v. INS

United States Court of Appeals for the Ninth Circuit (No. 02-72556)

The Petitioner claimed that he was a member of a student organization that made efforts to help Guatemalan refugees located in southern Mexico. The Guatemalan government approached members of this organization and ordered them to cease any aid to these refugees. Members of the organization then received death threats and two members were kidnapped. One member was found tortured and murdered, while another member is still missing. The Immigration Judge found the Petitioner's testimony to be credible and substantial evidence of a well-founded fear of persecution on account of political opinion and granted him asylum. The BIA found that unfulfilled threats did not constitute past persecution and that the circumstances were changed in the Petitioner's native country, therefore vacating the order of asylum.

The Ninth Circuit Court of Appeals granted the alien's petition. The Court found that the kidnappings and murder indicated a direct causal nexus between the persecution and the Petitioner's membership in the documented political and humanitarian

organization. In addition, while the BIA relied upon a U.S. State Department report indicating changed country conditions, the Court found that evidence indicated that the violence against student groups persisted in the alien's native country even after other circumstances had changed.

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Kaur v. Ashcroft  
United States Court of Appeals for the Ninth Circuit (No. 02-71986)

The Petitioner, Harjeet Kaur, a native and citizen of India, sought judicial review of a BIA holding dismissing her appeal from a decision from an Immigration Judge. The IJ denied the Petitioner's application for asylum and withholding of removal on the basis that the Petitioner failed to establish either past persecution or a well-founded fear of future persecution.

The Petitioner testified that she was beaten, raped, and threatened by police. The Ninth Circuit Court of Appeals reviewed the decisions of the BIA and the IJ and found that rape or sexual assault may constitute persecution. The appellate court quoted Lim v. INS and held that "a petitioner's family's continued safety does not rebut the petitioner's well-founded fear of future persecution when there is not evidence that the family is 'similarly situated or subject to similar risk, and nothing in the record supports an inference that their safety ensures that [petitioner] will be safe."

The court held that the reasons cited by the IJ for finding the Petitioner not credible were not legitimate or substantial, and reversed and remanded the case for further proceedings consistent with that result.

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## 6. Government Processing Times

This week there are new times to report for the following service center:

Vermont (November 1, 2003): <http://www.visalaw.com/vermont.html>

These are not official USCIS processing times, nor are they endorsed by the Central Office. Source: [American Immigration Lawyers Association](#).

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## 7. News Bytes

Following the federal investigation of the country's Wal-Mart hiring practices of employing illegal immigrants, many policy activists are urging immigration authorities to implement an amnesty program that would allow illegal immigrants to enter the United States legally for work. Activists argue that such a program would cut down on unnecessary costs involved with costly federal investigations, similar to the Wal-Mart investigation.

Michele Waslin, a senior immigration policy analyst for the National Council of La Raza told CNSNews.com, "So much of our economy is dependent on ... undocumented labor. [The Wal-Mart arrests] show the basic, fundamental problem with our immigration system – that there are incentives to hire undocumented workers, [and] that these poor workers are suffering for this."

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Teachers in Massachusetts are now required by a new state law to address ESL students almost entirely in English.

Question 2, which was approved by voters last year, replaced bilingual education, a program that allowed children to learn core subjects in their native language until their English improved enough to enter mainstream English classrooms. Under the new program, ESL students spend an entire year learning everything in English with other ESL students before moving to the mainstream classroom.

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## 8. International Roundup

FBI Director Robert Mueller, in his two-day visit to Athens, Greece, the host city of next year's Olympics, is expected to address U.S. concerns over the flow of illegal immigrants into Greece from Balkan neighbors and the Turkish coast. Some fear that terrorists with Olympic targets could possibly use the secret routes into the country.

Greek officials say the security plan for Athens is comprehensive and is being fine-tuned with the help of a seven-nation advisory group, which includes the United States and Israel. The officials hope Mueller's trip will allay U.S. concerns about Greece's failure to fully eliminate domestic terrorism.

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A 25-year-old Algerian man, who was detained for several months in an Irish prison for immigration offences, has been arrested on suspicion of having links to al-Qaeda after police found him to be in possession of information relating to possible terrorism targets in the United Kingdom.

Police say that last year, they began an investigation into the idea that al-Qaeda could use Northern Ireland as a gateway into Britain. The unnamed suspect was under surveillance for some time as part of this investigation, and he is thought to have been working with other Islamic terrorist organizations.

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A group of Afghani illegal immigrant squatters were found in an abandoned building. The Afghans have refused an order to leave Belgium, but with insufficient detention centers available to house the group, officials have been trying to obtain short-term

accommodation for the men. Within the past three months, 1,650 illegal aliens have been arrested in Zeebrugge, Belgium and are awaiting deportation. 60% of those discovered were attempting to reach the UK.

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The Rabiah border between Iraq and Syria is the final checkpoint for those entering the Iraq. Over 400 people pass through a dilapidated office at the checkpoint everyday. After capturing one attacker who had a Syrian passport, the border has increased its security since US military officials blamed foreign fighters for a wave of suicide bombings in Baghdad.

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On August 28, 2003 and on September 4, 2003, a TV program on Korea's Hyundai Home Shopping Network offered "immigration packages" to Manitoba, a province in western Canada with fewer immigration requirements than the federal government of Canada. During the 80 and 90 minute-programs, nearly 4,000 viewers called to order the package. Hyundai's immigration package program described Manitoba as heaven, where parents can be free from worrying over their children's education, and informed viewers that they could elude mandatory military service by immigrating.

The excitement about immigration to Manitoba came to the attention of the Korean Broadcasting Commission, which regulates television stations. On September 30, the commission announced that it would take measures against Hyundai's show. On October 2, the commission issued Hyundai a warning, which they claim slowed the potential flood of immigration package programming by the station.

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## 9. Legislative Update

A Senate-passed provision to shorten the length of time that immigrants in the U.S. military must wait to apply for U.S. citizenship is moving toward enactment. The provision would affect the 37,000 legal permanent residents who are on active duty in the armed forces and an additional 13,000 that are in the reserves. At least 14 "green-card troops" have been killed during the war in Iraq.

The legislation should extend naturalizations benefits to active-duty members and reservists, and ease immigration rules for certain family members of soldiers killed on duty.

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Rep. Ernest Istook, chairman of the Appropriations Subcommittee on Transportation, Treasury, and Independent Agencies, is making an effort to tear apart Clinton Executive Order 13166 by including in the fiscal year 2004 Transportation and Treasury spending bill a measure that exempts the Department of Transportation

from requiring state and localities using federal highway funds to provide multilingual signs.

The measure passed the final House transportation spending package, but no such provision is included in the Senate package. A Democratic spokesperson said that the measure faced little opposition because the provision would have little effect since no state or local governments use multilingual road signs.

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The following bills were recently introduced in Congress:

[S.1843](#): A bill to amend titles XIX and XXI of the Social Security Act to provide for FamilyCare coverage for parents of enrolled children, and for other purposes.

Sponsor: Sen Snowe, Olympia J. [ME] (introduced 11/10/2003)

Latest Major Action: 11/10/2003 Referred to Senate committee. Status: Read twice and referred to the Committee on Finance.

For a review of all the immigration bills introduced this year, visit our legislative chart at [www.visalaw.com/advocacy.html](http://www.visalaw.com/advocacy.html).



10. Guest Article - Declare Victory And Go Home: The Solution To Illegal Immigration In America, by Gary Endelman

*Gary Endelman practices immigration law at BP Amoco Corporation. The opinions expressed in this column are purely personal and do not represent the views or beliefs of BP Amoco Corporation in any way. This article is copyrighted by ILW.COM and is reprinted with permission. You can read other articles by Mr. Endelman, and subscribe to future articles at [www.ilw.com](http://www.ilw.com).*

When a law is routinely violated, a natural question to ask is whether the activity criminalized should have been illegal in the first place. The immigration laws of the United States do not make economic sense and that is the reason why illegal immigration is pervasive and persistent. America can solve this problem by repealing employer sanctions, legalizing the undocumented, eliminating most family-based immigration options and giving employment-based immigration the primacy it richly deserves but has rarely enjoyed. As Vermont Senator George Aitken famously advised at the height of the Vietnam War, we could then declare victory and go home.

Any honest observer must conclude that all efforts by the United States Government since November 1986 to end, or even deter, illegal immigration have been a spectacular failure. Let's briefly recount recent history to put things in perspective. First, the 1986 Immigration Reform and Control Act (IRCA) required all US employers to verify the identity and employment authorization of potential hires, something that had never been done before. Spending on the Border Patrol soared; 2.8 million illegals living here since January 1982 received amnesty; tougher penalties were imposed on the undocumented already in this country and the Illegal

Immigration Reform and Immigrant Responsibility Act (IIRIRA) took away what few legal protections they had previously enjoyed. So, after this unprecedented assault, what results? Daniel Griswold of the Cato Institute gave the bad news to the House Judiciary Subcommittee on Immigration, Claims and Adjustments on October 30, 2003: " By any real measure of results, the effort since 1986 to constrict illegal immigration has failed. The number of undocumented immigrants in the United States today has doubled since then from an estimated 4 million to 8 million with the undocumented population growing by more than 300,000."

Truth be told, the harder it became for illegals to enter this country, the more they were likely to remain once they made it here. The harder we sought to close the door, the more those already inside resolved they had to stay. Before IRCA, most Mexicans who came illegally to the US did not seek permanent status. Secure in the knowledge that they could always return, the pattern of their migration is aptly described by Daniel Griswold as "circular rather than settled." From the end of the Bracero program in 1964 to the enactment of IRCA in 1986, the median stay of undocumented Mexican migrants in the United States was 2.6 years. By the mid-1990's, it had risen to 6.6 years. "A U.S. border policy aimed at reducing illegal immigration to the United States, " Daniel Griswold explained to Congress," has perversely encouraged illegal immigrants to stay." Getting tough on illegal immigration has hardened the resolve of most migrants not to repeat this trial by fire. At the same time, precisely because they had lived in the shadows, most illegals before IRCA had little, if any, incentive to upgrade their job skills, knowing always that deportation lurked around the next corner. A 1995 study by the US Department of Labor found that 43% of Mexican men legalized in the IRCA amnesty of the 1980's tried to invest in their own futures through upgrading their skills and getting more education. For the first time, IRCA gave them a measure of freedom to better their lot and look for a living wage. Let us now go the rest of the way by eliminating not only the underground economy, largely immune to taxation, but also the entire industry of smugglers and false documents that endangers the lives of those who come and seeks to make a profit off of their marginality.

Rather than harming low-skilled Americans who lack the skills and education to thrive in the information economy, legalization would restore the undocumented to more equal footing, give them a voice to speak out, and level the playing field for all against unscrupulous employers. "If a wide enough channel were opened so that the supply of workers from Mexico could be legally matched with the demand for their labor in the United States," Daniel Griswold concludes, "the rationale for the current illegal flow of Mexican migrants would vanish." When the legacy INS doubled the number of Bracero visas in the late 1950's, illegal immigration from Mexico dried up. There is no reason to think that the same thing would not happen again. This would also have the added benefit of liberating thousands of government agents and some \$3 billion a year annually now wasted in a vain effort to seal off the Mexican border. Does anyone think the war against Al Quaida could use any help? At the same time, we would be fooling ourselves if we looked at illegal migration solely in economic terms. While it is certainly primarily that, it is much more, being heavily influenced by a variety of cultural, political and societal forces. That is why high levels of both legal and illegal immigration to the United States have continued in the last few years despite the recession and resulting drop in demand for labor. When times are hard here, they are invariably much worse everywhere else.

Legalization should not be adopted to benefit the undocumented or reward their violations of the law. It should be done because it makes sense for the American

economy by providing a ready source of labor for those hard, dirty, but necessary jobs that are still very much needed in our 21st century economic matrix. Legalization affords ample manpower without the risk of reigniting inflation. The benefits of legalization should be strictly temporary without any guarantee of permanent resident status. The goal should be to facilitate a return to the circular migration of pre-IRCA days and not to provide an alternative basis to the legal immigration system as a way to stay permanently in the United States. Those who benefit from such amnesty should be required to qualify for the "green card" in precisely the same way as everyone else. They should gain no special or added advantage. The temporary visa should be owned by the alien and not tied to any particular employer. The ability to pack up and look for a better job without worrying if Uncle Sam will throw you and your family out is the best protection that the undocumented could ever have or hope for.

This opens up a third way between competing Democratic, Republican and Bush Administration proposals to allow the undocumented a chance to get the green card without doing violence to the existing legal immigration system or making those who have patiently waited for its slow justice feel like chumps. The Republicans offer temporary guest worker status now followed by a return home before any green card comes through. The Democrats stoutly insist on full legal rights without delay while the Administration seeks a middle ground, essentially proposing guest worker visas now but an opportunity to remain here and prove entitlement to getting something more over time. In each case, a new immigration option is created solely for the undocumented that no one else can take advantage of. Once again, an already overburdened immigration system becomes even more complicated, thus adding to the overwhelming sense of mission overload that has already reduced immigration processing times to a slow crawl. The last thing the immigration folks need is yet another visa to interpret and administer. What impact will that have on everything else they do, particularly in the absence of any additional funding or staff? Let's place the undocumented on the same level as everyone else for a while but, if they want more, let them do it the old fashioned way - let them earn it in the same way and under the same constraints as everyone else. There is no need to choose between helping the undocumented and honoring the rule of law. Both are worth doing and a genuine respect for both is not only possible but necessary.

At the same time, those who favor more immigration must acknowledge and accept the need to end chain migration. Save for uniting the families of permanent residents and US citizens, both of whom should not be subject to any limitations, family immigration is the primary threat to the wages and working conditions of minorities and low-skilled Americans. Coming here without any labor market control, such family migration undermines all other attempts to protect the most vulnerable in our domestic workforce from low wage foreign-born competition. It simply makes no sense to make employment-based immigration more difficult when so many more workers come here to compete for jobs free of any restriction through family ties. Legalization now should be accompanied by a renewed emphasis on employment-based immigration and a transfer to this side of the ledger of visas now awarded to diversity lottery winners, adult children of permanent residents and American citizens, and siblings of American citizens. Unless we fundamentally change the legal immigration system, no amnesty can succeed or long endure. So long as employment-based immigration is grudgingly accepted as an afterthought, so long as we have an alien-centered immigration system that looks first to succor the alien and not enrich the nation, any restoration of sanity now will only set the stage for the need to take more drastic remedial action in the future.

IRCA failed because it separated the issue of illegal migration from the American economy as a whole. Such failure ironically gives us a chance to finish the job in the way it should have been done in the first place. If we seize this opportunity, and trust not in sentiment but enlightened national self-interest as the organizing principle of future priorities, those who believe that America is and must always remain a nation of immigrants have a shot at achieving something good for the immigrants and the special nation whose cause they seek to make their own.

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#### 11. Supreme Court to Consider Guantanamo Detainees' Right to Habeas Corpus Review

On November 10th, the Supreme Court agreed to decide whether aliens detained at the U.S. naval base at Guantanamo Bay in Cuba as a result of the war-on-terrorism, can go to U.S. courts for habeas corpus review.

Two joined suits, *Rasul v. Bush*, No. 03-334, and *Al Odah v. United States*, No. 03-343, were filed on behalf of twelve Kuwaitis, two British citizens and two Australians captured in Afghanistan or Pakistan after the September 11 attacks. These and other captured aliens were taken to Guantanamo Bay, sovereign territory of the U.S.

The Bush administration has claimed that because of Guantanamo's status, U.S. courts had no jurisdiction over the cases of the aliens. Prior precedents have concluded that U.S. courts have no jurisdiction over non-Americans detained abroad, and lower courts have unanimously decided that they have no jurisdiction to review the Guantanamo detainees' cases. The U.S. Court of Appeals ruled earlier this year, citing *Johnson v. Eisentrager* (1950), that because the prisoners were aliens who were not on U.S. territory, U.S. courts had no jurisdiction to hear these cases.

Lawyers for the aliens argued that Guantanamo is under "de facto control" of the U.S., having been leased by Cuba to the U.S. for the last 100 years. The lawyers also argued that the aliens held in Guantanamo had not been charged with any offense or found to be "enemy alien[s]" or "combatant[s]."

A group of Americans who were former prisoners of war advocated for the Supreme Court to rule against the Bush administration so the U.S. could "demand fair and humane treatment for future American detainees" because of the way it treated the Guantanamo prisoners.

Other cases have arisen due to the current war and anti-terrorism measures. *Hamadi v. Rumsfeld*, No. 03-6696, has already reached the Supreme Court, and more are on the way.

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#### 12. Mexican Leaders Lobby for U.S.-Mexico Migration Pact

Mexico's President Vicente Fox met with New Mexico's Governor Bill Richardson and Texas Governor Rick Perry while on a three day tour of Arizona, New Mexico, and

Texas last week to lobby for a migration pact with the United States that would strengthen economic and social ties between the neighboring countries.

Also last week, the Mexican Secretary of Foreign Affairs said he would like to make migration of Mexicans to the United States part of the North American Free Trade Agreement.

In Arizona, President Fox called for a bilateral effort to lessen the high death rate of migrants trying to cross the U.S.-Mexico border. He then praised New Mexico's Governor Richardson for his aid to undocumented Mexican migrants. New Mexico is the first state to recognize the validity of the matricula consular, an identification document issued by the Mexican government that migrants may now use to obtain U.S. bank accounts and driver's licenses.

Arizona leaders have already taken steps to accomplish several goals, including expanding trade with Mexico and creating a guest-worker program.

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### 13. Attempts to Smuggle Children Across U.S.-Mexico Border Increase

For years, illegal immigrants have worked in the U.S. for seasons at a time and then returned home. Now, with increased border patrols near major cities on the Southwestern border, the desert between Arizona and the Mexican state of Sonora has become the means for illegal migration. Last summer, one immigrant per day died using this route while trying to illegally enter the U.S.

Because parents illegally living in the U.S. are now finding it difficult to travel back and forth over the border, an increasing number of Mexican children traveling without their families have been caught by both American and Mexican border agents. Parents have discovered that they cannot afford the risks and expense of returning to Mexico for their children. They must choose to either allow others to raise their children or hire smugglers to bring their children into the U.S.

Many parents are willing to take the risk of having smugglers bring their children over the border. Parents reason that if they leave their children behind, they will lose them because of the distance. They believe that the benefits of having their children smuggled outweigh the high cost of smuggling and the risks of losing their children in the desert or being caught by border patrols.

Through the end of September, Mexican authorities repatriated over 9,800 unaccompanied Mexican children under age seventeen who were caught illegally crossing the border. The number of children under age thirteen who were repatriated rose to over 1,500 by the end of September. Officials attribute the increase in the number of children attempting to cross the border to the success of a large number of illegal immigrants who cross the border each year.

Unaccompanied minors who are caught attempting to cross the border are taken to a child welfare shelter, and the shelter notifies a family member where the children are located. However, authorities in both Mexico and the U.S. say that parents try to go around the system. Parents call the shelters promising to send their children back to

their homes in Mexico, but when the children are released, their parents allow smugglers to make another attempt at crossing the border.

Officials say they have arrested many women on charges of smuggling children. These women are typically American citizens or Mexicans with legal status in the U.S. who can easily cross the border, and who are looking to make easy money.

Smugglers usually try to avoid border patrols by crossing through deserts. However, smugglers with children often must drive or walk through border checkpoints crowded with border and customs officials. The smugglers carry legal papers belonging to other children in order to persuade officials that their charges are relatives.

Many of the smugglers are linked to chains of human traffickers that go from Mexico and into Latin America. Smuggled children have told officials that they traveled with several different strangers on their journey across the border. Parents of smuggled children report paying \$2,000 to smuggle a child from Mexico to \$7,000 to bring children from Central America. Mexican officials have caught over 2,900 minors from Central America who were traveling with smugglers.

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#### 14. Guyana Man Awaiting Deportation

A 27-year-old man from Guyana is still awaiting deportation after spending the past two years in the immigrant wing of the Suffolk County House of Correction in Boston, costing taxpayers approximately \$60 per day. Earl White, the detainee, decided to accept to government's order of deportation following 18 months in INS custody.

White was put in INS custody following release from prison under a law that declares any non-citizen who committed an "aggravated felony" must be entered into detention and await a deportation hearing. White lost his deportation hearing, and despite apparent efforts at rehabilitation, he also lost his appeal. At this point, after being in INS detention for six months longer than he had served for his crime, he accepted return to his homeland, where he had not lived since he was 14.

One year later, in October 2002, immigration authorities told White's attorney that they had requested the necessary travel documents from Guyana the previous May and that White would be leaving soon. After a series of confusing interactions with the necessary immigration departments within the INS, the travel office reported to his attorney that White was booked on a flight. But the flight took off without him because the authorities could not locate his travel documents. He is currently still in detention.

White is likely only one of the many detainees that face similar conflicts. Often either the U.S. has no diplomatic relations with their home countries, or the countries refuse to take deportees. These problems pose conflicts with the Supreme Court decision in June 2001 that indefinite detention of non-citizens was unconstitutional.

The number of detainees in a similar position may continue to increase as the DHS continues to make efforts to speed up the deportation process for individuals who have violated immigration laws. The DHS deported 118,686 people from the United

States between October 2002 and May 2003, a 26 percent increase over the same period in the previous year.