

Siskind's Immigration Bulletin
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Siskind Susser serves immigration clients throughout the world from its offices in the
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1. Openers
2. The ABC's Of Immigration – NEXUS
3. Ask Visalaw.com
4. Border News
5. News From The Courts
6. Government Processing Times
7. News Bytes
8. International Roundup
9. Legislative Update
10. Guest Article – Elephant In The Room: Amnesty And The Rule Of Law, By Gary Endelman
11. Feds Raid Wal-Mart Stores, Arresting Hundreds
12. Amended DREAM Act Passes Judiciary Committee
13. Anti-Immigration Think-tank Reports On Illegal Aliens' Affect On Politics
14. White House Sets FY 2004 Refugee Numbers
15. H-1B Usage For FY 2003

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1. Openers

Dear Readers:

It has been an eventful last week at our firm. First and foremost, many of you readers who are lawyers and are one of the 400,000 or so members of the American Bar Association may have received your November issue of the ABA Journal. If you look at the cover, you'll find a picture of me in a rather unusual pose. We've linked the photo of the cover on our In the News page at www.visalaw.com/news.

The Wal-Mart raids were big news last week. Some may say that the government made a bold move targeting America's largest company for allowing undocumented contract cleaning workers to work in their stores. Others are left questioning whether the USICE is incredibly naive. Wal-Mart probably has more money than the federal government and the law is likely to be on their side. The government is going to need to prove that the company knew that its contractors were bringing in undocumented workers and that Wal-Mart knowingly entered into contracts with such companies. I personally find it hard to believe Wal-Mart would have been foolish enough to do business in such a manner.

I also spent a part of last week on Capitol Hill lobbying on behalf of the Hebrew Immigrant Aid Society. HIAS, the nation's oldest refugee agency, has a lot of respect in Washington, and I always look forward to going to DC to meet with Congressional offices to discuss issues important to the agency. This time, as a board member of HIAS, I led a group of young professionals who are future leaders of the organization. It was also rewarding working with these folks - many immigrants themselves - in their first foray into grassroots advocacy. We worked on three issues:

1. Making sure that the 70,000 refugee slots called for by President Bush for this fiscal year actually get used. Last year, only 28,000 slots were used, a major embarrassment for a country that claims leadership in this area. We asked members of Congress to sign a letter urging the Department of Homeland Security to make sure that all slots get used. You can find more information on this in the story on refugee admissions later in this issue.
2. Urging members of Congress to help Iranians who are religious minorities (Jews, Christians, Bahais, etc.) and are stuck in Vienna because their refugee applications have been denied. Specifically, we requested they sign a letter calling on the Department of Homeland Security to issue parole status to these deserving applicants. Actually, the bigger question which remains unanswered is how the US can credibly condemn Iran for its gross human rights abuses involving religious minorities and then deny refugee cases for 75% of the members of these groups by saying that the fears they claim are not real?
3. Urging members of Congress to support the DREAM Act's passage in the Senate and the corresponding Student Adjustment Act in the House. This legislation would help legalize the status of tens of thousands of children and young adults in the US who have been here for several years, have good moral character and who have graduated high school. We were actually on Capitol Hill when the Senate was debating the bill and we report this week on the results of a key vote in the Judiciary Committee.

I also wanted to take the time to offer my sincere thanks to Mick Wright, our Communications Manager here at Siskind Susser. Mick is the one who manages our web site and our publications. He not only makes sure that this newsletter gets posted each week, he has done a lot of the writing as well. Mick is leaving our firm

next week to pursue a position with Youth Villages, a wonderful non-profit organization here in Memphis that helps thousands of troubled kids find long-term success. The organization's web site can be found at <http://www.youthvillages.org/> and is certainly worth considering if you are looking for a worthy organization to send a donation. We'll certainly miss Mick a lot, but know that his talents will help a lot of people in his new position. Good luck Mick!

While Mick is leaving, we are also pleased to announce the arrival of Paola Palazzolo. Paola is an Italian/Israeli attorney who has come to our firm for training in the US legal system. She's going to be working on a number of projects that will give her a flavor for how the US immigration system works. She also will be helping on our various publications. Welcome Paola!

Finally, as always, we remind readers that we're lawyers who make our living representing immigration clients. 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

2. The ABC's Of Immigration – NEXUS

NEXUS is a joint customs and immigration program for frequent travelers that both the Canadian and American governments have implemented. The program allows pre-screened, low-risk individuals to travel across the border between the two countries with little or no delay by United States and Canadian border officials. Using a photo-identification/proximity card, participants cross the border in a dedicated lane, allowing them to use a simplified entry process into either of the two countries.

New points of entry will begin to utilize the NEXUS program in October and November 2003.

Who can use the NEXUS program?

Permanent citizens or permanent residents of the United States or Canada, or non-permanent residents who can demonstrate a need to use the NEXUS lanes, may apply for the NEXUS program.

How does an individual sign up for the program?

Application forms are available on the Canada Customs and Revenue Agency (CCRA) website: <http://www.ccra-adrc.gc.ca>. Individuals can also get an application at a local customs or immigration office. The form should be completed and mailed with the fee processing payment and photocopies of the applicant's original travel documents, such as a birth certificate or passport, to the address of the Canada Customs Processing Center (CPC) shown on the form.

Only a single application form is required even though the program is a cooperative effort by several different agencies. However, an individual's application must be approved by both the United States and Canada.

Can an individual apply online?

While an individual cannot currently apply online, he or she may complete the application form online, print it, sign it, and mail or fax it to the CPC with payment information and photocopies of travel documents.

How much does it cost to sign up for NEXUS?

The non-refundable processing fee for a five-year membership in NEXUS is \$50 U.S. dollars or \$80 Canadian dollars. Applicants who pay with U.S. credit cards may pay more or less than \$50, depending on the exchange rate. U.S. dollar payments may also be sent by international money order. Payment must be made at the time of the application.

How long will it take to process an application?

The CCRA processes applications on a first-come, first-serve basis at all sites. It takes approximately six weeks to process each application. However, in sites where heavier volumes of applications are being received, it may take longer.

Before an application is approved, the applicant will be subject to security checks by the Canadian and American customs and immigration agencies.

What does an individual gain by using the NEXUS program?

The identification card provided to individuals in the program allows them to:
Use NEXUS-dedicated lanes in the United States and Canada; and
Cross the border without routine customs and immigration questioning.

What happens if an individual is approved for the program?

Once approved, the applicant will be invited for an interview at the enrolment center. During this final stage of processing, the CCRA will:
Review the information provided on the application form to ensure it is still valid;
Review ORIGINAL documents such as proof of citizenship, residency, employment authorizations, and/or visas;
Take a fingerprint biometric;
Take the applicant's photo and give the applicant a NEXUS identification card;
Explain client roles and responsibilities in the NEXUS program.

Who can't use the NEXUS program?

If an individual does not meet the requirements of the program, their application will be denied. In addition, certain individuals will not be allowed to utilize the program. These individuals are those who:
Are inadmissible to the United States or Canada under applicable immigration laws;
Provide false or incomplete information on their application;
Have been convicted of a criminal offense in any country for which they have not received a pardon;

Have been found in violation of customs or immigration law; or
Fail to meet other requirements of the NEXUS program.

Who organizes the NEXUS program?

The U.S. Bureau of Customs and Border Protection, the Canada Customs and Revenue Agency (CCRA), and Citizenship and Immigration Canada (CIC) work together to make this program run smoothly. The program allows these agencies to focus their efforts on potentially higher-risk travelers and goods.

Where is NEXUS currently operational?

Blaine, Washington, Pacific Highway
Blaine, Washington, Peace Arch Crossing
Blaine, Washington, Point Roberts
Buffalo, New York, Peace Bridge
Buffalo, New York, Rainbow Bridge
Detroit, Michigan, Ambassador Bridge
Detroit, Michigan, Windsor Tunnel
Port Huron, Michigan, Blue Water Bridge

Two additional sites will be open by the end of October 2003.

Buffalo/Niagara Falls, New York, Whirlpool Bridge
Buffalo/Niagara Falls, New York, Lewiston Bridge

In November 2003, new NEXUS sites will open at:

Highgate Springs, Vermont
Champlain, New York
Sweetgrass, Montana

Planned expansion in 2004 will include a site in North Dakota and one or more sites on the Maine/New Brunswick and New York/Quebec borders.

Is there legislation regulating NEXUS membership?

Canadian legislation, the Cross-Border Currency Reporting Legislation, requires NEXUS members to report in person to a Canadian Customs Officer, via the regular lane, when importing or exporting currency and monetary instruments of a value equal to or greater than \$10,000 Canadian dollars. For more information on this new requirement, see the Cross Border Currency Reporting web site at www.ccradrc.gc.ca/customs/general/cmr/menu-e.html.

3. Ask Visalaw.com

If you have a question on immigration matters, write 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.

Q - My H1-B petition was denied May 2002. I filed an appeal before the 30 day deadline. Up to now there has been no result yet. Am I already out of status? If I go back to my native country will I be able to come back here in the U.S.?

A - You don't remain in status merely because you have filed an appeal. If you win, then you can have your status retroactively approved back to the originally requested date. But you have to depend on winning the appeal, which is always risky.

Q - What are the consequences of traveling with advance parole if one hopes to adjust their status under Section 245 (k)?

A - Section 245(k) allows people to process employment-based green card applications if they have less than 180 days of status violations. That would also mean that a person is not subject to a three-year reentry bar. So traveling on an advance parole in such circumstances would seem to be fine. As always, double check with your immigration lawyer before traveling.

Q - I had a question about traveling from Canada to USA. If someone has their permanent residency (SIN card) from Canada, (but not citizenship) can they travel to the US without a visa?

A - Not any more. The rules on this recently changed and Canadian Landed Immigrants do need to apply for a visa at a US consulate.

Q - I'm on pending status waiting for reinstatement to F-1 visa and I've been waiting for 9 months. I'm almost done with my program of study. What happened if I graduate before I received my reinstatement to F-1? Can I apply for practical training when I'm still on pending status? If yes, what are the deadlines to apply?

A - If you graduate before receiving your reinstatement, you cannot apply for OPT. I suggest that you discuss with your international students advisor to see if he/ she can request the case to be expedited because of your graduation time. You may also consider extending your education for another semester by taking a new concentration, etc. This is legal as long as it is an extension for a valid academic objective. Keep in mind that you will have to complete your new concentration, etc. before you will become eligible to apply for OPT.

Q - I was a graduate student between 1999 and 2001, working towards my second PhD (a challenge and big achievement if done). I got married in late 2001 to a permanent resident lady. Later she got her citizenship and sponsored me for a green card. I got the conditional residency in May 2003, but things are not working so well and I am may consider to ask for divorce. I may be able to petition for removal of the conditional residency (after divorce), but this may or may not work, most likely it

may not. All I want is to be able to recover my student status and finish my PhD. Please note that before I got married I had a student visa valid until 2005 and an I-20 with similar date but I had to renew my passport which expired just before the interview, I got new one that has the INS stamp but no more visa on it. Could you please advise me?

A - Your best chance is to work with an immigration attorney in getting the condition removed from your permanent residency. Despite the divorce, this may still be possible.

If you still have your old passport with your valid F-1 visa (if it has not been cancelled), you may try to get a new I-20 from your school, leave the country, and return using your NEW passport and your OLD passport only for the visa purposes. Because your country does not have the authority to cancel an American visa, when they cancelled your old passport, they should have left the visa valid. A valid visa in an expired passport may be used in conjunction with a new valid passport.

You can also apply for a change of status to F-1 in the United States, but it will be hard to do given the fact that you manifested an intention to immigrate and obtained a conditional permanent residency. You can argue that due to the divorce your intention has changed and now you just want to finish your degree and go back home. This will take lots of convincing and will require a very compelling legal argument.

Problem is, by applying for permanent residency, you manifested an intention to immigrate. Therefore, if you try to re-enter with the F-1 visa, the immigration officer may deny admission to you due to immigrant intent (you probably have an I-551 stamp in your passport that proves your conditional permanent residency). The same is also a risk with a change of status application. But at least with the change of status application you will be in the US if you are denied, and will be able to fight it while you're here.

If you do have a qualifying job opportunity, you may want to apply for a change of status to H-1b. Because you do not have to show non-immigrant intent for that status, you will have a much higher chance of success in this category.

As you can see, all your options have their pros and cons and you should consider all angles before making an educated decision in this. If we can offer you further professional assistance in this matter please let me know.

Q - I came to the USA on an B2 visa which expires in a few days, however I would like to stay longer and go to school here. I got an I-20 (over 3 months ago) but the school informed me that I could not convert to a student visa unless I went back to my home country. So that went nowhere. I am wondering how long I can stay here (USA) after my B2 expires (is there a grace period before I depart or change my status), can I renew a B2 visa in the USA? How hard is it to file for a refugee status or get a religious based visa?

A - The school is right, even though it is theoretically possible for you to convert to an F-1 visa, in practice it is very hard. You can apply and see what happens, but your chances will be very low. If you are going to apply, your application must be

received by the immigration office before the expiration of your B-2 status (as indicated in your I-94 Form). Also, if you wish, you can apply for a 6-month extension of your B-2 status using the immigration form I-539 (and a \$140 application fee). Again, your application must be received by the immigration office before the expiration of your B-2 status (as indicated in your I-94 Form).

4. Border News

The United States has instituted several requirements aimed at detecting terrorists disguised as tourists since September 11, which some argue have done little more than create a blow to the US economy tourism industry. Under a new security procedure, the United States has screened more than 125,000 visa applications in an attempt to screen terrorists. This procedure requires security reviews for all males between the ages of six and 45 from a list of 26 mostly Islamic countries. Not one of these applications, however, has been denied.

In addition, the State Department also requires personal interviews for all visa applications. Certain other visitors are also subject to FBI and CIA screening. Next year, the department will begin to collect fingerprints from all applications. This year, it is estimated that the United States will conduct more than 6 million background checks, compared to 2 million before 2001.

Consequently, travelers to the United States since September 11 must wait approximately 30 days for a background check and pay higher fees as well. As a result, the number of visitors to the United States has fallen nearly 20 percent since 2001, and according to an estimate by a Florida travel industry official, that decline has cost the United States economy more than \$15 billion.

Asa Hutchinson, the undersecretary for the Department of Homeland Security, said DHS has denied entry to 200 foreign nationals who attempted to enter the country as students, who "posed a risk to America." Hutchinson told attendees at a U.S. Chamber of Commerce conference that the Student and Exchange Visitor Information System (SEVIS), which tracks foreign students, assisted the government in assessing and rejecting the applicants.

In some cases, Hutchinson said, the schools had no record of the student applicants, and in other cases the students had been expelled.

SEVIS has recently come under fire by the General Accounting Office and in congressional hearings, for its persistent technical problems. About 800,000 individuals are now listed in SEVIS.

The Department of State issued a press statement early last week designating Dhamat Houmet Daawa Salafia as a foreign entity that has committed or poses a significant risk of committing acts of terror threatening the U.S. national security, under Executive Order 13224. The designation, effective October 17, 2003, blocks

the group's assets in the U.S. and bars U.S. citizens from engaging in transactions with the group.

According to the statement, the group is previously known as Katibat el Ahoual, which splintered from the Armed Islamic Group (GIA), which was previously designated as a foreign terrorist organization. The group is said to have ties to al-Qaida.

5. News From The Courts

News From The Courts will return next week.

6. Government Processing Times

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

Texas (10/15/2003): <http://www.visalaw.com/texas.html>

Nebraska (10/15/2003): <http://www.visalaw.com/nebraska.html>

Vermont (10/15/2003): <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](#)

7. News Bytes

An advisory panel recommended that the government change how it projects Social Security's future finances by assuming significant changes, including increases in immigration. Using such methods to project Social Security's future financial status boosts the system's projected deficit by \$200 billion to \$3.7 trillion over 75 years, the panel said.

The Social Security Technical Panel on Assumptions and Methods was appointed by the Social Security Advisory Board, an independent, bipartisan board created in 1994 to advise the government. The most urgent change the panel recommended would be to assume an increase in immigration rather than a decline, the Washington Post reports.

"Given the steady increase in immigration experienced since World War II, the panel believes that the current assumption of a decline in the annual number of immigrants is unrealistic," the panel said.

The Social Security Advisory Board website is <http://www.ssab.gov>

Early last week in Bangkok, President Bush and Mexican President Vicente Fox met for the first time in a year and agreed that the two governments would work on immigration. The two leaders, meeting in Thailand for the annual Asia-Pacific Economic Cooperation summit, was described as "very warm," and Fox was invited to visit the Bush ranch later this year.

Fox has been pushing the United States to expand permanent visas and guest worker programs for Mexicans who already live and work in the United States. Bush has said he supports the programs, but relations between the two administrations cooled after the terrorist attacks on 9-11 and after Mexico refused to provide support in the United Nations for the U.S-led coalition against Iraq. Recently, however, tensions have eased, as Mexico supported a U.N. resolution urging international support for the reconstruction of Iraq.

U.S. Immigration and Customs Enforcement (ICE) has posted an agency organization chart, on the web at:

http://www.bice.immigration.gov/graphics/about/organization/org_chart.pdf

Last week Homeland Security Secretary Tom Ridge announced the appointment of Jason Klitenic as the new Deputy General Counsel for the Department of Homeland Security. Klitenic has served as Deputy Associate Attorney General at the Department of Justice since January 2002. Before working at the Justice Department, Klitenic was a partner at Alston & Bird LLP in Atlanta. Klitenic is a graduate of Johns Hopkins University and the University of Baltimore School of Law.

8. International Roundup

The fastest-growing Jewish population in the world is in Germany, and it is expected to soar by a third in the next two years, according to Paul Spiegel, leader of the Central Council of Jews. Spiegel forecasts that there will be around 130,000 Jews in Germany by 2005, saying he welcomes the increase as a sign that Germany was "on the way to normality." Most Jewish immigrants to Germany arrive from countries in the former Soviet Union, such as Kazakhstan and Uzbekistan. Following the Holocaust, only 15,000 Jews lived in Germany, compared to 560,000 before Hitler came to power.

With 26.6 percent of the vote, Switzerland's right-wing People's Party gained 11 seats in the National Council, making it the strongest political force in the nation. The party's leader, Christoph Blocher, wants to ban European Union entry, end illegal immigration and overhaul the federal budget. The party campaigned on a platform that identified immigrants and asylum-seekers as part of Switzerland's social and economic woes. Blocher said that foreigners were still welcome in Switzerland - so long as they were not illegal immigrants - denying claims that he was xenophobic.

U.K. Immigration Minister Beverley Hughes said language tests are to become a regular part of the official screening process for migrants who claim asylum in Britain. She said a pilot program using the tests has shown that one in five applicants claiming to be fleeing from Somalia had in fact come from another country. The tests are administered by Home Office language analysts who determine if the asylum seeker's accent is authentic for the country they claim to have come from.

9. Legislative Update

The following bills were recently introduced in Congress:

[HR 3345](#), to enhance the public safety by rendering aliens ineligible to receive visas and ineligible for admission to the United States if their entry poses a danger to national security, and for other purposes.

Sponsor: Rep Flake, Jeff [AZ-6] (introduced 10/20/2003)

Latest Major Action: 10/20/2003 Referred to House committee. Status: Referred to the House Committee on the Judiciary.

[HR 3360](#), to amend the Immigration and Nationality Act to provide for the automatic acquisition of citizenship by certain Amerasians.

Sponsor: Rep Lofgren, Zoe [CA-16] (introduced 10/21/2003)

Latest Major Action: 10/21/2003 Referred to House committee. Status: Referred to the House Committee on the Judiciary.

HR 3361, to provide for the protection of unaccompanied alien children, and for other purposes.

Sponsor: Rep Lofgren, Zoe [CA-16] (introduced 10/21/2003)

Latest Major Action: 10/21/2003 Referred to House committee. Status: Referred to the House Committee on the Judiciary.

[S. 1642](#), a bill to extend the duration of the immigrant investor regional center pilot program for 5 additional years, and for other purposes.

Sponsor: Sen Leahy, Patrick J. [VT] (introduced 9/23/2003)

Latest Major Action: 10/7/2003 Referred to House committee. Status: Referred to the House Committee on the Judiciary.

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

10. Guest Article - Elephant In The Room: Amnesty And The Rule Of Law, 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.

As the run-up to the 2004 national elections picks up steam, the political imperatives for a widespread immigration amnesty will also intensify. Both parties are vying to broaden their appeal and make inroads among Hispanic voters whose support is seen as vital to winning such electoral bonanzas as Texas, Florida and California. Legalizing the undocumented is the solution du jour, even though the recent California recall election suggests that Hispanic opinion on this issue may not be as monolithic as the political spinmeisters think it is. The Miami Herald recently reported that "an exit poll showed 52% of Hispanic voters opposed (Gov.) Davis' September decision to allow undocumented Mexicans to get a California driver's license. Winning candidate Arnold Schwarzenegger campaigned against the measure." Nonetheless, President Bush has always wanted to use immigration as a wedge issue to expand his electoral base and would have brought forward a sweeping amnesty long before now if not for the horror of September 11th. Karl Rove is looking for the right time to strike. Claire Buchan, a White House spokesperson, said it all when she told the New York Times: "The President has expressed a very strong interest in migration policy and matching willing workers with willing employers." Can the repeal of employer sanctions be far behind?

There is a sense on Capitol Hill that the trauma of that awful day has ebbed somewhat, enough to alter the political calculus. Senator Orrin Hatch, the conservative Utah Republican who chairs the Senate Judiciary Committee, plans to introduce a bill that would grant legal status to tens of thousands of high school students or graduates who are illegal immigrants. Known as the Development, Relief and Education for Alien Minors (Dream) Act, it has 36 co-sponsors, one-third of them Republicans. The very liberal Edward Kennedy and the stalwartly conservative Larry Craig have co-authored another initiative ("Agricultural Jobs, Opportunity, Benefits and Security Act of 2003") that would grant legal status to 500,000 undocumented farm laborers if they have worked in agriculture for 100 days leading up to August 2003. Senators from Massachusetts and Idaho, not to mention the Chamber of Commerce and organized labor, rarely agree on anything, but they both know good politics when they see it. So do Republican Congressman Chris Cannon and Democrat Howard Berman, both from California, who have brought forward a companion AGJOBS bill in the House of Representatives. Senator Kennedy openly proclaims his intention to sponsor "follow-up legislation for other industries," according to the New York Times. Tamar Jacoby, a Senior Fellow at the Manhattan Institute, wrote recently in the Los Angeles Times that Sen. Kennedy and Sen. Charles Hagel, a key Republican from Nebraska, will propose "comprehensive legislation" in the "coming weeks". Senator Kennedy is taking dead aim at the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996; nothing less than its outright repeal will satisfy him. The AFL-CIO wants to regain lost glory by organizing illegal service workers and now supports the repeal of employer sanctions. Big business will not stand in the way of a new legalization initiative.

The numbers continue to swell. While Proposition 187 was a misguided attempt to cut off educational and medical services to illegal migrants in California, the political, social and economic need to come to terms with the consequences of a burgeoning population was an entirely legitimate one. Census Bureau statistics place the number of undocumented in California alone at more than 2 million. Immigration, both legal and illegal, is no longer a regional phenomenon. USA Today recently reported that, in the 27 months following the 2000 Census, Georgia had the fastest growing Hispanic population of any state, almost a 19% rise. Atlanta witnessed the most dramatic growth in Hispanic population of any American city. Six of the top 10 Hispanic growth

states were in the Old Confederacy. Oregon had over 312,000 Hispanic residents according to a recent Census Bureau report and the real figure may be closer to 500,000 in the opinion of Mexican consular officials as reported in a Salem, Oregon newspaper. While California gets most of the headlines on illegal migration, when viewed in terms of growth in Hispanic residents, it does not even make the top 10; South Carolina, Kentucky, Arizona, Alabama and Washington, D.C. all were attracting Hispanic population in greater relative numbers. Not only are there more Hispanics in the United States, they are younger and poorer. A profile compiled last year by the Census Bureau found that the percentage of Hispanics under age 18 is more than 50% higher than non-Hispanic whites, with nearly three times as many Hispanics living below the poverty line. During the 1990's, the nation's immigrant population grew by 11.3 million, more than at any time in our history.

The issue is not whether farm laborers should be able to unionize, or visit their families in Mexico and return here without fear of arrest, or be able to sue employers in federal court if they are cheated, abused, or mistreated. Talented high school students whose parents brought them to America deserve the right to a higher education. Simple justice is not subject to rational debate. The issue goes beyond these immediate concerns. However compelling their claim is on the national conscience, the resort to amnesty as a means of their advancement erodes the very rule of law that offers the last, best hope of a true, honest and sustainable solution.

In a democratic society, a national consensus to address the most controversial problems can only arise from an informed partnership between an aroused citizenry and an engaged government. Amnesty is not a solution to the problem of illegal immigration, but, rather, an abdication of the need to come up with a solution. For precisely this reason, such a bandaid approach will never be accepted as legitimate by opponents, nor will it prevent the need for yet another amnesty in the future. While short-term gains can be achieved by legislative tinkering or imposed by judicial fiat and executive order, only through a slow but painful reform of the fundamental operating assumptions on which our immigration system is based can we ever bring the undocumented in from the shadows to realize the promise of American life in full measure. If we repeat the mistake of 1986 by failing to overhaul our immigration laws at their roots, we are laying the foundation for an even more divisive debate over yet another amnesty that will further erode the social fabric whose unity is so precious to our national welfare.

Immigration is the elephant in the room that cannot be swept under the carpet. While amnesty is bad public policy, Congress' repeated actions/inactions in divorcing our immigration laws from our economic needs make such amnesty inevitable in some form or fashion. America has neither the political will nor the capacity to deport millions of uninvited guests. Not only do they do the hard and dirty jobs on which the rest of us depend, the remittances they send home stabilize the economies of our political allies throughout Latin America. America's tolerance of their presence is, in effect, the most widespread and effective form of foreign aid that we have. Amnesty is also a political necessity for Mexican President Vicente Fox who has staked his entire political reputation on being able to reach just such a deal. In fact, when Presidents Fox and Bush got together this Monday in Thailand at the Asia- Pacific Economic Cooperation Forum, the issue of immigration amnesty was high on their agenda. So, we all know that amnesty is going to happen sooner or later; only the details remain to be decided.

Our challenge now is to ensure that, when the next amnesty comes, there will no longer be the need for any amnesty after that. This is impossible unless we realign our immigration priorities and stop thinking of immigration as social work. Employment-based immigration must no longer be an afterthought to a family immigration system that allows large numbers of low-skilled immigrants to work permanently in this country without any effective form of labor market control, to the disadvantage of mostly-minority American workers who lack the education or skills to get better jobs. Labor certification does nothing to protect these Americans since the jobs family-immigrant competitors do will never be certified in the first place. If we want to cut off the need for amnesty at its source, we must eliminate the entire family-based immigration system with the exception of the Family 2A category. It is inhumane to separate families or give green card holders the Hobson's choice of either living apart from their spouses and children or living with them illegally. There should be no cap on the Family 2A category, but everything else on the Family side of the ledger goes. Truth be told, much of the domestic irritation with so-called "abuses" of the employment-based immigration system actually is directed against family-based immigrants who are unchecked by any prevailing wage or labor market control filter. The work visas are simply a more inviting target. Other than genuine refugees/asylees fleeing persecution or bullets, most people outside one's nuclear family come to the United States for one reason, namely to work. We force them to do this illegally by making it impossible to do it under color of law. The artificial 10,000 limitation on the immigration of essential workers insults our intelligence and makes repeated amnesties that much more likely. The continued resistance of the US Department of Labor to the efforts by honest employers to regularize the status of the undocumented has the same effect and frustrates the deep yearning of illegal immigrants to join the American nation and provide a better future for their children. Unless we end chain migration and transfer these immigrant visa numbers to the employment side of the ledger, American workers, who think they are shielded from foreign competition by labor certification but really are tangential to its true concerns, will never get the protection they need and deserve.

When the law does not allow for change, change will come outside the law. It is the very concept of a rule under law that suffers when this continues to happen, time after time. As we accept amnesty now, let us plan to make it unnecessary ever again.

11. Feds Raid Wal-Mart Stores, Arresting Hundreds

FBI agents arrested over 250 Wal-Mart employees from 62 stores in 21 states Thursday. The workers, members of cleaning crews hired through a contractor, were arrested as they finished their night shifts. A spokesperson from Immigration and Customs Enforcement said that all of the workers were in the U.S. illegally. The employees now face deportation.

The investigation prompted allegations that Wal-Mart subcontractors recruited illegal immigrants, mostly Eastern Europeans, to work on cleaning crews at various Wal-Mart stores. Most of the arrests took place in Pennsylvania and Texas stores.

In what is the largest immigration crackdown in several years, federal agents also searched the office of an executive at Wal-Mart's Bentonville, AR., headquarters, removing boxes of documents.

A Wal-Mart company spokesperson said the allegations that illegal immigrants were working in company stores came as a surprise.

Officials said the arrests were prompted by two earlier federal investigations, one in 1998 and one in 2001. The 1998 investigation, conducted with the Pennsylvania attorney general's office, also targeted the contractors and subcontractors used by Wal-Mart for cleaning services.

Wal-Mart Vice President for Communications Mona Williams said, "These federal officials are referring to third-party suppliers that we entrusted to hire legal workers. For them to say that it strains credibility that we're surprised about what happened today, those other actions happened years ago."

An anonymous official quoted by the New York Times said the government used wiretaps in the investigation and had recordings of conversations among Wal-Mart executives and contractors.

Employers are required to check I-9 forms completed by every new employee and retain the forms for a certain period of time. Employers who knowingly hire illegal immigrants can face both civil and criminal penalties, including a \$10,000 fine per illegal employee.

However, because the workers were employed on a contract basis by another employer, the government will have the more difficult task of showing that Wal-Mart was aware that the contractors were hiring undocumented workers and knowingly contracted with them anyway.

This is the second major operation against a large American company undertaken by the Bush Administration since the 9/11 attacks. The other action was against Tyson Foods. Wal-Mart and Tyson are two of the largest employers in Arkansas, home of former President Bill Clinton.

Critics of the raids have questioned whether it is wise for the government to focus so much time and effort targeting illegal janitors when the country is at war fighting terrorists interested in destroying the country. They also suggest that the raid actually reinforces the need for comprehensive immigration reform so that there are legal and practical ways for companies to actually bring in much needed low-skilled immigrant labor.

12. Amended DREAM Act Passes Senate Judiciary Committee

The Development, Relief, and Education for Alien Minors (DREAM) Act passed the Senate Judiciary Committee this week by a strong 16-3 margin, though the bill was somewhat weakened by an amendment. The bill next moves to the Senate floor.

The DREAM Act grants conditional permanent resident status to young people who have been in the United States for five years at the time of enactment, who entered before the age of 16, who have graduated from high school, and who are in good moral standing. In order for the conditional status to be lifted, the student must complete two years of college or serve for two years in the US Armed Forces before

the end of a six-year grace period during which they are exempt from deportation. The bill also reverses parts of the 1996 immigration reform and restores states' ability to offer in-state tuition to illegal immigrants.

Senators Charles Grassley (R-IA) and Dianne Feinstein (D-CA) introduced an amendment to the bill which strikes down a third option that would have allowed students to earn permanent status by performing 910 hours of volunteer community service. The amendment, which passed on an 18-1 vote, also makes DREAM Act beneficiaries ineligible for certain federal financial aid programs, including Pell Grants, and requires beneficiaries to register in SEVIS, a system that tracks foreign students.

The bill's sponsors say the DREAM Act helps young people who are in immigration limbo because their parents brought them into the U.S. while they were minors. As many as 65,000 illegal immigrants graduate from U.S. high schools every year, but many are unable to pursue higher education because of their status and the high costs of tuition. The individuals that would benefit from the bill are also unable to work, because they cannot obtain valid work authorization.

Opponents say the bill would encourage more illegal immigration and rewards those who break the law. Senator Orrin Hatch, one of the bill's sponsors, says the bill is targeted at students already in the U.S. who are trapped in a "Catch-22."

13. Anti-Immigration Think-Tank Reports On Illegal Aliens' Affect On Politics

The Center for Immigration Studies (CIS), an anti-immigration think-tank, has released a report finding that the U.S. "is currently experiencing the largest wave of immigration in its history," with a foreign-born population of over 31 million in 2000, and that the political implications of this population increase has affected the distribution of seats in the U.S. House of Representatives.

Unlike the Senate, where each state is represented by two senators, in the House of Representatives a state can have one or more representatives, depending on its population, for a total of 435 representatives. Each member of the House represents one congressional district. Every ten years, congressional districts are reapportioned.

Apportionment of districts is based on each state's total population, which includes illegal aliens and other 'non-citizens,' relative to the rest of the United States. In the 2000 census, almost seven million illegal aliens were counted. While some states with 'low-immigration' might seem to be unaffected by immigration, the CIS report shows how they may be losing political influence in Washington, D.C.

The report claims that the presence of 'non-citizens,' (defined by CIS as illegal immigrants, legal immigrants and temporary visitors), in the U.S. resulted in the redistribution of nine seats. CIS maintains that none of the states that lost seats have had a decline in population. On the contrary, Oklahoma, Pennsylvania, Wisconsin, Kentucky and Utah all had population increases. These nine seats were divided among California, which gained six new seats, and Florida, New York and Texas, each gaining one new seat.

The CIS report also points out the resulting change to the cultural makeup of states with large numbers of immigrants, which in turn further impacts the nature of those states' representation in Congress: "Immigration takes away representation from states composed almost entirely of U.S. citizens and results in the creation of new districts in states with large numbers of non-citizens."

CIS attributes these 'problems' to the fact that the foreign-born population is concentrated in a few states, rather than spread across the U.S. Two-thirds of the immigrant population live in six states. In 2000, the nine states that lost seats had an immigration population ratio of 1:50. In California, one in seven residents is an immigrant, and ten percent of residents in New York, Texas and Florida are immigrants.

The report argues that the presence of a large immigrant population also affects the Presidential election, because Electoral College votes are apportioned according to congressional districts, just like seats in the House.

In the report, CIS says a possible solution to the "problem of citizens losing representation" is to encourage eligible immigrants to naturalize, working on the assumption that if immigrants become naturalized citizens, they will learn English and civics, meaning "immigration-induced reapportionment would not take representation away from citizens." CIS recommends that the U.S. should reduce the number of immigrants allowed into the country, so as not to affect the redistribution of congressional districts.

14. White House FY2004 Refugee Numbers

In a memo to Secretary of State Colin Powell, President Bush has authorized the admission of up to 70,000 refugees for Fiscal Year 2004. The memo includes the regional allocation of the admission numbers.

The numbers by region are as follows:

Africa	25,000
East Asia	6,500
Europe and Central Asia . .	13,000
Latin America/Caribbean . .	3,500
Near East/South Asia . . .	2,000
Unallocated Reserve	20,000

The Department of Homeland Security has come under fire because though this past year 70,000 slots were also allocated, only 28,000 refugees were actually admitted, a fraction of the number admitted in recent years. Refugee advocates are urging

Congress and the Administration to press DHS to use its resources to ensure that the US fulfills its commitments to process refugee cases.

15. H-1B Usage For FY 2003

This week U.S. Citizenship and Immigration Services released a fact sheet on H-1B petitions received and approved in Fiscal Year 2003. Though there was an increase in the number of petitions filed and approved in 2003 over the last fiscal year, the numbers still trail behind the two years previous. In total, CIS received 231,030 H-1B petitions in FY 2003, for both initial and continuing employment, an increase of about 15,000 over the last fiscal year.

The legacy Immigration and Naturalization Service (INS) approved 217,340 petitions this fiscal year, out of the 231,000 applications it received. Of those approved, nearly half were for initial employment (105,314) and half were approved for continuing employment (112,026).

A majority of the applications approved for continuing employment were not subject to the Congressionally mandated cap of 195,000 beneficiaries, which exempts individuals working with institutions of education and nonprofit research organizations. All but 13 percent of those approved for continued employment did not count against the cap.

Only about two-fifths of the total number approved for H-1B employment (about 78,000) were subject to the FY 2003 cap, which was not reached even by half.

The full summary is available online at:

<http://www.immigration.gov/graphics/publicaffairs/factsheets/H1-BFY2003.pdf>