

Siskind's Immigration Bulletin –  
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Siskind Susser serves immigration clients throughout the world from its offices in the US and its affiliate offices across the world. To schedule a telephone or in-person consultation with the firm, go to <http://www.visalaw.com/intake.html>.

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1. Openers

Dear Readers:

Until recently, most people reading this newsletter were in a select group. Most people paid little attention to the discussion of immigration law and policy. Suddenly, immigration is the hottest topic in the country. The massive street protests and the action on the immigration bill in the Senate are, of course, driving the debate.

Developments are happening so fast that we've decided to utilize our blog to get news out as quickly as possible. You can visit our blog at [www.visalaw.com/blog.html](http://www.visalaw.com/blog.html). We are updating it several times a day and have been posting items sometimes within minutes (such as our reporting on the cloture vote). We have been posting section by section summaries of the legislation as it changes and also posting news on the politics surrounding the issue.

In this issue, we include our summaries of the legislation, our comment on the recent Labor Department regulation and an opinion piece I wrote this week for the Memphis Commercial Appeal.

As for where the legislation stands at this point, we are half way through the Easter recess and when the Senate comes back into session, it is anyone's guess whether the bill will be taken up or not. One hint that things may be going well is the fact that the Senate is still working on the bill and making changes, hardly a sign that the legislation is dead. Senator Specter and McCain both indicated that they expected the bill to be taken up again shortly after the Senate returns. While a funding bill for the Iraq War is on the agenda for right after the Senate gets back, it might be shortly after that finishes that we start to see debate. We have not heard any news regarding whether a deal has been reached on the issue of amendments to the bill.

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In firm news, a number of our lawyers have been in the news. I have appeared on Memphis' Fox affiliate three times in the last month as an expert on immigration law. As noted above, I have also written an opinion column for the Memphis Commercial Appeal which can be found on our web site at <http://www.visalaw.com/news/commercialappeal041306.pdf>. Lynn Susser has also appeared on the Fox affiliate in Memphis and Karen Weinstock appeared on the Fox affiliate in Atlanta.

I will be speaking this coming week at the ABA Tech Show in Chicago. I'll be speaking on Internet marketing for law firms.

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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. ABCs of Immigration: Foundations of Immigration Law, Part II

This week you'll find part one of a two part article. The two articles provide a VERY quick overview of the ways a person can legally come to the US. More in depth discussions of each of these topics can be found in our site's ABCs section at [www.visalaw.com/abcs.html](http://www.visalaw.com/abcs.html).

### **IMMIGRANT VISAS ("GREEN CARD")**

There are four (4) basic categories of immigrant visas:

1. Family sponsored immigrants
2. Employment based immigrants
3. Diversity immigrants
4. Refugees and Asylees

#### **Family Sponsored Immigrants**

1. Immediate relatives – no quotas, faster processing
  - a. Are you a spouse of a US citizen?
  - b. Are you a child under 21 years old of a US citizen?
  - c. Are you the parent of a US citizen over the age of 21?
2. Preference categories\*
  - a. First Preference – Are you the adult unmarried child of a US citizen? Wait: Three to five years (or more for the nationals of Mexico and Philippines)
  - b. Second Preference A – Are you the under 18 child of a green card holder or the spouse of a green card holder?  
Wait: Five to seven years (or more for the nationals of India, Mexico and Philippines)
  - c. Second Preference B – Are you the adult unmarried child of a green card holder?  
Wait: Nine years (or more for the nationals of India, Mexico and Philippines)
  - d. Third Preference – Are you a married child of a US citizen?  
Wait: Six years (or more for the nationals of Mexico and Philippines)
  - e. Fourth Preference – Are you a brother or sister of a US citizen?  
Wait: Twelve years (or more for the nationals of India, Mexico and Philippines)

\*The above waiting periods are based on the US Department of State's Visa Bulletin published on March 2004. The US DOS publishes the Bulletin monthly and announces the current waiting periods therein. The above periods should be considered as estimates and for accurate waiting periods, the current Visa Bulletin must be checked.

General Notes: Must file petition with the USCIS to get a place in the queue; marriage to a US citizen is scrutinized to make sure the marriage is genuine; petitions based on green card holder automatically switch to higher preference category when the green card holder becomes a citizen. The Visa Bulletin can be found at: [http://www.travel.state.gov/visa\\_bulletin.html](http://www.travel.state.gov/visa_bulletin.html)

#### **DV Visas – Green Card Lottery**

The US government allocates 50,000 visas a year for people to receive through a random computer drawing. Information on the green card lottery can be found at [www.visalaw.com/greencard.html](http://www.visalaw.com/greencard.html). Entry applications are submitted online. The application is linked at [travel.state.gov](http://travel.state.gov).

1. Are you a high school graduate?
2. Do you work in a field typically requiring two years of work experience and you have at least two years of work experience in the field?
3. Were you born in an eligible lottery country?

General Notes: Very low odds (fewer than 1 in 40 applicants will succeed); easy to enter; entry period is limited and usually is in the last quarter of the calendar year (October to December); must have job available in US or proof of ability to support self financially. Congress is seriously considering ending the program.

### **Employment-Based Green Cards**

**EB-1-1** – Persons of Extraordinary ability in the sciences, arts, education, business or athletics

1. Are you one of the top people in your field?
2. Can you show that you have won a major international award OR at least three of the following?:
  - a. Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
  - b. Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;
  - c. Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date and author of such published material, and any necessary translation;
  - d. Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought;
  - e. Evidence of the alien's original scientific, scholarly or business-related contributions of major significance in the field;
  - f. Evidence of the alien's authorship of scholarly articles in the field, in professional journals or other major media;
  - g. Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation;
  - h. Evidence that the alien has commanded and now commands a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.

General Notes: No employer required, but you'll need to show you intend to pursue work in your field; fast category except there are multiyear backlogs for Indian and Chinese nationals (and all other nationals likely to face backlogs soon).

**EB-1-2** – Outstanding Professors and Researchers

1. Are you recognized internationally as outstanding in a specific academic area?
2. Do you have three years experience in teaching or research in your area?
3. Are you coming to the US to work in a tenure or tenure-track teaching position or a long term research position?

4. Can you present evidence that you are recognized internationally in your academic field by presenting evidence of at least two of the following?:
  - a. Receipt of major prizes or awards of outstanding achievement
  - b. Membership in an association which requires outstanding achievement
  - c. Published material in the professional publications written by others about your work
  - d. Evidence of your participation as a judge of the work of others
  - e. Evidence of original scientific research
  - f. Authorship of scholarly books or articles in the field

General Notes: Fast category but there are multiyear backlogs for Indian and Chinese nationals and all other nationals likely to face backlogs soon.

**EB-1-3 – Multinational Executives and Managers**

1. Category is virtually identical to L-1 intracompany transfer non-immigrant visa
2. Key differences
  - a. Not available to specialized knowledge employees
  - b. US branch must be operating for at least a year

General Notes: Multiyear backlogs for Indian and Chinese nationals and all other nationals likely to face backlogs soon.

**EB-2 – Members of the Professions Holding Advance Degrees or People With Exceptional Ability**

1. Do you have a degree beyond a bachelors degree or do you have a bachelors degree plus five years of work experience in your field?
2. Or do you meet the definition of exceptional ability by showing three of the following:
  - a. Degree relating to the area of exceptional ability
  - b. Letter from current or former employer showing at least 10 years of experience
  - c. License to practice profession
  - d. Person has commanded a salary or remuneration demonstrating exceptional ability
  - e. Membership in professional association
  - f. Recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organization
3. Do you have a job offer and labor certification or are you basing your green card application on benefiting the nation's interest?
4. If you are planning on basing your green card application on a labor certification, do you work in a field where there is a shortage of American workers in the local area where you intend to work?
5. If your claim is based on a labor certification, are you going to be paid the prevailing wage for similarly employed workers in the city where you are going to work?
6. If your claim is based on a labor certification, has your employer attempted to recruit workers to fill the position?
7. If your claim is based on a national interest waiver, do you meet the following tests?:
  - a. The person seeks employment in an area of substantial intrinsic merit
  - b. The benefit will be national in scope

- c. The national interest would be adversely affected if a labor certification were required

General Notes: Processing times vary but labor certification cases typically take one to two years and national interest cases take six months to a year and a half; Employer not required in national interest waiver cases; multiyear backlogs for Indian and Chinese nationals and all other nationals likely to face backlogs soon.

### **EB-3 – Skilled Workers, Professionals and Other Workers**

General Notes: Available to university graduates and people working in jobs requiring a worker with at least two years experience can file this category if the employer gets a labor certification (see above). There is a sub-category for unskilled workers that does not have a work experience or education requirement, but still requires a labor certification. The EB-3 category is backlogged for multiple years for all nationalities. Nurses and physical therapists have a temporary bonus quota that eliminates the queue for those professionals and this supply of visas is expected to last most of 2006 and possibly into 2007.

### **EB-4 – Special Immigrants – Religious Workers**

General Notes: Basically the same requirements as the R-1 religious worker non-immigrant category except that the applicant must have been working in the field for at least a two year period. No backlogs in this category as of late 2005 and none are predicted.

### **EB-5 – Investor Employment Creation Visa**

1. Are you investing in a business in the US?
2. Is the business new or are you buying into a restructured business?
3. Are you investing at least \$500,000 if the business is in a rural, high unemployment area or designated target investment area or \$1,000,000 if located elsewhere?
4. Is your investment in the form of cash, equipment, inventory, other tangible property, cash equivalents and indebtedness secured by assets owned by the entrepreneur?
5. Is the investment "at risk"?
6. Can you document that the source of the funds is legitimate?
7. Will the investment result in the creation of at least ten full-time jobs for American workers?

General Notes: The USCIS scrutinizes these cases carefully. While technically the investment and job creation need not take place until after granting the green card, in practice, the USCIS will deny unless the investment and job creation take place before the application was submitted.

More information about immigrant visas may be found at our website <http://www.visalaw.com/abcs.html>

## **3. ASYLEES AND REFUGEES**

There are certain protected groups of aliens in the US. Most common are the asylee and refugees. Under the 1980 Refugee Act, a refugee is defined as "any person who is outside of any country of such person's nationality . . . who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion."

Both refugees and asylees must satisfy this definition. Indeed, in almost every way, the requirements for refugee status and asylum are the same. The most important difference is that an asylee makes their application while in the US, while the refugee applies outside of their home country, but also outside of the US.

Asylees and refugees are eligible for employment authorization and have special paths to permanent residency.

There are other protected groups like the TPS (temporarily protected status) aliens, and more information about these special groups and others may be found at our website <http://www.visalaw.com/abcs.html>

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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.

Q - I'm an Italian citizen traveling to the United States as a tourist. My girlfriend lives in the United States. I know that you can only resume in the United States 90 days at a time. My question is how many times in a year can I go back and forth to the US or how many days within a year can I be in the United States? Thanks for your help.

A - There is no limit on the number of visits you can make in a year. However, if you travel too frequently to the US and you don't appear to be maintaining a residence in your home country, you could be denied either because an examiner thinks you are an intending immigrant or because of a suspicion that you are working illegally in the US. I would recommend spending at least a few months back in Italy in between US trips.

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Q - I am currently on H1-B Visa. I recently got married and need to change my maiden name. I am not sure if you can answer this but, if the Indian Consulate in Houston issues a new passport with my married name, does that mean I need to go back to get my H1-B Visa stamped again?

A - Typically if you travel with all relevant documents, you should be fine. In other words, if you travel with the old passport, new passport and marriage license, you should be fine.

The other options are to file an H amendment or apply for a visa with the new name depending on which document needs to be corrected.

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Q - I am a foreign trained physical therapist. If I am filed for a concurrent i-140 and AOS with my wife(Physical therapist also) as a dependent, will she be able to file for an Employment Authorization Document even if my visa application has not yet been approved yet?

A - Yes, your wife can get an employment authorization document based on filing the adjustment of status application even if the I-140 is not approved.

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Q - I've been waiting for my green card for 7 years now. Is that true that all backlogs will be eliminated once this bill becomes the law?

A - If the immigration bill passed by the Senate Judiciary Committee (and which is currently being debated by the full Senate) passes, backlogs in most categories would be shortened or disappear. That's one reason why passage is so important.

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Q - I recently my green card was stolen, and in this point in time I don't have a clue what to do next can You please send me some info on what I should do.

A - You need to file an I-90 form which can be done at a local USCIS office or done electronically via the web. You can find instructions at <http://uscis.gov/graphics/formsfee/forms/i-90.htm>.

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Q- Can a B1/B2 visitor go to the USA while pregnant?

A - Women who are pregnant can come to the US on a visitor visa, but I have seen cases where pregnant women were given trouble if they try and enter very close to their due date. Because the US offers birthright citizenship to children born here, some port officers are suspicious of intentions for people traveling late in a pregnancy. But this will obviously depend on the circumstances of the trip and the individual's background.

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#### 4. Border and Enforcement News

According to a press release from Immigration and Customs Enforcement (ICE), document fraud is on the rise. According to ICE, with the potential to extort large sums of money from a desperate clientele, millions of dollars are being made by individuals who can create fraudulent documents. The increase of available, sophisticated technology has compounded the problem and increased the number of people who can enter into the illegal trade. Because of the security threat that document fraud poses to the U.S., efforts to combat the growing problem have increased. In the September 11<sup>th</sup> attacks, at least seven of the

hijackers were able to obtain government issued identification by offering falsified documents.

ICE has created a new program for combating document fraud based on an existing task force in the D.C. area. The new "Document and Benefit Fraud Task Forces" will be opened in ten major cities across the US in order to crack down on major counterfeiting operations. The task force brings together a number of agencies in order to open a broader field of expertise. By pooling specialized knowledge in the different areas of document and benefit fraud, ICE hopes to facilitate the capture and prosecution of a growing criminal trade. Along with a number of federal agencies in the new task force, both local and state law enforcement agencies will be utilized to locate and capture counterfeiters. In any cases like 9/11 where terrorist links are found, investigations will be turned over to Joint Terrorism Task Forces.

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A pub operator in Depew, Bridget Campbell, 37, has admitted to arranging the smuggling of at least thirty undocumented Irish aliens from Ontario into Buffalo, according to *Newsday*. Campbell faces sentencing in the U.S District Court on June 9. The undocumented immigrants were charged a fee in exchange for being shuttled into the U.S., and coached as to what questions border inspectors might ask them. Campbell used actual pub workers or customers to transport the undocumented immigrants across the border.

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According to the *Associated Press*, Border Patrol agents rescued twenty Mexican undocumented immigrants after they activated a rescue beacon twenty miles south of Tacna. Agents from the Wellton Station responded to a distress signal and encountered the immigrants in three dispersed groups. Twelve of the immigrants were still in the desert when rescued.

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According to *The Associated Press*, the 2nd U.S. Circuit Court of Appeals has given Indonesian citizen, Yose Rizal, another chance at asylum. Rizal, 37, claimed that due to Christian beliefs he had been harassed and discriminated against by Muslims. His church back in Jakarta was also one of many to have been burned. Previously, Rizal's claim of religious persecution was rejected when he could not correctly answer questions such as who wrote Ten Commandments or where Jesus was crucified. The appeals court decided that Rizal could be persecuted for his religious affiliation without having a detailed faith.

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## 5. News From the Courts

The News From the Courts column is written by Maria Bjornerud, an immigration attorney with an office in Southaven, MS. Originally from Russia, Ms. Bjornerud is licensed to practice law in Tennessee and Mississippi. She can be contacted via email at [mbjorne@msn.com](mailto:mbjorne@msn.com).

IN RE BAUTISTA GOMEZ, 23 I&N Dec. 893 (BIA 2006) holds that the provision in 8 C.F.R. § 1003.23(b)(3) (2005) that an applicant for cancellation of removal under INA § 240A(b), 8

U.S.C. § 1229b(b)(2000), must demonstrate statutory eligibility for that relief prior to the service of a notice to appear applies only to the continuous physical presence requirement and has no bearing on the issues of qualifying relatives, hardship, or good moral character.

BEFORE: HOLMES, HURWITZ, and MILLER:

The respondent, a 22-year-old native and citizen of Mexico, arrived in the United States with her parents when she was 3 months old. In 2000, at the hearing in removal proceedings, an IJ granted her parents cancellation of removal pursuant to INA § 240A(b)(1), 8 U.S.C. § 1229b(b)(1) (2000). The respondent, not having a qualifying relative at the time of the hearing, was only granted voluntary departure. Three months later, the respondent filed a motion to reopen stating that her parents had become lawful permanent residents since they were granted cancellation of removal, and that she now has the qualifying relatives required to establish eligibility for that relief. The IJ denied the motion to reopen, holding that under 8 C.F.R. § 3.23(b)(3) (2000), which is currently at 8 C.F.R. § 1003.23(b)(3) (2005), the respondent was not eligible for cancellation of removal because at the time of service of the Notice to Appear (Form I-862) on the respondent, her parents were not lawful permanent residents. In 2002, the BIA summarily affirmed the results of the IJ's decision denying the respondent's motion to reopen her removal proceedings. The Government sought a remand for the Board to consider whether the respondent's motion to reopen was properly denied.

The BIA pointed out that an application for relief from removal is a continuing one. *Matter of Ortega-Cabrera*, 23 I&N Dec. 793 (BIA 2005). The BIA determined that the issue of qualifying relatives, like the issue of good moral character, should be considered at time an application for cancellation of removal is finally decided. The BIA found that 8 C.F.R. § 3.23(b)(3) as applied to INA § 240A (b)(1) provides only that an alien seeking to reopen his or her case for consideration of an application for cancellation of removal must have satisfied the continuous physical presence requirement for that relief at the time of service of a notice to appear. The regulation has no bearing on the other requirements for cancellation of removal, including the issues of qualifying relatives, hardship, or good moral character.

The BIA sustained the respondent's appeal from the IJ's denial of her motion to reopen and remanded to the IJ for further proceedings consistent with this opinion.

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## 6. Government Processing Times

There are new processing times for the following service centers:

Nebraska (4/1/2006): <http://www.visalaw.com/nebraska.html>  
Texas (3/31/2006): <http://www.visalaw.com/texas.html>  
Vermont (4/10/2006): <http://www.visalaw.com/vermont.html>  
California (4/10/2006): <http://www.visalaw.com/california.html>  
Missouri (4/10/2006): <http://www.visalaw.com/missouri.html>  
AAO (3/23/2006): <http://www.visalaw.com/aao.html>

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## 7. News Bytes

The National Refugee Admission Quota is generated at the beginning of each fiscal year to set limits on the number of individuals who can enter the country under refugee protection. A report on refugee admissions at the conclusion of March has indicated that only about twenty-nine percent of the available slots have been filled.

The report breaks down the numbers into regions and individual countries. Currently, the largest sources of immigration are Russia (3,710), Vietnam (2,300) and Somalia (4,397). Other countries with immigration totals over a thousand are Cuba, Ukraine, Sudan and Liberia. If the US continues on this track, there will be far fewer immigrants than reserved positions in the Proposed Refugee Admissions Report. The US maintains a ten thousand position unallocated reserve, but, at this point, no area is in danger of overflowing into the reserve.

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The Pew Hispanic Center and the Pew Research Center joined together to conduct a survey on the current opinions of Americans on immigration. The survey focused on understanding the public's perception on the size of the immigration problem, the nature of immigration issues, the opinions on public policy, the perceptions of immigrants and coming to an understanding of the link between immigrant population and perception in metropolitan areas. Each of these categories tended to have significant connections with the other categories as the opinions on one matter often contributed to opinions on another.

The initial conclusion drawn by the survey is that immigration is a growing concern. Each year, more individuals answer that immigration is a problem in the United States. Similarly, the population that believes immigration is strengthening the nation is continuing to decline. These statistics, though, should be understood in the context of the numbers which they represent. Most of the data hovers around fifty percent, suggesting a much divided country.

The survey not only looked to gathering the data to understand immigration, but to understand the U.S. public as well. By taking statistical data from five metropolitan areas, the survey was able to see how immigrant populations effected immigration perceptions. The only city which believed immigration was the most important issue for their community was Phoenix—a city that is situated near a border crossing.

As well as trying to understand the issues by area, the survey split the data in to economic, social, political, educational and racial divisions to account for variances in the population. These results showed that groups within the population are as much divided as the location in which they reside. More specific details on these surveys can be found at <http://people-press.org/reports/pdf/274.pdf>.

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United States Citizenship and Immigration Services (USCIS) has released a study on the number of individuals in the country with H-1B visas. In Fiscal Year 2004, 48 percent of H-1B visas were given to individuals with bachelor degrees while 50 percent were offered to individuals with a masters or higher degree. In fiscal year 2005, the ratio swung more in favor of the higher degrees with only 44 percent of the H-1B visas being offered to foreigners with no higher than a bachelor degree.

Separated by country, the largest percentage of individuals entering the US with H-1B visas during fiscal year of 2005 came from India, China, Canada and the Philippines. India held

the largest share with over 44 percent of the offered visas. Of those who work in the US with H-1B visas, 44 percent work in technical, computer related fields.

The ratio of application to acceptance for H-1B visas is extremely high. In fiscal year of 2004, 92 percent of the applications were approved in the H-1B visa sector. In 2005, the ratio grew higher.

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A press release from the Federal District in Mexico announced the extension of the OASISS program in both Mexico and the United States. The OASISS program was first implemented in 2005 along the California-Mexico border in order to target immigrant smugglers.

The program is centered on cooperation between Mexican and US officials in order to protect immigrants, facilitate criminal prosecutions and tighten border security. The coordination between governments will create an information exchange in order to both capture smugglers and prevent impunity. The new plans will expand the OASISS program to the following areas in Mexico, Texas and New Mexico: Columbus, Las Cruces, El Paso/Ciudad Juarez, Fabens, Fort Hancock, and Presidio/Ojinaga.

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The State Department issued an update on the number of Schedule A green cards for nurses and physical therapists that would be available during 2006 in a memorandum written to the American Immigration Lawyers Association. The State Department claims that there are approximately twenty thousand Schedule A visas remaining. The statement notes that a cutoff will likely occur in the first quarter of the fiscal year 2007 unless a dramatic change in the necessity for immigrants arises before that time.

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Eddie Romualdo Miranda, a former immigration officer, is being charged with attempting to obtain sexual favors in exchange for granting U.S. Citizenship. According to Mai Tran of *The Los Angeles Times*, the victim was a 29 year old Vietnamese woman whose name is not being released. Miranda had been working as an immigration officer for six months prior to the incident.

Allegedly, Miranda told the woman to meet him at a later time in a parking structure. When she arrived, he became sexually aggressive which prompted her to go to the authorities. Miranda was arrested and is awaiting trial.

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## 8. International Roundup

*The United Press International* disclosed that Indonesian immigration officers overseas are under scrutiny due to a visa corruption scandal involving over 3.1 million dollars. Officials at consular offices in Malaysia and Japan allegedly obtained the money over a five year term by processing passports and visas. Legislator Djoko Susilo called for the Foreign Ministry to take over the immigration tasks at overseas consular offices, downsize personnel, and increase supervision over the department. Foreign Ministry spokesman Desra Percaya said that now payment for immigration services will no longer be payable in cash.

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According to an article in *The Age*, Australia is making changes in immigration legislation in order to allow skilled migrants and students to bring their same-sex partners into the US. Currently, Australians are able to bring same-sex partners into the country. Conversely, skilled immigrants and students are only able to bring their heterosexual partners into the country. The change in current policy would eliminate the apparent discrimination in the system. The Immigration Minister of Australia claimed that this step would keep Australia competitive in attracting skilled immigrants. The change will be in effect as of July 1<sup>st</sup>.

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Singapore has revealed a new biometric passport which will be available for all passport holders in August. The new passport, called the "Biopass," will have increased security measures including laser images and a contactless chip bearing facial and fingerprint biometric data. According to an article by Vivian Yeo of *CNET* news, the new passports will reach a level II security requirement that the US has requested in order for compliance with their scanning machines. The pass will be first released to government officials and airline crew members before large scale distribution. Despite the advantages of meeting US compliance, the Biopass will be more expensive for citizens. The price rise will reflect the cost of increasing security measures.

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In Australia, new legislation has been passed to crack down on businesses hiring undocumented immigrants. Under the new laws, negligent employers who hire undocumented immigrants could face up to two years of jail time or heavy fines. Employers who are found guilty of exploiting immigrant laborers will face up to five years in jail and up to one hundred and sixty-six thousand dollars in fines for the convicted business.

According to an article by Sophie Morris of *The Financial Review*, these measures are targeting taxi, cleaning, horticultural and sex industries which frequently hire undocumented immigrants. These individuals are at a large risk for mistreatment because of their undocumented status. Supporters of the new legislation point to the problems that undocumented immigration is creating by taking jobs from nationals and contributing to organized crime. In order to aid in stopping an illegal job market that is fueled by undocumented immigrants, the government will be running awareness campaigns to let employers know of their obligation to check on a potential employee's legal status.

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## 9. Legislative Update

Georgia's state Senate has approved the Georgia Security and Immigration Act, according to *The Atlanta Journal Constitution*. The Senate is involved in much debate over the Sen. Chip Roger's Senate Bill 529 that targets illegal immigrants, which equals anywhere between 250, 000 and 800, 000 people in Georgia, and their employers. Democrat Labor Commissioner Michael Thurmond complains that it creates an "amnesty program" while Republicans say that it is the best solution that can be reached as of now. The state's legislature made several amendments to the bill however. A section that imposed a fee on money wired out of the country by illegal immigrants was deleted, and under the alternate proposal, companies with federal contracts must use a federal verification program to determine the citizenship status of their new hires. Employers will also withhold a six

percent tax from undocumented immigrants. These provisions will not take into effect into July of 2007. Private employers will not be affected until the year 2008.

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In New Hampshire, the Senate passed a bill that will force businesses that hire foreign workers to register with the state. The bill will make it easier for law enforcement to locate and punish undocumented immigrants. Despite passing through the Senate, the bill is the subject of hot contestation.

According to an article by Kathy McCormic, supporters of the bill argue that it is just a step to help deter employers from hiring undocumented immigrants who take jobs away from local citizens. Critics of the bill point to a wide range of problems in the legislation, including the potential discrimination which the bill could inspire in employers. The bill will have to go before a House which has killed a number of immigration bills before it can be ratified.

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In Ohio, the House voted to discount immigrants when conducting census research to determine congressional seats. The state is concerned about the growing immigrant population in states such as Florida which, if included in the next census, would strip Ohio of two congressional seats. The proposal to change the 14<sup>th</sup> amendment passed easily in the Ohio House, but has elicited negative reactions from the immigrant population within the state.

According to an article by Reginald Fields of *The Plain Dealer*, a ratification by the US Congress is highly unlikely. States with booming immigrant populations will be less inclined to support a bill that will discredit a large portion of their populace. Despite being a long shot, Ohio politicians have risked alienating a large group of their population in order to protect their voice in the U.S. House of Representatives.

Critics of the legislation complain that the proposal would discount those immigrants who are within the country legally but have not yet attained citizenship while others have questioned why all non-citizens have been lumped together. Some detractors have raised questions of discrimination in the motives behind this proposal. These issues may weigh in when the issue goes before the Ohio Senate in the near future.

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Mexico's government spent approximately close to three hundred thousand dollars to clarify its stance in immigration, according to *The Daily Bulletin*. Mexico bought a full page ad in *The New York Times*, *Washington Post*, and *Los Angeles Times*, expressing its position on border enforcement, economics, a U.S. guest-worker program, and so forth. The ad was entitled "A Message from Mexico about Migration." Jennifer Ring, a vice president with Allyn & Co., the Dallas-based public relations firm that created the ad, explained that Mexico's ad was part of the government's effort to 'correct misconceptions' U.S. residents might have about their southern neighbor. It is estimated that combined daily circulation of the three U.S. newspapers is 2.7 million. Mexico's manner of advertising its policy is slightly unorthodox, but Rod camp, professor of government at Claremont McKenna College, stated

that Mexico used three of the largest newspapers in the U.S. because it is trying to influence a specific 'elite readership.'

\*\*\*\*\*

[H.R.5023](#) : To amend title XIX of the Social Security Act to repeal the amendments made by the Deficit Reduction Act of 2005 requiring documentation evidencing citizenship or nationality as a condition for receipt of medical assistance under the Medicaid Program.

**Sponsor:** Rep Christensen, Donna M. [VI] (introduced 3/28/2006) Cosponsors (15)

**Committees:** House Energy and Commerce

**Latest Major Action:** 3/28/2006 Referred to House committee. Status: Referred to the House Committee on Energy and Commerce.

[H.R.5035](#) : To provide discretionary authority to an immigration judge to determine that an alien parent of a United States citizen child should not be ordered removed from the United States.

**Sponsor:** Rep Serrano, Jose E. [NY-16] (introduced 3/28/2006) Cosponsors (2)

**Committees:** House Judiciary

**Latest Major Action:** 3/28/2006 Referred to House committee. Status: Referred to the House Committee on the Judiciary.

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10. Notes from the Visalaw Blog

**Sunday, April 16, 2006**

## **MOTHER FACES LIFETIME IN EXILE**

Garance Burke of the [Associated Press reports today](#) on Myrna Dick, the mother of 18 month old US citizen Zachary Dick and the wife of US citizen Brady Dick. Myrna is facing deportation and a lifetime bar on ever coming back to the US. Did she kill someone? Did she beat her child? Is she a drug smuggler? A terrorist?

No. She *allegedly* made a false claim to immigration authorities that she is was a US citizen when she once sought entry to the US.

She's just a mom and we're about to ruin three lives over something that while serious clearly does not warrant this kind of punishment. So much for family values.

By the way, this was the treatment she got when she was arrested for this civil violation:

*"Six years later, the government reinstated the old deportation order under Treviso-Frias' name to take Myrna into custody. Myrna was three months pregnant. For two weeks, nauseous with morning sickness, she was shackled to the floor and bused from a detention facility in Versailles, Mo., to Immigration and Customs Enforcement offices in Kansas City.*

*"When they sent her to jail, no one told her she could consult a lawyer," said Sharma-Crawford, an immigration attorney in Overland Park, Kan. "Then, when the case finally went to court, it was like having a murder trial by argument alone. We got no witnesses and could only present evidence that the government got to pick."*

Myrna Dick might have a shot at staying with her family if comprehensive immigration reform is passed. Hers is one more story to remember when thinking about why we need better laws.

# posted by Greg Siskind @ 9:17 PM

## YOUTH PROTESTORS MAKING SACRIFICES

I have been struck by several stories I've seen in recent weeks about some of the small and large sacrifices kids around the US are making to participate in protests around the US.

A youth march was held yesterday in Los Angeles to remember Anthony Soldara, a Southern California 14 year old who committed suicide March 30th, four days after participating in the massive march in his city. The **Los Angeles Times reports**

*Louise Corales said her son, Anthony Soltero, called her shortly before shooting himself to death March 30, saying he was suspended from school and had been told by the vice principal that he was going to jail for three years for skipping school.*

The school system denies that the vice principal made the threat though the facts certainly don't look good.

In school systems throughout the country, students have risked suspensions and other disciplinary actions because they have participated in walkouts to protest immigration policies. Students have, in fact, been suspended. At one school, all students who participated in the walkouts were barred from attending the school's prom.

Today, the **Salt Lake City Tribune reports** that a mostly Latino local Boy Scout troop has been warned that it cannot issue merit badges for "Citizenship in the Community" for youths participating in protests in that city. The Great Salt Lake Council of Boy Scouts of America warned the troop that awarding badges would violate the policy against involvement in political events. Troop leader Michael Clara noted that the Boy Scout council didn't have a problem with awarding badges to members of the same troop for participating in a flag ceremony at the most recent Utah Republican convention.

I have mixed feelings about the best way to approach the subject. I think it is wonderful that young people are exercising their free speech and participating in the protests. This is a most American value and these children are learning what it means to be a citizen of this country. American-born children can learn a lesson.

I hate to see the kids punished, but I also think that one day they will appreciate their actions more knowing that they had to make a sacrifice. On the other hand, school officials should be reasonable in doling out punishments. The prom ban was a good example in my opinion. Certainly the students will feel the pain, but their futures won't be jeopardized.

In any case, these kids are our future and they should be commended for their actions.

# posted by Greg Siskind @ 6:27 PM

## RELIGIOUS COMMUNITIES THROW SUPPORT BEHIND IMMIGRATION REFORM

Dozens of religious organizations around the US have signed on to a statement urging Congress to support comprehensive immigration reform. You can see the letter [here](#).

# posted by Greg Siskind @ 3:14 PM

## SENATE BILL COMPLETE SUMMARY

I have now completed updated [my complete section by section summary](#) of the Specter bill in the Senate as it now stands. The changes are color coded to make it easy to see what has changed.

# posted by Greg Siskind @ 10:57 AM

**Saturday, April 15, 2006**

## NEBRASKA BECOMES 10TH STATE TO OFFER RESIDENT TUITION TO UNDOCUMENTED IMMIGRANTS

The Nebraska legislature passed a bill to allow undocumented immigrants who meet the state's residency requirements to receive in state tuition rates at the state's public universities. The legislation passed the legislature and then overcame a veto by the Nebraska governor by a vote of 30 to 15. The margin of victory for the legislation was much greater than expected. [Bender's Immigration Bulletin has a copy of the new law.](#)

# posted by Greg Siskind @ 5:56 PM

## REID ACCUSES PRESIDENT OF USING IMMIGRATION TO DIVERT ATTENTION

Senator Harry Reid (D-NV), the minority leader in the Senate accused the Bush Administration as using the immigration debate to divert attention from the Iraq war and that the Republicans are not serious about passing immigration legislation. Reid made the statement [in an interview](#) with the Pahrump Valley Times, a Nevada newspaper.

# posted by Greg Siskind @ 5:23 PM

## SUMMARY OF THE LATEST CHANGES TO THE SENATE BILL

As we noted Thursday, Senate Republicans and Democrats have hammered out a new bill which incorporates most of what was in the Hegel-Martinez compromise bill announced last week (however, there are a number of important changes) and also adding 125 pages of new amendments. The latest version is co-sponsored by Senator Specter (R-PA, Chair of the Judiciary Committee), Senator Hegel (R-NE), Senator Martinez (R-FL), Senator McCain (R-AZ), Senator Kennedy (R-MA), Senator Graham (R-SC) and Senator Brownback (R-KS). The fact that Senator Kennedy has given his stamp of approval is highly important since he is the most influential Senator in the party on immigration matters.

We have summarized the changes [here](#). You can also find links to our summaries of the rest of the bill by following the links shown at the top of the document. Here are some of the highlights from my report:

- the H-2C starting quota is dropped from 400,000 to 325,000. Note, however, that the cap can grow by up to 20% a year depending on demand.
- 30% of the EB other worker category will be reserved for people with applications filed before January 4, 2004

- HHS will have to issue a report on nursing that covers the nurse shortage, the US population of foreign nurses and the impact of nursing immigration in the US on the supply of nurses in the supplying countries
- All applicants for naturalization will be eligible for a \$500 grant to fund tuition for English and civics classes. The residency requirement for naturalization will drop to four years for those fluent in English (no guidance on how fluent is fluent); the naturalization oath is modified and DOS will now notify the applicant's home country that the applicant has renounced allegiance.
- Several hundred attorneys are to be added each year for five years at BIA, the IJs, US Attorney, etc.
- Non-citizens will be eligible to join the military and can naturalize after two years (seems to be open to everyone (even the undocumented) and not just green card holders, but it's not clear that this was intended)
- P visas for athletes are opened up to make it easier for athletes in foreign leagues to qualify as well as people coming for ice skating productions. Advisory opinions won't be needed for these people or people in professional leagues with revenue over \$10,000,000.
- The H-2B language from the REAL ID Act that exempts returning workers from the cap and splitting the cap into six month periods is extended from 2006 to 2009
- Something akin to a 245i late is now in there – anyone with a green card pending based on INA Sections 201 or 203 (family and employment cases) that was filed before the law went into effect will be eligible for a waiver of the overstay bars.

# posted by Greg Siskind @ 1:05 PM

**Friday, April 14, 2006**

## **PEW RELEASES PROFILE OF UNDOCUMENTED WORKERS**

A [new report from the Pew Hispanic Center](#) profiles the work situation for undocumented immigrants in this country including the industries in which they work and the salaries at which they are paid. According to Pew, 2.5 million workers have entered the country in the last five years accounting for about 5% of the US workforce. In some industries, such as construction and hospitality, they account for a much higher percentage. Pew estimates that as of 2005, the undocumented population in the US was 11.1 million. They expect that number to grow to as much as 12 million this year.

# posted by Greg Siskind @ 9:16 AM

## **NEW POLL SHOWS REPUBLICANS SUPPORT COMPREHENSIVE IMMIGRATION REFORM**

A [new poll jointly commissioned by the Bloomberg news service and the Los Angeles Times](#) shows Republican voters are not nearly as divided on immigration reform as their party leaders. Bloomberg.com described the results this way:

*A Bloomberg/Los Angeles Times poll this week shows most Republicans support proposals to give legal status to undocumented workers and legislation that combines tougher enforcement of immigration laws with new temporary-worker programs.*

*That 64 percent of Republican voters support this two-part approach may be good news for President George W. Bush, who has endorsed a similar proposal. These results indicate Republican voters are at odds with legislation approved by party lawmakers in the House of Representatives last year that only emphasized tougher enforcement and the construction of 700 miles of fencing along the Mexican border.*

# posted by Greg Siskind @ 8:52 AM

**Thursday, April 13, 2006**

## **DEMOCRATS SEEK TO RESUME WORK ON IMMIGRATION BILL SOON**

According to a report in the **Associated Press**, Senator Harry Reid (D-NV), the Democratic leader, sent a letter to Senator Bill Frist (R-TN), the Republican leader asking for the Senate to resume work on the immigration bill immediately after the Senate finished a spending bill dealing with funding the war in Iraq and relief for victims of Hurricane Katrina.

# posted by Greg Siskind @ 7:09 PM

## **NEW COMPROMISE BILL INTRODUCED IN SENATE**

I have just received the newest compromise bill which reflects the Hegel-Martinez compromise language as well as a number of additional changes reflecting amendments pending at the time of the recess last week. There are a number of additional new sections making the bill come in at a whopping 614 pages.

We will be analyzing the text over the next days and will update our section by section summary to inform readers of the substance of the changes.

# posted by Greg Siskind @ 6:54 PM

## **NATIONAL GEOGRAPHIC: WILL A BORDER FENCE BE AN ENVIRONMENTAL NIGHTMARE?**

**National Geographic**, not normally known for weighing in on political questions, has an article warning that a border fence could be harmful to wildlife in the region.

*As the U.S. government debates major immigration reform, environmentalists warn that the proposed laws would also prevent animal migrants from crossing the country's southern border.*

*Specifically, the legislation's proposal to erect 700 miles (1,125 kilometers) of immigrant-stopping fence could block key wildlife migration routes in the Sonoran Desert along the U.S. - Mexico border.*

# posted by Greg Siskind @ 7:05 AM

## READ GREG SISKIND'S COLUMN IN THIS MORNING'S MEMPHIS COMMERCIAL APPEAL

I've written an [opinion article](#) in this morning's Memphis Commercial Appeal newspaper about myths surrounding comprehensive immigration reform.

# posted by Greg Siskind @ 6:44 AM

## ABC NEWS POLL SHOWS PUBLIC OVERWHELMINGLY BACKS SENATE IMMIGRATION APPROACH OVER HOUSE VERSION

A new **poll from ABC News and the Washington Post** asked a number of immigration questions and findings were surprising

President Bush received poor marks for his handling of immigration with 33% approving and 61% disapproving.

The general public still ranks immigration low on the list of most important issues. Only 12% of members of the public consider immigration the most important issue and presumably views are split in that small number. This is consistent with other polls and this finding, compared with polls of Hispanic voters showing they overwhelmingly consider immigration the most important issue is giving Republicans some worries. They don't appear to be winning ovters with the anti-immigrant views, but there are clearly alienating the very important Hispanic voting community.

The public is now giving Democrats much higher marks on immigration issues than Republicans. 50% of the public approves the Democrats handling of the issue while Republicans only get 38% approval ratings.

75% of the public believes that we're not doing enough to thwart illegal immigration. But most, nearly 2/3, don't think that immigrants pose a threat to American workers.

The most interesting question, in my opinion was the following one which asked people to make choices regarding the major options being considered by Congress. Interesting, the House approach and the Frist approach are overwhelmingly unpopural.

21. I'll read three proposals for illegal immigrants who currently live and work in the United States. Please tell me which you prefer.

ONE: Let immigrants who have lived here a certain number of years apply for legal status and eventually become permanent citizens if they meet specific conditions, like paying a fine and back taxes

TWO: Let them pay a fee and work here for a limited number of years after which they'd have to leave the country

THREE: Declare all illegal immigrants to be felons and not allow them to work here legally

Which of these would you prefer -  
a program that may lead to legal status and permanent citizenship, a program allowing them to work here for a limited number of years but not remain permanently, or no temporary work program and felony status?

Program that may lead to legal status and permanent citizenship 63

Program allowing them to work here but not remain permanently 14  
No temporary work program and felony status 20  
None of them (vol.) 2  
No opinion 1  
# posted by Greg Siskind @ 12:26 AM

**Wednesday, April 12, 2006**

## **NEW REPORT SHOWS UNDOCUMENTED IMMIGRANTS PAY MORE IN TAXES THAN THEY GET BACK**

Francine Lipman, a tax professor at the Chapman University School of Law, has **published a report** documenting that undocumented immigrants pay more in taxes than they receive in public benefits. One of the key arguments of immigration proponents is that immigrants are a burden on the public coffers.

# posted by Greg Siskind @ 7:48 AM

## **MCCAIN SUGGESTS SENATE BILL WILL BE BACK ON TRACK AFTER RECESS**

Senator John McCain (R-AZ), one of the named sponsors of a key section of S.2425, the Senate bill containing guest worker provisions, released a statement indicating his optimism that the body would eventually prevail in passing his legislation. He released the following statement yesterday:

*"I want to assure the American people that the cosponsors of the Secure America and Orderly Immigration Act, and the senators who worked to find a compromise last week that would have won the support of a substantial Senate majority remain totally committed to returning to this issue when the Senate returns from recess.*

*"The public expects Congress to address comprehensively this national problem recognizing both the vulnerability of our inadequately protected borders and the need to allow an earned path to citizenship for the millions of undocumented immigrants who work here that substitutes fines, civic responsibilities such as paying back taxes and learning English, and a place at the back of the line for the de facto amnesty that exits under our current system. This is a fair, practical and humane solution to the problem of illegal immigration that I'm confident has the support of a majority of Americans and will have the support of well over sixty senators. In the Senate, no less than in the country at large, the majority will eventually prevail, and we are absolutely determined that it be sooner rather than later."*

# posted by Greg Siskind @ 7:38 AM

**Tuesday, April 11, 2006**

## **DO YOU HAVE MIGRAPHOBIA?**

**Humor from the San Francisco Chronicle.**

# posted by Greg Siskind @ 10:19 PM

**Monday, April 10, 2006**

## **Si Se Puede!**

I hope some of you had the opportunity to get out to an immigration rally in your city today. Here in Memphis, 10,000 showed up for a protest at the **National Civil Rights Museum**. For those of you who have not been there, this is the Lorraine Motel site where Martin Luther King was shot. The speakers were a mix of Latino leaders and African American civil rights leaders (including Benjamin Hooks, Martin Luther King's close friend and the former NAACP president). Couldn't really get great shots from my camera phone, but here are a few. Let's hope these voices are heard in Washington.

# posted by Greg Siskind @ 5:43 PM

## **DEMOCRATIC LEADER BLAMES GOP FOR LACK OF PROGRESS ON SENATE BILL**

Senate Minority Leader Harry Reid (D-NV), who has been specifically criticized by Republicans and others as playing politics with comprehensive immigration reform, hit back at his critics this morning and issued the following statement:

*"In a week when President Bush was unable to convince House Republicans to pass his budget, was unable to convince Senate Republicans to pass immigration reform, and was caught misleading the American people about national security matters yet again, it's no surprise that he would take a page from the Karl Rove playbook and blame Democrats to distract from his own troubles. The fact is, President Bush and Senator Frist are flat out wrong about what happened to the immigration bill. Democrats are committed to comprehensive, bipartisan immigration reform. That's why we voted twice last week in favor of it. It was President Bush and Republicans in Congress who lacked the backbone to stand up to the extreme right-wing of their party, filibustered reform twice in two days, and put partisan politics ahead of border security and immigration reform."*

# posted by Greg Siskind @ 1:13 PM

## **SPECTOR "OPTIMISTIC" DEAL WILL BE REVIVED**

Senator Arlen Specter (R-PA), chair of the Senate Judiciary Committee and one of the Senate leaders pushing for an immigration deal, is optimistic that a bill will pass when the the Easter recess ends mid-month.

Specter was interviewed on "Fox News Sunday" and **talked about the prospects** for the bill:

*"I think tempers will cool over a two-week period. And also, there are going to be some expressions by many people very unhappy with the Senate not passing a bill and very unhappy with the House bill" that would make being an illegal immigrant a felony.*

*"There's a real risk of significant political fallout here, and members of the Senate think about that, believe it or not."*

The **Associated Press** is reporting, however, that House leaders are still not being specific about just how far they will go if the Senate sends a bill to them.

"Until we begin to secure our borders and enforce our immigration laws, I don't think we ought to be talking about a more comprehensive approach," said House Majority Leader John Boehner, R-Ohio, on ABC's "This Week."  
# posted by Greg Siskind @ 10:57 AM

**Sunday, April 09, 2006**

## **MASSIVE PRO-IMMIGRANT PROTESTS HELD AROUND COUNTRY**

Hundreds of thousands of people protested to support comprehensive immigration reform in all parts of the country today. And this is a preview of tomorrow's major protests when millions are expected to turn out.

In Dallas, as many as 500,000 people took to the streets to show their support.

But while Texas had the largest rally of the day, large crowds showed up in many other cities. 180,000 turned out in Washington, D.C. 30,000 turned out in Minnesota, Iowa. 50,000 marched in San Diego. And similar scenes played out in New Mexico, Minnesota, Michigan, Iowa, Alabama, Utah, Oregon, Idaho and Mississippi.

Rallies are set in 136 cities around the country tomorrow and more than 2 million people are expected to participate. And the rallies will start to include representative of other immigrant groups.

In San Francisco, the Chinese community will parade out of Chinatown. Haitians will turn out in Miami. And Africans will turn out in another protest in Washington.

Want to show your support and attend one of the April 10th rallies? Go to [http://www.cccaction.org/cccaction/april\\_10\\_local\\_events.html](http://www.cccaction.org/cccaction/april_10_local_events.html)

# posted by Greg Siskind @ 10:42 PM

## **WHO BLEW IT?**

If you listened to President Bush in today's radio address and Senator Frist during yesterday's floor statements, Harry Reid and Democratic allies never really wanted to get a bill passed and used the amendment dispute as a way to keep the bill from getting to a vote. Why? Because they didn't want to give the Republicans a victory on this issue and are hoping to make immigration an issue in the November election.

Listen to Reid and the fault all lies with the Republicans who are intent on figuring out a way to gut the Hegel-Martinez compromise either via amendments or in the conference committee. The Democrats are just trying to keep the Republicans honest.

Whose right? Well, there certainly is plenty of fingerpointing. Marc Cooper, the pro-immigration liberal columnist for *the Nation* actually **has some not so kind words** for Senator Reid:

*What we didn't anticipate it is what appears to be the **ignominious** role played by Democratic Minority Leader **Harry Reid**. I had written, as recently as Thursday, that it looked like his GOP counter-part, **Bill Frist**, was actually the guy who was going to scuttle what has been the five-year long effort to enact comprehensive reform. But then, the whole story took yet another unexpected turn. An authentic bi-partisan majority was reached in support of an imperfect but significant compromise: a bill that would liberalize and expand*

*legalized immigration as well as grant legal status to six or seven million "illegals" already living here.*

*And then, on Friday, defeat snatched from victory. The whole deal collapses. And while the reasons are myriad, and while the back-room bickering may never be fully disclosed, there's a whole lot of anecdotal evidence that Harry Reid **intentionally blocked** the deal. There is an argument to be made that he did the right thing i.e. to "protect" the core of the bill. There's a much stronger argument that Reid simply didn't want to hand a legislative victory to an unpopular Majority Leader and his equally unpopular President. And to hell with the 7 million immigrants who might have benefitted.*

*This is not some right-wing conspiracy theory. You can find it in Friday's daily press briefing (not yet online) from the non-partisan but certainly Democrat-friendly and liberal leaning [National Immigration Forum](#).*

According to a [behind-the-scenes story](#) in Time Magazine, the Democrats are hardly united behind Reid. Senator Kennedy, according to Time, is furious at the maneuver. On the other hand, Time indicates that Reid's fears regarding what would happen in the conference committee are not trivial. If the bill gets gutted in the conference committee and then comes back to the Senate for a vote, it might be "political suicide" for the Democrats to vote against it.

And there is some reason to believe this is true. Look what happened in the House in December. A number of Democrats in vulnerable, right-leaning seats. My own Congressman is the perfect example. He's not anti-immigrant. But he's a Democrat now running for Senate in Tennessee, one of the so-called "red states." He would vote for a guest worker program if it were part of an immigration bill. But there's no way he would vote against a border enforcement bill in the middle of a campaign.

Personally, I think the amendments argument is not that strong. The Republicans seem willing to limit the number of amendments to a reasonable number like twenty so the "filibuster by amendment" argument is one that I don't buy. The Democrats also have the votes to stop the worst of the amendments or at least alter them so they don't destroy the substance of the deal. But I do think the conference committee fears are a real issue. So getting some assurance that the Senators on the conference will walk away from the table if the bill is being destroyed is key. I'll leave it to the politicians to figure out how to get such a guarantee.

**Friday, April 07, 2006**

## **SISKIND SUSSER COMMENTS ON DOL REGULATION**

Siskind Susser has submitted it's comment on the horrendous proposed labor certification regulation. You can find the proposed regulation on our web site [here](#) and you can see our comment [here](#).

The rule would end legitimate substitutions in labor certification cases, impose an unreasonable deadline to file an I-140 after approval of a labor certification and limit the ability of immigrants to hire their own attorneys.

We encourage all of our readers to consider commenting. You can find instructions on commenting in the regulation linked above.

# posted by Greg Siskind @ 6:24 PM

## H-2B CAP HIT FOR SECOND HALF OF FY 2006

USCIS has announced that it has reached the H-2B cap for the second half of FY 2006 and will only process applications received before April 4, 2006. Only 33,000 applications will be processed for each six month period.

The announcement reminds the public that the USCIS will continue to process petitions filed to

- Extend the stay of a current H-2B worker in the United States;
- Change the terms of employment for current H-2B workers and extend their stay;
- Allow current H-2B workers to change or add employers and extend their stay; or
- Request eligible H-2B "returning workers."

# posted by Greg Siskind @ 5:21 PM

## NOT ALL PRO-IMMIGRATION GROUPS SUPPORT HEGEL-MARTINEZ

The New York Times made an interesting observation this morning that the chances of a bill being approved with the two week Easter break will be harder because pro- and anti-immigration groups will have more of a chance to see the details of the compromise plan and find reasons not to be happy.

One such group is the AFL-CIO. By the way, some of you probably think the AFL-CIO is on the anti- side. Far from it. They are very interested in this bill passing because a) they know the future of their union lies with immigrants embracing organized labor and b) legalizing millions of undocumented workers will have the effect of empowering these workers and driving up wages for everyone. The **AFL-CIO is against** the Hegel-Martinez compromise because they are against dividing up undocumented workers into three groups as we've described on this blog because they feel *all* workers should be put on the path to citizenship.

For the record, all workers would have an opportunity to pursue citizenship under Hegel-Martinez. But some would have an easier, faster path than others.

# posted by Greg Siskind @ 4:29 PM

## SENATOR MARTINEZ STRIKES OPTIMISTIC NOTE

Senator Martinez briefly addressed the Senate this afternoon and indicated that the Senate would immediately resume its work on immigration when it returns later this month. Senator Specter indicated as well that the Senator Judiciary Committee will also resume work on the bill upon return, possible to deal with a number of the amendments at the committee level.

# posted by Greg Siskind @ 1:35 PM

## CLOTURE MOTION ON FRIST BILL FAILS

This is good news, though not really unexpected and certainly doesn't counter the bad news that the Hegel-Martinez bill will not move at this point. The Frist bill is the Senate counterpart to the horrible HR 4337 House immigration enforcement bill. The Frist bill has no guest worker program and is universally disliked by pro-immigration groups. The attempt to force a vote on this bill also fails along party lines with fewer than the needed 60 votes to pass.

# posted by Greg Siskind @ 9:48 AM

## **CLOTURE VOTE FAILS; PROSPECTS FOR IMMIGRATION BILL UNCERTAIN**

An attempt to force a vote on the Senate immigration bill with the new Hegel-Martinez language has failed largely on party lines (38 yeas and 60 no votes). Even Senators Hegel and Martinez voted with their party against the bill. What's happening? Senators are not voting on whether they like or do not like the bill as it now stands. The fight is over how amendments will be offered and how many. Republicans are arguing that they are entitled to offer amendments and the Democrats are only trying to play politics by making it look like they killed the immigration bill. Democrats are arguing that the Republicans have several hundred amendments that would effectively be a "filibuster" of the bill and that amendments will be used as a back door way to kill the bill by never letting the main bill come up for a vote. They also argue that most of the amendments are designed to kill the delicately crafted compromise language that everyone was hailing yesterday.

# posted by Greg Siskind @ 9:13 AM

## **SPECTER: BILL WILL HAVE TO BE TAKEN UP AFTER EASTER RECESS**

Senator Arlen Specter (R-PA) is saying that they will work over the Easter recess to resolve questions on the rules for debate of the immigration bill that will allow the measure to proceed to finishing work on the immigration bill. The statement from the Senate floor effectively means that the bill will not be finished today as Senate leaders were predicting yesterday.

# posted by Greg Siskind @ 7:50 AM

**Thursday, April 06, 2006**

## **SENATE TO ADJOURN FOR EVENING WITHOUT A VOTE**

Here's the play by play on what has just happened:

Senator Frist is on the Senate floor now announcing they will adjourn for the evening. Frist is complaining that the Democrats have acted as obstructionists by keeping 396 amendments from coming up for a vote. He is saying that the Democrats "reversed course" after agreeing to the compromise language. Frist says he would like to get at least 20 amendments packaged for a vote as well as a vote on the underlying bill, but that this was turned down by the Democrats.

Frist says that an up or down vote on the compromise bill is unlikely to be approved in the morning. He believes little progress will be made tomorrow based on where things stand at this point. Frist is saying that he'll bring up a vote on his bill if the Democrats won't come to an agreement.

Now Minority Leader Reid (D-NV) is up. He is saying that 20 amendments is a backdoor way to filibuster the compromise bill. He also wanted an agreement on who the conferees would be (Reid wants all the Judiciary Committee members to represent the Senate).

Frist is saying he will not support a cloture motion and urge Republicans to vote against a cloture motion unless agreement is made ahead of time on amendment voting.

Now Frist and Reid are discussing a possible compromise to allow some amendments to be considered tomorrow with 30 minutes of debate for each amendment. Apparently, we're back to negotiating.

# posted by Greg Siskind @ 8:54 PM

## WHAT THE HEGEL-MARTINEZ COMPROMISE ACTUALLY DOES

Everything on the news is providing only a vague analysis of what the changes since yesterday actually are. So after several hours of analyzing the Hegel-Martinez compromise language, I have prepared a [seven page summary](#) of the changes. The only thing I have not done is summarize the Alexander naturalization language which allows the naturalization residency period in some cases to be reduced from five years to four.

If you want to read the whole 525 page bill including the compromise language, click [here](#). Note that language for any changes made today is not included. The main item I know about that may change is a potential drop in the number of allocated H-2C visas.

# posted by Greg Siskind @ 8:43 PM

## DEAL STILL NOT DONE IN SENATE

Despite basic agreement on the terms of compromises in the Senate bill, no agreement has been reached on consideration of amendments, the same problem that was threatening the bill yesterday. The Senate is still in session this evening and it is still not clear when or how the compromise bill will be considered (i.e. with or without additional amendments).

# posted by Greg Siskind @ 7:46 PM

## OUR TORONTO ATTORNEY QUOTED IN NATIONAL POST

Attorney Sergio Karas in our Toronto office was quoted in a front-page article in the [National Post](#) on April 6, 2006. Click [here](#) to read it.

# posted by Greg Siskind @ 4:25 PM

## SISKIND SUSSER'S TORONTO LAWYER DELIVERS CITIZENSHIP CEREMONY ADDRESS

Attorney Sergio Karas in our Toronto office delivered an address at a Special Citizenship Ceremony held at the Ontario Bar Association on occasion of Law Day. Click [here](#) to read more about the ceremony.

# posted by Greg Siskind @ 4:24 PM

## THE TEXT OF THE SENATE BILL

We have uploaded the [text of the latest version](#) of the Senate bill on our web site. The bill has expanded from 478 to 525 pages. We are now analyzing the bill to see what has changed and we hope to have a summary available shortly. Note also that there are still changes being negotiated and some changes made today will not be in this version which was last updated last night.

# posted by Greg Siskind @ 3:53 PM

## SENATE DEAL REACHED BUT LANGUAGE STILL BEING DRAFTED

Key Senators from both the Republican and Democratic Parties held a press conference today hailing a compromise that will allow a bill to pass that House as early as this evening. Amendments can be added only today and then a final vote including the Hegel-Martinez language will be voted after a cloture motion to stop debate likely passes.

A transcript of the Senate press conference can be found at the [Washington Post web site](#).

The compromise will make the following changes:

A - Those in the US five years or more would be eligible for the Kennedy-McCain program in the current version of the Specter bill. Seven to eight million people are thought to be in this group.

B- Those in the US less than five years but more than two would be able to participate if they go to one of twenty ports of entry at a border, exit the US briefly, and then would be readmitted to the US (the so-called "touch back" approach). Approximately three million immigrants fall into this group. Only the head of the household will need to leave the country. Only 425,000 green cards will be available each year to nationals in this category so the green card process will be lengthened by approximately two to four years beyond those in the first category.

C - Those in the US less than two years would have to leave the country and pursue residency from outside the US (though the current bill version only allows participation by people in who entered after January 4, 2004, so this may not really be much of a change). About one to two million people are thought to be in this category.

There may be other changes, but no language is yet available. We will report on the language as it becomes available.

For a summary of the rest of the bill (except for the changes noted above), see our [article](#) on the subject.

# posted by Greg Siskind @ 2:46 PM

## KEY DEMOCRAT SAYS DEAL CLOSE

Richard Durbin (D-IL), a member of the Judiciary Committee and a key proponent of the Kennedy-McCain language in the Senate immigration bill, [told Chicago Sun-Times columnist Lynn Sweet](#) this morning

``I think that we are close, very close to a bipartisan agreement," said Sen. **Dick Durbin** (D-Ill.), spending the morning in closed door negotiations first in a meeting just with Democrats and then another with Republicans.

More details are emerging as well on the Hege-Martinez language. Only heads of families in the two to five year group would need to process at a border port of entry. Also, the path to citizenship would be lengthened by two to three years.

Apparently, the 400,000 H-2C visas in the bill also would be reduced. No word yet on the new number.

# posted by Greg Siskind @ 11:02 AM

## CONSERVATIVE COLUMNIST HAS HARSH LANGUAGE FOR HOUSE IMMIGRATION CAUCUS MEMBERS

David Brooks, the conservative NY Times columnist used extraordinarily blunt language [this morning](#) (subscription required) to criticize House Republicans who are opposing an immigration deal which would grant legal status to millions of undocumented immigrants in the country.

*I had a horrifying experience in the House of Representatives last week. The House Immigration Caucus held a press conference so members could compete to see who was the biggest blithering idiot in the group.*

*"Anybody who votes for an amnesty bill deserves to be branded with a scarlet letter, 'A for Amnesty!' " one aspiring idiot thundered. There's "a foul odor that's coming out of the U.S.*

*Senate!" bellowed Representative Dana Rohrabacher of California, who then went on to win the prize by suggesting that instead of using illegal aliens to harvest crops, we force felons to do it. "I say, Let the prisoners pick the fruits!"*

*Here was a seemingly mentally competent adult recommending that we force a largely minority population to go out in the fields and pick lettuce and cotton. You wanted to hit him over the head and scream: Is this ringing any bells, Representative Rohrabacher? Are we repealing the Emancipation Proclamation, too?*

Brooks, who has been covering the immigration bill in the Senate, noted that the Hegel-Martinez language would likely bring along 15 or so Republicans who would not otherwise support the Specter bill. That would be enough to push through an immigration bill with more than 70 votes, giving the measure much needed momentum as it moves to the House.

# posted by Greg Siskind @ 10:39 AM

## **REID CLOTURE MOTION FAILS, BUT NOT LIKELY TO AFFECT COMPROMISE PLAN**

Senator Reid decided to press forward with a cloture vote after all. And, as predicted, it failed (39 to 60) to pass. However, because a compromise was reached, but earlier predictions that a failure to win on the vote would kill the immigration deal have not proven accurate. That's because compromise language appears to be close to approval by all of the major players. Senator Reid congratulated Senators Hegel and Martinez on their efforts and predicted that a deal would be reached (with the caveat that the language still needed to be tweaked).

# posted by Greg Siskind @ 9:59 AM

## **SENATE BILL COULD BE PASSED AS EARLY AS TONIGHT**

The [New York Times](#) is reporting that the Senate could vote as early as tonight on the compromise immigration bill. The paper is reporting that Senator Frist made the statement in an interview on CNN this morning.

# posted by Greg Siskind @ 8:54 AM

## **REID CLOTURE VOTE APPEARS TO BE SCRAPPED INDICATING COMPROMISE REACHED**

Senator Frist just announced on the Senate floor that he did not believe a cloture vote as called by Senator Reid would actually happen. Presumably this is because a compromise has been reached that will allow the Hegel-Martinez strategy described here last night to get a vote instead. It is not clear what is the status of amendments that have yet to be introduced and debated as well as the status of those amendments already queued up for a vote (particularly the controversial Kyl poison pill amendment).

The [New York Times](#) is reporting this morning that a number of pro-immigration organizations as well as business groups are throwing their support behind the new language. One group named in the article as now being supportive of the new language and optimistic about the outcome is the [National Immigration Forum](#).

# posted by Greg Siskind @ 8:37 AM

**Wednesday, April 05, 2006**

## **DETAILS EMERGING ON HEGEL-MARTINEZ COMPROMISE**

As we mentioned earlier today, Republican pro-immigration moderates have been working on a proposal designed to draw enough Republicans to overcome filibuster threats. The plan would place undocumented immigrants into three categories:

A - Those in the US five years or more would be eligible for the Kennedy-McCain program in the current version of the Specter bill. Seven to eight million people are thought to be in this group.

B- Those in the US less than five years but more than two would be able to participate if they go to one of twenty ports of entry at a border, exit the US briefly, and then would be readmitted to the US (the so-called "touch back" approach). Approximately three million immigrants fall into this group.

C - Those in the US less than two years would have to leave the country and pursue residency from outside the US (though the current bill version only allows participation by people in who entered after January 4, 2004, so this may not really be much of a change). About one to two million people are thought to be in this category.

The Hegel-Martinez compromise will get a vote on Friday. It appears to also have the support of Senator Frist, Senator John McCain, and Senator Lindsay Graham. Graham and McCain are both co-sponsors of the legalization provisions in the Specter bill.

Minority Leader Harry Reid (D-NV) was encouraged by the offer, but declined to endorse the proposal until he had a chance to review the specifics of the offer.

# posted by Greg Siskind @ 11:25 PM

## **FRIST: COMPROMISE AMENDMENT TO BE INTRODUCED**

Senator Frist and Senator Reid are now announcing on the Senate floor that a compromise amendment will be introduced tomorrow by Senators Chuck Hegel (R-NE) and Mel Martinez (R-FL). There will be a cloture vote in the morning on the Specter bill. Senator Frist said he believes that will likely fail. Frist indicated that Hegel-Martinez compromise has already been negotiated. It is not clear that this was a compromise just amongst Republicans or that backers of the Kennedy-McCain bill have agreed. We will report on details as they become available.

# posted by Greg Siskind @ 8:28 PM

## **BUSH HOLDS PRESS CONFERENCE URGING SENATORS TO WORK THROUGH DIFFERENCES ON IMMIGRATION BILL**

President Bush met with reporters on the White House lawn this morning and made the following [statement](#):

"The United States Senate is debating a very vital issue for our country, and that is immigration reform. I urge the senators to continue to work toward getting a comprehensive bill; a bill that will help us secure our borders; a bill that will cause the people in the interior of this country to recognize and enforce the law; and a bill that will include a guest worker provision that will enable us to more secure the border, will recognize that there are people here working hard for jobs Americans won't do, and a guest worker provision that is not amnesty, one that provides for automatic citizenship.

This is a vital debate. I thank the members who are working hard to get a bill done. I strongly urge them to come to a conclusion as quickly as possible and pass a comprehensive bill.

Thank you all very much."

# posted by Greg Siskind @ 4:28 PM

## **DEMOCRATS, REPUBLICANS NEGOTIATING, BUT DEAL APPEARS**



## ELUSIVE

Supporters of the Kennedy-McCain legalization language and opponents in the Republican Party met this morning to discuss a potential compromise to break an impasse over the shape of a legalization program for the millions of undocumented immigrants in the country. No significant progress has been reported, though the fact that negotiations appear to be taking place are encouraging.

Senator McCain, obviously a key figure in the debate, criticized the Democrats for delaying a vote on the Kyl amendment. The impact of his taking this position publicly is not clear.

One wild card is what, if any role, the White House is taking in the debate. The White House is said to be working behind the scenes to keep the Senate moving on an immigration bill.

# posted by Greg Siskind @ 12:55 PM

## KYL AMENDMENT WOULD REMOVE ESTIMATED 1,000,000 PEOPLE FROM ELIGIBILITY FOR LEGALIZATION

The Kyl Amendment that has become the focal point for the current impasse in the Senate would exclude criminal aliens. Pro-Immigration Senators don't have a problem with that provision. Where they take issue is a "poison pill" provision in the amendment that would exclude anyone who has been subject to expedited removal or removal in an immigration court. The expedited removal group is the largest. According to an interview in the [San Francisco Chronicle](#), Frank Sharry, director of the National Immigration Forum, estimates that 1,000,000 of the 11 to 12 million undocumented immigrants in the US would be removed from eligibility under the provision.

# posted by Greg Siskind @ 12:09 PM

## SENATE STILL HUNG UP ON THE KYL AMENDMENT

The Senate has still not agreed on proceeding with voting on amendments because of disagreement over an amendment offered by Senator Jon Kyl (R-AZ) that would bar criminals, those subject to deportation orders and those who overstayed visa waiver I-94ws from participating in guest worker programs. The Democrats are refusing to take up the amendment unless changes are made to the language and Republicans are refusing to make changes and to take up additional amendments unless the Kyl amendment gets a vote. Senator Frist has given until the end of the weekend to get to a floor vote on the bill and it is not clear whether the Senate will be able to meet the deadline without resolving this impasse.

# posted by Greg Siskind @ 10:21 AM

**Tuesday, April 04, 2006**

## PRINCETON ECONOMIST CHALLENGES NOTION THAT IMMIGRANTS PUSH DOWN WAGES

Alan Krueger, an economist at Princeton University has [released a paper](#) arguing that immigrants do not depress wages for US workers. Among the empirical examples cited is the influx of Cuban refugees during the Mariel boatlift in the late 1970s. The refugees were largely unskilled and swelled the local population by 7% virtually overnight. Wages should have declined if the anti-immigrant conventional wisdom were to be believed. But they did not. Professor Krueger argues that the key is to protect working conditions to ensure exploitation is kept to a minimum.

# posted by Greg Siskind @ 10:50 PM

## MORE DETAILS EMERGING ON PROPOSED LEGALIZATION COMPROMISE

While Republicans and Democrats held a highly contentious debate on the Senate floor today, Republicans were meeting behind closed doors to work further on a compromise plan on the legalization provisions in the Specter bill. An emerging counter-proposal would create two classes of applicants. Those here five years or more (roughly 60% of the estimated 11,000,000 undocumented immigrants in the country), would legalize under the Kennedy-McCain plan (pay a penalty, get in the back of the line, pass an English and civics test, undergo background checks, pay back taxes, etc.). Those here less than five years would have to do the same things, but they would also have to wait longer to apply for permanent residency, travel to a port of entry at a US border to file the paperwork and have to undertake some sort of community service or have a probation status.

The proposal met with a skeptical response from pro-immigration advocates and from Senator Kennedy himself. But if the bill faces prospects of failure, would pro-immigration groups be in a more compromising mood?

Democrats will attempt to force Republicans to go on the record tomorrow morning when they force a cloture vote. If 60 Senators vote to end debate on the Specter bill, then the threat of a filibuster will go away and the Judiciary Committee bill would likely move to passage. If, however, there are not 60 votes, then Democrats will have to decide whether to compromise or allow the bill to die.

At the end of debate today, Minority Leader Reid (D-NV), promised Senator Specter that he would allow several amendments to come up for a vote beginning tomorrow morning.

# posted by Greg Siskind @ 9:56 PM

## TIME MAGAZINE POLL SHOWS STRONG SUPPORT FOR GUEST WORKER PLAN

Another day, [another poll](#) on immigration. The [National Immigration Forum](#) gives the quick summary of the results: About **8-in-10 (79%) favor allowing illegal immigrants to register as "guest-workers."**

- About **8-in-10 (78%) favor allowing illegal immigrants in the U.S. citizenship if they learn English, have a job and pay taxes.**
- About 8-in-10 (82%) say the U.S. is not doing enough to keep "illegals," from entering the country.
- About 7-in-10 (71%) favor providing and enforcing penalties for employers convicted of hiring illegal immigrants.
- A majority (62%) favor stopping illegal immigrants from entering the U.S. "by whatever steps necessary."
- A minority (47%) support deporting all illegal immigrants.

# posted by Greg Siskind @ 5:00 PM

## KYL AMENDMENT ON BARRING CRIMINALS FROM GUEST WORKER PROGRAM BEING DEBATED

A controversial amendment by Senator Kyl (R-AZ) to make all criminals ineligible for guest worker status is currently being debated. It is not clear that the bill really changes anything since most crimes would bar someone from participating under current law and under the language of the

Kennedy-McCain bill. But it's also not clear what the Democrats mean when they complain that the amendment is a backdoor attempt to attack the Kennedy-McCain provisions. An attempt to table the amendment is about to be defeated and probably unanimously. That should pave the way, hopefully, for consideration of some of the amendments already introduced.

# posted by Greg Siskind @ 4:43 PM

## **MORE HINTS OF COMPROMISING MOOD IN HOUSE**

Congressman James Sensenbrenner, the sponsor of H.R. 4337, the immigration enforcement bill that passed the US House of Representatives in December, sent the letter below to colleagues in the House of Representatives. The letter discusses the attitudes of business owners to immigration reform. The most interesting item is at that end where Sensenbrenner includes information that a sizable majority of employers favor a guest worker program, albeit one that is temporary in nature. Nevertheless, as we read tea leaves regarding where the House may be headed, the letter is interesting because it seems to indicate that a guest worker program is something that might be under consideration.

April 4, 2006

Dear Colleague:

The National Federation of Independent Business (NFIB) recently released the results of a scientific survey it conducted to determine the views of the small businesses it represents on the subject of immigration. The results of this survey demonstrate that small business owners - like most Americans - believe that our immigration laws must be vigorously enforced. The most significant findings are as follows:

- When asked whether an electronic employment eligibility verification system would be a burden, 76% of small businesses said it would be a "minimal burden" or "not a burden."
- Seventy-eight percent (78%) of employers surveyed support increased penalties for employers who knowingly hire illegal aliens.
- Over 90% of small-business owners believe illegal immigration is a problem, with 70% calling it a "serious" or "very serious" problem. Eighty-six percent (86%) say that immigration should be a "very high" or "high" priority for Congress.
- The primary reason small business owners see illegal immigration as a problem is the cost to taxpayers for illegal immigrants (47%). Eighty-six percent (86%) of small business owners would deny illegal immigrants access to public support.
- A plurality of small-business owners (43%) say that too many legal immigrants are admitted each year, with 38% saying the number is about right.
- About half of those surveyed said there should be no amnesty under any circumstances, but about 44% would support it for immigrants who are employed but not dependent on government assistance. Well over half (65%) do not favor offering amnesty even if a person can prove that they have lived in the U.S. 3 years or more.
- Sixty-two percent (62%) of respondents support a guest worker program that would allow immigrants to work for a specified period of time and return home.

Several findings are significant with regard to H.R. 4437, passed by the House in December 2005. First, small business owners overwhelmingly support tougher penalties for employers who hire illegal aliens. Second, employers - particularly small business owners - do not feel that an electronic employment eligibility program such as contained in H.R. 4437 would be burdensome.

Sincerely,

F. JAMES SENSENBRENNER, JR.

Chairman  
House Judiciary Committee

# posted by Greg Siskind @ 4:09 PM

## **REPUBLICANS THREATENING FILIBUSTER OF JUDICIARY COMMITTEE IMMIGRATION BILL**

The Associated Press is reporting that Republican opponents of the Kennedy-McCain legalization provisions of the Senate Judiciary Committee's immigration bill are threatening to filibuster the bill and that Senator Specter does not have the 60 votes needed to overcome the filibuster. Behind the scenes, Republicans have been pushing a compromise plan along the lines of what I described in my post from last night - the so-called "roots" approach where those in the US longer than five years would be put on an easier path to citizenship than those here less than that amount of time. The Senate seems to have reached an impasse and no amendments are being voted on at this point.

# posted by Greg Siskind @ 3:06 PM

Attorney Greg Siskind wrote a column in the April 1st issue of the [Indus Business Journal](#) explaining the details of the EB-5 Immigrant Investor Visa. Click [here](#) to read it.

# posted by Greg Siskind @ 1:23 PM

**Monday, April 03, 2006**

## **AP: GOP LEADERS MAY PUSH FOR A LESS GENEROUS LEGALIZATION PLAN**

According to a [report from Associated Press](#), GOP leaders met today on a plan to push through a different version of a legalization plan than the Kennedy-McCain version passed by the Senate Judiciary Committee last week. According to the account, Senator Frist met with Senators Cornyn and Specter about a plan to allow those in the US for five years to pursue a plan along the lines of the Kennedy-McCain plan and those less than five years would be able to work on a non-green card track in a plan akin to the Cornyn-Kyl bill. The plan has been pushed by Republican moderate Chuck Hegel of Nebraska. Hegel is set to brief Republicans Tuesday morning. The AP report also notes that Senator Frist may try and get a vote on the bill as early as the end of this week.

# posted by Greg Siskind @ 10:36 PM

## **15,000 IMMIGRANTS RALLY IN NASHVILLE**

When I started practicing immigration law in Nashville 16 years ago, I was told there was not enough of an immigrant community in Tennessee to support a full time immigration lawyer. I disagreed and went ahead and started my practice any way. But those who were doubters then probably looked at the mass of humanity in downtown Nashville this past weekend and are thinking differently about the size and importance of the Hispanic community in this typical Southern city. Kudos to the Tennessee Immigration Rights Coalition and, in particular to my friend Executive Director David Lubell.

# posted by Greg Siskind @ 9:25 PM

## ALEXANDER AMENDMENT WOULD CUT NATURALIZATION RESIDENCY REQUIREMENT TO FOUR YEARS FOR SOME

One of the first votes has just taken place on an amendment offered by Senator Lamar Alexander (R-TN). Alexander's amendment would prescribe the binding oath or affirmation of renunciation and allegiance required to be naturalized as a citizen of the United States, encourage and support the efforts of prospective citizens of the United States to become citizens (including providing financial assistance to take English classes and offering citizenship a year early to those proficient in English). The measure passed 91 to 1.

Another amendment offered by Senator Jeff Bingaman (D-NM) to provide financial aid to local law enforcement officials along the Nation's borders passed just before Alexander's amendment by a vote of 84 to 6.

# posted by Greg Siskind @ 5:15 PM

## UNIVERSITIES OPPOSE MEASURE TO END H-1B CAP EXEMPTIONS

NAFSA: The Association of International Educators, is urging its members to call their Senator to oppose any attempts to pass an amendment to the immigration bill which would eliminate the higher education and research institution H-1B cap exemptions. Senator Charles Grassley (R-Iowa) attempted to get the amendment added in the Judiciary Committee markup, but failed. He may try and get the amendment added on the Senate floor during this week's debate. NAFSA is [providing sample letter language](#) to help as well as information on how to reach your Senator.

# posted by Greg Siskind @ 11:45 AM

## NEW POLLS MEASURE OFFER NEW INSIGHTS TO FEELINGS ON IMMIGRATION

Two more immigration-related polls are out today. [New American Media has a poll](#) of 800 immigrants to the US. 60% are US citizens and the remainder are green card holders. The poll found the following:

1. The **immigrant community** in the United States is **alarmed** regarding the tone and substance of the current political debate on immigration policy. Majorities of legal immigrants from Latin America, Asia, Africa and Europe feel that "the anti-immigrant sentiment is growing in the United States."
2. **Undocumented immigrants have a positive image** among legal immigrants from throughout the world.
3. The **major political "actors"** in the immigration debate in Washington, D.C. **receive fairly low ratings** from legal immigrants on the job they have done *so far* on the immigration issue. Only about one-fifth of those interviewed gave the Republican Party a positive rating on the way it has handled the debate on this issue. The U.S. Congress, President George W. Bush, and the Democratic Party do not fare much better, with only about one-third of legal immigrants giving them a positive rating.
4. **The McCain/Kennedy immigration bill** has **majority support** among legal immigrants in the United States.

For those who don't think these findings mean much, consider that 42 million Americans are

immigrants and most of them are voting citizens.

Another [poll](#) has been released by the [National Immigration Forum](#). What makes this poll different from others is it provided summaries of the Cornyn-Kyl guest worker plan (which allows undocumented workers to get legal status for six years and then they must return home) and the Kennedy-McCain plan (which legalizes the undocumented and provides a path to US citizenship). The overwhelming majority (71%) of respondents preferred the Kennedy-McCain plan.

The poll also is consistent with other polls showing illegal immigration is only listed as the most important issue by a small percentage of the public (in this case 8%). This is further evidence that immigration is not likely to be an effective wedge issue for those in either party who think opposing a guest worker program will give them a political edge.

# posted by Greg Siskind @ 11:18 AM

## H-1B APRIL FOOLS HOAX DEBUNKED

Don't believe rumors that the H-1B cap has been hit for the 2007 fiscal year. A phony USCIS press release has been circulating stating that the H-1B cap was hit on April 1st, the first day applications were being accepted. According to [Bender's Immigration Bulletin](#), the press release is a doctored version of a January press release. But the date of the press release should have given a hint of its validity - April 1st (that's April Fools Day for those of you from places in the world not familiar with this day of practical jokes).

Update: The USCIS just released the following announcement on the spoof:

### **USCIS WARNS OF SPOOF H-1B Release**

*Employers should continue to file FY2007 petitions*

*Washington, D.C. - USCIS became aware today of the circulation of a bogus release indicating that USCIS has received enough petitions to meet the congressionally mandated H-1B cap for FY 2007. The release further relays that the H-1B exemption limit for the first 20,000 foreign workers with a U.S.-earned master's or higher degree was also met. This release **is not accurate** and **was not issued** by U.S. Citizenship and Immigration Services.*

*To date, USCIS has not received enough petitions to close either the congressionally mandated H-1B cap for FY 2007 or the 20,000 worker exemption limit. USCIS is committed to ensuring that employers have accurate and timely H-1B information and will provide an update about the latest cap numbers later this week.*

# posted by Greg Siskind @ 10:48 AM

## H-1B QUEUE REOPENS; NEW FILING PROCEDURES IN PLACE

Just a reminder to readers that you can now begin filing H-1B petitions can now be filed for fiscal year 2007 start dates. That means that if you are requesting a start date after October 1, 2006, you can now file for an H-1B visa. We expect visas to run out even earlier this year than last year (applications were used up by August 2005 for the federal year which ran October 2005 to September 2006). Demand could be alleviated somewhat by the availability of 20,000 visas for US graduate program degree holders. But the economy is strong and there is a lot of pent up demand from last year. Also note **an important change** on filings beginning April 1st - all I-129 applications must now be filed at the Vermont Service Center. Some of the cases will be diverted

to the California Service Center after filing in Vermont. I-140 green card cases will all be filed at the Nebraska Service Center and some of those cases will be forwarded to the Texas Service Center. The USCIS press release can be found on their web site [here](#).

# posted by Greg Siskind @ 10:03 AM

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## 11. State Department Visa Bulletin

### IMMIGRANT NUMBERS FOR MAY 2006

#### A. STATUTORY NUMBERS

1. This bulletin summarizes the availability of immigrant numbers during May. Consular officers are required to report to the Department of State documentarily qualified applicants for numerically limited visas; the Bureau of Citizenship and Immigration Services in the Department of Homeland Security reports applicants for adjustment of status. Allocations were made, to the extent possible under the numerical limitations, for the demand received by April 5th in the chronological order of the reported priority dates. If the demand could not be satisfied within the statutory or regulatory limits, the category or foreign state in which demand was excessive was deemed oversubscribed. The cut-off date for an oversubscribed category is the priority date of the first applicant who could not be reached within the numerical limits. Only applicants who have a priority date earlier than the cut-off date may be allotted a number. Immediately that it becomes necessary during the monthly allocation process to retrogress a cut-off date, supplemental requests for numbers will be honored only if the priority date falls within the new cut-off date.

2. Section 201 of the Immigration and Nationality Act (INA) sets an annual minimum family-sponsored preference limit of 226,000. The worldwide level for annual employment-based preference immigrants is at least 140,000. Section 202 prescribes that the per-country limit for preference immigrants is set at 7% of the total annual family-sponsored and employment-based preference limits, i.e., 25,620. The dependent area limit is set at 2%, or 7,320.

3. Section 203 of the INA prescribes preference classes for allotment of immigrant visas as follows:

#### FAMILY-SPONSORED PREFERENCES

**First:** Unmarried Sons and Daughters of Citizens: 23,400 plus any numbers not required for fourth preference.

**Second:** Spouses and Children, and Unmarried Sons and Daughters of Permanent Residents: 114,200, plus the number (if any) by which the worldwide family preference level exceeds 226,000, and any unused first preference numbers:

A. Spouses and Children: 77% of the overall second preference limitation, of which 75% are exempt from the per-country limit;

B. Unmarried Sons and Daughters (21 years of age or older): 23% of the overall second preference limitation.

**Third:** Married Sons and Daughters of Citizens: 23,400, plus any numbers not required by first and second preferences.

**Fourth:** Brothers and Sisters of Adult Citizens: 65,000, plus any numbers not required by first three preferences.

**EMPLOYMENT-BASED PREFERENCES**

**First:** Priority Workers: 28.6% of the worldwide employment-based preference level, plus any numbers not required for fourth and fifth preferences.

**Second:** Members of the Professions Holding Advanced Degrees or Persons of Exceptional Ability: 28.6% of the worldwide employment-based preference level, plus any numbers not required by first preference.

**Third:** Skilled Workers, Professionals, and Other Workers: 28.6% of the worldwide level, plus any numbers not required by first and second preferences, not more than 10,000 of which to "Other Workers".

**Schedule A Workers:** Employment First, Second, and Third preference Schedule A applicants are entitled to up to 50,000 "recaptured" numbers.

**Fourth:** Certain Special Immigrants: 7.1% of the worldwide level.

**Fifth:** Employment Creation: 7.1% of the worldwide level, not less than 3,000 of which reserved for investors in a targeted rural or high-unemployment area, and 3,000 set aside for investors in regional centers by Sec. 610 of P.L. 102-395.

4. INA Section 203(e) provides that family-sponsored and employment-based preference visas be issued to eligible immigrants in the order in which a petition in behalf of each has been filed. Section 203(d) provides that spouses and children of preference immigrants are entitled to the same status, and the same order of consideration, if accompanying or following to join the principal. The visa prorating provisions of Section 202(e) apply to allocations for a foreign state or dependent area when visa demand exceeds the per-country limit. These provisions apply at present to the following oversubscribed chargeability areas: CHINA-mainland born, INDIA, MEXICO, and PHILIPPINES.

5. On the chart below, the listing of a date for any class indicates that the class is oversubscribed (see paragraph 1); "C" means current, i.e., numbers are available for all qualified applicants; and "U" means unavailable, i.e., no numbers are available. (NOTE: Numbers are available only for applicants whose priority date is earlier than the cut-off date listed below.)

	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
<b>Family</b>					
1 <sup>st</sup>	22APR01	22APR01	22APR01	01JAN91	22AUG91
2A*	01MAR02	01MAR02	01MAR02	15JUN99	01MAR02
2B	15JUL96	15JUL96	15JUL96	01SEP91	08JUL96
3 <sup>rd</sup>	22JUL98	22JUL98	22JUL98	01JAN93	01JUL88
4 <sup>th</sup>	01JAN95	01JAN95	01JUN94	15AUG93	15OCT83

\*NOTE: For May, 2A numbers EXEMPT from per-country limit are available to applicants from all countries with priority dates earlier than 15JUN99. 2A numbers SUBJECT to per-country limit are available to applicants chargeable to all countries EXCEPT MEXICO with priority dates beginning 15JUN99 and earlier than 01MAR02. (All 2A numbers provided for MEXICO are exempt from the per-country limit; there are no 2A numbers for MEXICO subject to per-country limit.)

	All	CHINA-	INDIA	MEXICO	PHILIP-PINES
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	<b>Chargeability Areas Except Those Listed</b>	<b>mainland born</b>			
<b>Employment-Based</b>					
1 <sup>st</sup>	C	01JUL04	01JUL05	C	C
2 <sup>nd</sup>	C	01JAN04	01JAN03	C	C
3 <sup>rd</sup>	01MAY01	01MAY01	01MAR01	15APR01	01MAY01
Schedule A Workers	C	C	C	C	C
Other Workers	01OCT00	01OCT00	01OCT00	01OCT00	01OCT00
4 <sup>th</sup>	C	C	C	C	C
Certain Religious Workers	C	C	C	C	C
5 <sup>th</sup>	C	C	C	C	C
Targeted Employment Areas/Regional Centers	C	C	C	C	C

The Department of State has available a recorded message with visa availability information which can be heard at: (area code 202) 663-1541. This recording will be updated in the middle of each month with information on cut-off dates for the following month.

Employment Third Preference Other Workers Category: Section 203(e) of the NACARA, as amended by Section 1(e) of Pub. L. 105 - 139, provides that once the Employment Third Preference Other Worker (EW) cut-off date has reached the priority date of the latest EW petition approved prior to November 19, 1997, the 10,000 EW numbers available for a fiscal year are to be reduced by up to 5,000 annually beginning in the following fiscal year. This reduction is to be made for as long as necessary to offset adjustments under the NACARA program. Since the EW cut-off date reached November 19, 1997 during Fiscal Year 2001, the reduction in the EW annual limit to 5,000 began in Fiscal Year 2002.

## **B. DIVERSITY IMMIGRANT (DV) CATEGORY**

Section 203(c) of the Immigration and Nationality Act provides a maximum of up to 55,000 immigrant visas each fiscal year to permit immigration opportunities for persons from countries other than the principal sources of current immigration to the United States. The Nicaraguan and Central American Relief Act (NACARA) passed by Congress in November 1997 stipulates that beginning with DV-99, and for as long as necessary, up to 5,000 of the 55,000 annually-allocated diversity visas will be made available for use under the NACARA program. **This reduction has resulted in the DV-2006 annual limit being reduced to 50,000.** DV visas are divided among six geographic regions. No one country can receive more than seven percent of the available diversity visas in any one year.

For May, immigrant numbers in the DV category are available to qualified DV-2006 applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off number is shown, visas are available only for applicants with DV regional lottery rank numbers BELOW the specified allocation cut-off number:

<b>Region</b>	<b>All DV Chargeability Areas Except Those Listed</b>		

	<b>Separately</b>		
<b>AFRICA</b>	AF	20,400	Ethiopia 18,950 Nigeria 12,350
<b>ASIA</b>	AS	6,100	
<b>EUROPE</b>	EU	12,850	
<b>NORTH AMERICA (BAHAMAS)</b>	NA	10	
<b>OCEANIA</b>	OC	735	
<b>SOUTH AMERICA, and the CARIBBEAN</b>	SA	1,175	

Entitlement to immigrant status in the DV category lasts only through the end of the fiscal (visa) year for which the applicant is selected in the lottery. The year of entitlement for all applicants registered for the DV-2006 program ends as of September 30, 2006. DV visas may not be issued to DV-2006 applicants after that date. Similarly, spouses and children accompanying or following to join DV-2006 principals are only entitled to derivative DV status until September 30, 2006. DV visa availability through the very end of FY-2006 cannot be taken for granted. Numbers could be exhausted prior to September 30.

**C. ADVANCE NOTIFICATION OF THE DIVERSITY (DV) IMMIGRANT CATEGORY RANK CUT-OFFS WHICH WILL APPLY IN JUNE**

For June, immigrant numbers in the DV category are available to qualified DV-2006 applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off number is shown, visas are available only for applicants with DV regional lottery rank numbers BELOW the specified allocation cut-off number:

<b>Region</b>	<b>All DV Chargeability Areas Except Those Listed Separately</b>		
<b>AFRICA</b>	AF	23,500	Ethiopia 20,400 Nigeria 13,400
<b>ASIA</b>	AS	6,700	
<b>EUROPE</b>	EU	14,200	
<b>NORTH AMERICA (BAHAMAS)</b>	NA	12	
<b>OCEANIA</b>	OC	830	
<b>SOUTH AMERICA, and the CARIBBEAN</b>	SA	1,375	

**D. RETROGRESSION OF FAMILY PREFERENCE CUT-OFF DATES FOR MAY**

For May, it has been necessary to retrogress the cut-off dates for the Mexico and Philippines chargeability areas. This has been done in an effort to hold the issuance levels within the applicable annual numerical limits for the affected categories. The categories which have experienced retrogressions are listed below:

Mexico: F1, F2B, and F3  
Philippines: F3

#### **E. RETROGRESSION OF THE EMPLOYMENT THIRD PREFERENCE "OTHER WORKER" CATEGORY FOR MAY**

Continued heavy demand for numbers (particularly for adjustment of status cases at USCIS offices) has brought allocations close to the 5,000 annual numerical limit. Therefore, it has been necessary to retrogress the Employment Third preference "Other Worker" cut-off date in an effort to limit future demand. Should the annual limit be reached, it will be necessary to immediately make the category "unavailable" for the remaining months of the fiscal year.

#### **F. POTENTIAL RETROGRESSION OF FAMILY-SPONSORED PREFERENCE CATEGORIES**

Applicant demand for numbers, particularly in the Family F1 and F2A categories, has increased dramatically in recent months. Should the current rate of demand continue, it will be necessary to retrogress those cut-off dates in June.

#### **G. CHINA-MAINLAND BORN AND INDIA EMPLOYMENT-BASED PREFERENCE VISA AVAILABILITY**

There has been a significant amount of forward movement in the China-mainland born and India Employment First and Second preference cut-off dates during recent months. This has been done in an effort to generate demand for numbers. It cannot be assumed that these cut-off dates will continue to advance at this pace during the remainder of the fiscal year. It remains to be seen how heavy the demand for visa numbers by applicants from those areas will be in the coming months.

#### **H. OBTAINING THE MONTHLY VISA BULLETIN**

The Department of State's Bureau of Consular Affairs offers the monthly "Visa Bulletin" on the INTERNET'S WORLDWIDE WEB. The INTERNET Web address to access the Bulletin is:

**<http://travel.state.gov>**

From the home page, select the VISA section which contains the Visa Bulletin.

To be placed on the Department of State's E-mail subscription list for the "Visa Bulletin", please send an E-mail to the following E-mail address:

**[listserv@calist.state.gov](mailto:listserv@calist.state.gov)**

and in the message body type:

**Subscribe Visa-Bulletin *First name/Last name***  
**(example: *Subscribe Visa-Bulletin Sally Doe*)**

To be removed from the Department of State's E-mail subscription list for the "Visa Bulletin", send an e-mail message to the following E-mail address :

**[listserv@calist.state.gov](mailto:listserv@calist.state.gov)**

and in the message body type: **Signoff Visa-Bulletin**

The Department of State also has available a recorded message with visa cut-off dates which can be heard at: (area code 202) 663-1541. The recording is normally updated by the middle of each month with information on cut-off dates for the following month.

Readers may submit questions regarding Visa Bulletin related items by E-mail at the following address:

**[VISABULLETIN@STATE.GOV](mailto:VISABULLETIN@STATE.GOV)**

(This address cannot be used to subscribe to the Visa Bulletin.)

Department of State Publication 9514  
CA/VO: April 5, 2006

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12. Siskind Susser's Comment on DOL's Labor Certification Proposal



Siskind Susser, P.C. is an immigration law firm based in Memphis, Tennessee. We primarily handle employment and business immigration matters and we represent a broad range of employees and employers. We are one of the nation's larger immigration practices and handle matters in all 50 states. We appreciate the opportunity to comment on the Department of Labor's proposed regulation regarding ending labor certification substitutions and related matters.

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### Fraud Prevention

The Department of Labor asserts that this regulation is needed because there are systematic problems of abuse by people gaming the labor certification program in order to get illegitimate applicants approved for permanent residency. A couple of prominent examples are cited by DOL in support of this assertion.

While we have no doubt that the cited examples are very serious, we would first question whether there really is evidence that they, in fact, are representative of a wider problem or are just isolated problems. The proposed rule does not provide any details regarding whether there is any indication that the examples cited are part of a trend. Some of the cited abuse is tied to the unusual period of time in early 2001 where Congress briefly reinstated Section 245i of the Immigration and Nationality Act. One could reasonably assume that the problems cited are tied to that particular unique period in recent immigration history. We would suggest at the outset that the DOL conduct a study of the problems cited or otherwise provide evidence that provides justification for these serious policy changes.

Second, the examples cited by DOL are already unlawful and punishable by fines and/or prison terms. The DOL fails to explain why current anti-fraud provisions in the law are inadequate to address any perceived problems. If the penalties are not effective, then the DOL should explain why the better approach would not be to reevaluate our enforcement policies as opposed to changing the rules in such a way that legitimate business practices are not targeted.

Before imposing rules that could have a serious impact on employer using the labor certification system, the DOL owes it to the public to explain exactly how serious the problem is and why current tools available to the DOL are inadequate to address the situation. And perhaps other avenues should be explored that would more directly target wrongdoers. Such alternative solutions might include implementing harsher criminal penalties, imposing a fraud fee on labor certification cases (similar to the one imposed on H-1B visas) and using PERM's technology to better track patterns of fraud.

## Substitutions

The new regulation seeks to completely ban the substitution of foreign nationals on pending labor certifications and labor certifications approved but not yet filed with USCIS. According to the DOL, substitutions were historically permitted because of the long processing times associated with labor certification processing. The DOL now says that PERM has largely reduced those processing times and reduced the legitimate need for substitution. DOL states that banning substitution is needed to weed out fraud in the system.

The proposed rule does not cite any evidence of just how many substitutions are actually made each year and how many have proven to be fraudulent. If there are serious problems with fraud, the DOL should quantify them so a fair determination can be made whether the risks associated with current substitution policies outweigh the benefits.

There are a number of legitimate business reasons for substitutions and it is not true, as asserted by DOL, that PERM has ended the legitimate use of the substitution option. First, just because PERM approvals arrive more quickly than labor certifications under the old system that does not mean that employers still are not forced to wait years for the arrival of a sponsored worker. The EB-3 green card category is now backlogged more than five years. Workers are often no longer available after such a long wait. It is not hard to envision an employer finally having a case reach the front of the visa queue only to find that the employee has accepted a position with another company in another country. Without substitution, the employer could very well have to begin waiting in yet another five-plus year queue for a green card to become available after going through a second expensive labor certification process.

Furthermore, it is not true that slow labor certification approvals are a relic of history. There are still several hundred thousand cases in backlog reduction centers and those cases may still be years away from approval.

The DOL also expressed concern in the proposed rule that the "black market" for substitution in labor certification cases is made worse because crooked lawyers and agents can file cases without an employer even knowing. However, PERM addressed this concern by requiring an employer to actually set up a case in the DOL system rather than an agent or attorney. A labor certification must also be matched up with an I-140 and an employer must sign the I-140 and file it with a copy of the company's tax returns or other proprietary documents. The DOL should explain why this new requirement in the system is not adequate.

One also must ask the question of why the State Department and Department of Homeland Security cannot simply contact an employer before approving an immigrant visa or a substitution to ensure that the labor certification is actually the employer's and they are aware that a person is pursuing a green card based on a full-time offer to work for that employer? Similar to the way DOL emails the petitioner when a PERM application is filed to confirm they knew it was being filed.

Another issue is cost. Prior to filing a PERM application, particularly in the case of a "professional", the employer is required to recruit extensively for the position. This recruitment is very costly in terms of both money and time. Two newspaper ads in large cities such as NY and San Francisco cost in excess of \$1500. Add the cost of the 3 additional forms of recruitment and the time involved on the part of the employer's representative in answering inquiries and conducting interviews, and there is a substantial investment on the part of the employer in this process. Even if the PERM application is

certified quickly why should the employer have to go through this process all over again if the employee is unable to fill the position? The employee's sudden unavailability does not do away with the employer's genuine need to fill the position permanently or with the unavailability of qualified US workers.

Finally, the labor certification process is predicated on the idea that an employer should be able to sponsor an immigrant when it can demonstrate that it has an opening for which no qualified US worker is available. The identity of a particular foreign worker is not particularly relevant except to the extent that the employer demonstrates that the alien has the qualifications necessary to perform the duties of the certified position. Substitution should have no bearing on the underlying policy objective of the labor certification process as long as an employer can demonstrate that the substituted worker met the qualifications required for the certified job at the time of the initial advertising. Filing a new labor certification will cost employers massively in terms of positions remaining unfilled for longer periods of time and in added legal and recruiting fees.

A possible compromise solution would be to limit the period of time in which a substitution may be made IF a visa number is available. In such a case, a better case can be made that an employer should have to make up its mind on which applicant it will ultimately sponsor for permanent residency.

#### Limited Labor Certification Validity

Under the proposed DOL rule, once a labor certification is approved, an employer will have just 45 days from the date of certification to file an I-140 with USCIS. The 45 days is consistent with other 45 day deadlines built in to the labor certification process.

In the labor certification context, a 45 day rule is usually not a major issue because the amount of effort needed to submit a response is often minimal. For example, responding to a request for re-verification of the labor certification request from a Backlog Reduction Center is as simple as checking a box and signing a piece of paper.

But the filing of an I-140 is a complex legal process that involves gathering extensive supporting documentation and information. This is especially burdensome for smaller employers who often have only a limited number of people available to work on the matter. If, for example, a human resources professional is on family leave, a deadline could easily be missed and an employer would face the tremendous burden of having to start again.

In addition, the USCIS strongly discourages filing of the I-140 petition without an attached Adjustment of Status. Yet implementation of this proposed regulation would force attorneys to ENCOURAGE employers to go against the requests of the USCIS and file the I-140 separately. Retrogression prevents filing of the I-485 application for individuals who are from countries where current visa numbers are not available. Given this contradiction between the DOL and the USCIS, it seems apparent that attorneys and employers are likely to be penalized at some stage in the process. And, of course, this again discourages employers from pursuing labor certification for qualified employees.

Furthermore, USCIS requires that very specific documentation including a tax return or audited financial statement be included with an I-140 at the time of filing. Currently USCIS officers have been instructed to deny without a Request for Evidence any I-140 filed without this most basic information. Sometimes it is necessary to wait more than 45 days to get

the required documentation needed. It would be unfair for DOL to void a certified application just because the date of approval happened to fall early in the year and current financials were not immediately available.

If the DOL is insistent on imposing an expiration date on labor certifications, then the period should at least be something reasonable like at least one year.

### Attorney fees

The proposed rule bans all payment of legal fees to an attorney by anyone other than the petitioning employer, thus drastically altering the attorney/client relationship. Both the employer and the alien attest to the accuracy of the labor certification application under penalty of perjury, and to deny either party their attorney of choice in the preparation and filing of this attestation is certainly a violation of this relationship.

Current rules encourage involvement from both the petitioning employer and the alien worker in completing the application process. An immigration attorney often represents both the employer and the alien in a labor certification application, owing responsibilities to each. If the alien feels that their own interests are not adequately represented, he or she may obtain separate counsel. Under the proposed rule, this type of arrangement would be prohibited unless the employer agrees to pay for both attorneys – something that is impossible for most employers to afford, and that would be anti-business to require. This effectively eliminates the alien worker's right to choose their own counsel to represent the alien's own interests. Given the extremely dire consequences that an alien could face if a petition is mishandled, the ability to hire one's own counsel – separate from the employer's counsel – is important.

The proposed rule also significantly limits the alien's input as to the selection of which counsel will act as a dual representative. The alien worker is often much more diligent in learning about the immigration process and in obtaining the best-qualified immigration attorney to assist in the application. Small business employers, for example, will often defer to alien workers as to preference of counsel, allowing the alien to choose the attorney when the alien agrees to bear some or all of the legal expense. The rule would act to eliminate this practice, and further limit the alien's ability to choose effective counsel.

The proposed rule punishes small business, non-profit organizations, universities, public school systems, public hospitals, and government employers, many of whom routinely require workers to pay for their own legal fees. This is typically done for perfectly valid reasons, such as to keep hiring costs within budgetary restrictions. Under the proposed rule, the only option for these entities in most cases will be to not use an attorney at all, resulting in a lack of counsel for both the employer and the alien.

By placing the sole financial burden on the employer, many employers will now attempt to complete the labor certification process on their own and without the assistance of an attorney. This will undoubtedly result in an increase in erroneous applications that could be legally damaging to the employer and/or the alien worker, and will result in a considerable increase in DOL processing volume due to numerous re-filed applications.

The rule not only bars employees from paying attorney fees, but also third parties. There are many situations where third parties pay legal fees for legitimate business reasons. Two

examples arise frequently in the health care sector. In nursing, staffing companies frequently build attorney fees into their placement contracts. The staffing companies typically have much more expertise regarding the immigration process than their health care employer clients and the staffing companies will play a key role in locating the attorney and working as a go-between the lawyer and the client. Health care employers often expect the lawyer fees to be a part of the fees being paid to the placement firm.

Another example involves physicians. A doctor may be paid by a physician group, but the local hospital stands to benefit just as much financially from the doctor moving to the city. It is very common for the hospital to hire and pay the attorney and manage the legal process.

This proposed rule creates substantial hurdles for both the employer and the alien to obtain legal counsel. The relationship between attorney and client is sacrosanct, and should not be subject to government interference unless a compelling and clearly proven public interest argument has been made. The DOL has made no sufficient argument to support this proposed interference.

The DOL has commented that it questions the legitimacy of a job offer and wage when an employer passes on the legal fees to the alien worker. The DOL ignores the fact that with most labor certification applications, the alien worker is already on the job and being paid the salary as noted in the application. Furthermore, employers under the proposed rule would be required to pay legal fees even when they are paying considerably more than the prevailing wage even if attorneys fees were subtracted. Either way, the DOL has made no argument that justifies violation of the attorney / client relationship.

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### 13. USICS Reaches H-2B Cap

U.S. Citizenship and Immigration Services (USCIS) announced that it has received a sufficient number of petitions to reach the congressionally mandated H-2B cap for the final six months of Fiscal Year 2006 (FY 2006). USCIS is notifying the public that April 4, 2006 is the "final receipt date" for new H-2B worker petitions requesting employment start dates prior to October 1, 2006.

USCIS will apply a computer-generated random selection process to all petitions, which are subject to the cap and were received on April 4, 2006. This process will select the number of petitions needed to meet the cap. USCIS will reject all cap-subject petitions not randomly selected. USCIS will also reject petitions for new H-2B workers seeking employment start dates prior to October 1, 2006 that arrive after April 4, 2006.

Petitions for both current and returning H-2B workers do not count towards the congressionally mandated bi-annual H-2B cap. In order to qualify, the worker must have counted against the H-2B numerical cap between October 1, 2002 and September 30, 2005. Any worker not certified as a "returning worker" is subject to the numerical limitations for the relevant fiscal year.

Petitions received after the "final receipt date" which contain a combination of "returning workers" and workers subject to the H-2B cap will be rejected with respect to non-returning workers, and petitioning employers will receive partial approvals for those aliens who qualify as "returning workers" if otherwise approvable.

USCIS will continue to process petitions filed to:

- Extend the stay of a current H-2B worker in the United States;
- Change the terms of employment for current H-2B workers and extend their stay;
- Allow current H-2B workers to change or add employers and extend their stay; or
- Request eligible H-2B "returning workers."

More information about the H-2B work program is available at [www.uscis.gov](http://www.uscis.gov) or by calling the National Customer Service Center at 1-800-375-5283.

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#### 14. State Department Proposes Changes to J-1 Trainee Programs

By Greg Siskind ([gsiskind@visalaw.com](mailto:gsiskind@visalaw.com))

The Department of State has proposed a regulation governing the administration of J-1 training programs. The proposed rule would eliminate the distinction between "specialty" and "non-specialty" occupations. According to DOS, the distinction is being dropped because the distinctions between these types of programs are "conceptually artificial and do not adequately describe the types of training that the Department desires to promote in the national interest."

DOS now believes the *amount* of experience is more important than the *type* of training. Thus, trainees will now have to have a minimum of three years of prior related work experience in their fields before being eligible for the J-1 visa.

While lack of work experience will prevent one from coming as a trainee, the proposed regulation also creates a new twelve month internship program that will allow recent college and university graduates to come to the US to train in their fields. An intern must start their internship within 12 months of graduating from their educational program.

Trainees and interns will also now have to take the Test of English as a Foreign Language (TOEFL) and score a minimum of 550.

The Department of State is also concerned that training plans submitted with J-1 trainee petitions have not been effective and they do not adequately assist a DOS examiner in determining if training is real or the plan is just "boilerplate." Consequently, the proposed rule also calls for the creation of a new Form DS-7002 Trainee/Internship Placement Plan for sponsors to complete for trainees and interns prior to the issuance of a DS-2019 form.

The proposed rule states that employers may not use training and internship programs to "displace American workers" but no specific guidance is given regarding what exactly this means.

A rather onerous new requirement is that a J-1's sponsor must conduct an in-person interview with a potential trainee or intern in the applicant's home country. Furthermore, exchange program sponsors will be required to visit in person the businesses and organizations where J-1 trainees and interns will be placed. And the organizations and businesses where trainees and interns will be placed must be in business for at least three years.

The proposed rules contain several new restrictions on the type of work in which trainees or interns may engage including

1. no work involving child care or elder care, any clinical or other kind of work involving patient care or contact (including work that would require trainees or interns to provide therapy, medication, or other clinical or medical care such as sports or physical therapy, psychological counseling, nursing, dentistry, social work, speech therapy, or early childhood education).
2. no work that would bring the exchange program or DOS into "notoriety or disrepute"
3. no engagement of staffing or employment agencies to recruit, screen, orient or place trainees or interns
4. no more than 20% clerical work and only if necessary for an assignment

Both trainees and interns will be subject to a requirement that they depart the US for two years before returning to the US for a repeat training opportunity.

Changes also would be made regarding flight training. On-the-job training time would be tied to full-time classroom study. One month of training will be allowed for every four months of classroom study. A maximum of 18 months will be permitted for training/study.

Finally, there are changes in the proposed rules that would affect agricultural, hospitality and tourism training programs. These programs would only be available for twelve months duration. The DOS justifies the change based on problems it has seen in these fields. Agricultural sponsors must also certify they meet all the requirements of the Fair Labor Standards Act and the Migrant and Seasonal Agricultural Worker Protection Act.

Comments may be sent to the State Department through June 6, 2006.

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#### 15. Fernandez-Vargas v. Gonzales Immigration Case To Be Decided By Supreme Court

The Supreme Court is currently hearing the case of Fernandez-Vargas v. Gonzales to determine if a law passed by congress in 1996 can be applied retroactively to immigrants. The legislation passed by congress and enacted a year later in 1997 eliminated court hearings for individuals for individuals who had previously been deported. Fernandez-Vargas entered reentered the US prior to the law being written in 1996 but was deported without a hearing. Lawyers on Vargas' side claim that he should be exempt from the law since he entered the United States prior to its creation.

Until this point, courts have been split on the issue. While the 6<sup>th</sup> and 9<sup>th</sup> Circuit Courts have sided with Fernandez-Vargas on the legal dispute, the 10<sup>th</sup> Circuit Court sided with the government. The US government defends their position by pointing to the nature and intent of the law. According to Thomas Burr of *The Salt Lake Tribune*, Congress made it clear that the law should apply to all immigrants, regardless of when they reentered the country.

Fernandez-Vargas' case is could affect thousands of immigrants who have reentered the country after previously being deported. If Fernandez-Vargas loses his case, then those individuals who reentered the country prior to 1997 will be subject to the same deportation

procedures as Vargas.

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#### 16. Poll Reports Feelings of Business Owners Regarding Immigration

The National Federation of Independent Business (NFIB) conducted an extensive survey on its member's perspectives regarding immigration. The thirty-three question survey was split into four primary sections: current labor markets, the bureaucracy of working in the US, legal immigration and undocumented immigration.

In the first section, NFIB members were evenly split and balanced on the role of immigrants in the current labor market. When questioned about the impact of immigrants on the labor market, 27 percent of those polled answered that immigrants had a positive effect on the market, 26 percent said that immigrants had a negative effect and 28 percent said that immigrants had no effect. A similar distribution was recorded for the overall impact immigrants had on an area.

The second section of the poll revealed that a vast majority of NFIB members did not believe that the US should admit more immigrants than they already do, with just over 14 percent answering that too few immigrants are admitted each year. Despite that response, a majority of those polled supported a guest-worker program and finding labor abroad when a government agency determines a class of workers to be needed.

Only a few NFIB members admitted to hiring immigrant laborers—around 21 percent. Slightly more than five percent of polled individuals have ever been requested to produce an I-9 form by a government agency. When questioned about potential ways to identify whether a foreign laborer is or is not eligible for work, a majority answered that the proposed methods would not be a burden.

The final section, which focuses on undocumented immigration, shows a clear concern over the level of undocumented immigration in the country. The results revealed that only about 8 percent of NFIB members felt that undocumented immigration was not a problem in the US while over fifty percent answered that undocumented immigration was a "very serious problem." In the same line of thinking, only fourteen percent of those polled believed that undocumented immigration should not have a high priority for the president and congress.

The poll showed mixed feelings regarding legalization of undocumented immigrants. Members were split on the question of granting legalization if an immigrant is employed and receives no government aide.

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#### 17. Extensions granted for Nationals of Honduras and Nicaragua

In a recent press release, the Department of Homeland Security (DHS) along with the U.S. Citizenship and Immigration Services (USCIS) has extended Temporary Protection Status (TPS) for citizens of Nicaragua and Honduras by twelve months. The extension is the result of damage incurred by both Nicaragua and Honduras during Hurricane Mitch. The U.S. has determined the infrastructure of these two countries too weak to be able to handle the return of their nationals.

The new protection will last until July of 2007 if further extensions are not made before that deadline. In tandem with this move, DHS has also extended Employment Authorization Documents (EAD's) for six months to account for the lengthened stay of individuals granted with longer TPS status.

Nationals of Honduras and Nicaragua who are currently protected under TPS will have to re-register for the extension. Those seeking to take advantage of the temporary reprieve will have to register within a sixty day period that began on April 1, 2006. The process for those individuals who re-apply will be similar to the original procedure. An individual must fill out an I-821 form—the Application for Temporary Protected Status. Along with this, applicants can file an I-765 form in order to receive their EAD's. There are filing charges accompany the application process, yet these can be waived if they meet regulations.

An extended TPS recipient must also pay a seventy dollar biometrics fee which cannot be waived. All individuals over thirteen must pay this or their applications will be ignored. Any individual under thirteen who is also applying for an EAD will be required to pay the seventy dollar biometrics fee as well.