



Immigration Issues

SOLVE ACT: DEMOCRATS INTRODUCE COMPREHENSIVE IMMIGRATION REFORM PROPOSAL

The Safe, Orderly, Legal Visas and Enforcement (SOLVE) Act, introduced on May 4, 2004, in the Senate by Sen. Edward M. Kennedy (D-MA) and in the House of Representatives by Reps. Luis V. Gutierrez (D-IL) and Robert Menendez (D-NJ), would strengthen employment and labor protections for workers in the United States, including immigrant workers and workers who would be employed under a temporary worker program that the act would create. It would also reverse the Supreme Court's decision in *Hoffman Plastic Compounds v. NLRB*, 122 S.Ct. 1275 (2002), in which the Court restricted the remedies available to undocumented workers whose employers violate laws intended to protect workers.

The SOLVE Act is the second comprehensive immigration reform proposal to be introduced in Congress this year. The first was introduced by Senators Chuck Hagel (R-NE) and Tom Daschle (D-SD) on Jan. 24, 2004, after President Bush, with much fanfare, announced earlier that month a set of principles that he said would govern his administration's approach to immigration reform. Since the president made his announcement, however, legislators from both political parties have complained that he has done very little to move his reform program through Congress.

Even though it is unlikely that any comprehensive immigration reform bill will be enacted this year, immigrants' and workers' rights advocates would profit from staying abreast of what reforms are being proposed, so they can help advance the ones that would best serve the people for whom they advocate. Immigrant communities, too, need to be provided accurate information about new reform proposals, both so they can advocate for themselves and so they understand clearly that these are only legislative proposals—that presently there is no new legalization program for which immigrants can apply.

The SOLVE Act features the following provisions:

- It would establish an *earned adjustment program* whereby most currently undocumented workers in the U.S. could apply for lawful permanent resident (LPR) status.
- It would provide a *transitional status* for currently undocumented workers who cannot meet the requirements for earned adjustment.
- It would facilitate *family reunification* via provisions designed to deal with the current huge backlog of family-based visa applications and other obstacles that keep families separated for many years.
- It would create a new *temporary worker program* that would feature strengthened employer attestation and worker protection provisions.

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FOUNDED IN 1979, THE NATIONAL IMMIGRATION LAW CENTER PROVIDES technical help to legal services programs, community-based non-profits, and pro bono attorneys throughout the United States. NILC also counsels impact litigation, conducts policy analysis and trainings,

and publishes legal reference materials. NILC's staff specializes in immigration law and in immigrants' employment and public benefits rights. In addition to this newsletter, NILC produces legal manuals, a referral directory, and other community education materials.

- It would reverse the Supreme Court's decision in *Hoffman*.

TITLE I: EARNED ADJUSTMENT

The SOLVE Act would create an earned adjustment program whereby undocumented workers who are presently in the U.S. could apply for LPR status if they meet certain requirements.

Eligibility requirements for earned adjustment. Under the SOLVE Act, undocumented noncitizens would be eligible for earned adjustment to LPR status if they meet the following requirements:

- They have been physically present in the U.S. for at least five years preceding May 4, 2004.
- They have been employed in the U.S. for at least two years, but not necessarily with the same employer. Individuals who are disabled, under 21 years old, or in school would be exempted from the employment requirement.
- They have paid required income taxes and registered under the Military Selective Service Act.
- They possess basic "citizenship skills," e.g., they have a minimum understanding of English, as well as knowledge and understanding of U.S. history and government.
- They pass a security screening.

Non-U.S. citizen workers in the U.S. who have had contact with the Dept. of Homeland Security (DHS) or have been in immigration court could still apply for earned adjustment—even if they have been ordered removed from the U.S.—if they are otherwise eligible for the benefit. The SOLVE Act would require the government to terminate removal proceedings against any non-citizen in removal proceedings who could show that he or she is prima facie eligible for earned adjustment (i.e., a preliminary review of the noncitizen's case indicates that he or she is eligible). In addition, noncitizens with orders of deportation, exclusion, removal, or voluntary departure would be eligible to apply for earned adjustment.

Spouses and children of principal applicants. Under the SOLVE Act's earned adjustment provision, the spouse and children (unmarried and under 21 years of age) of the principal applicant could also apply for LPR status. In addition, spouses and children who otherwise would be able to adjust but whose relationship to the principal applicant has ended due to domestic violence, or those who could show that they have been battered or subjected to extreme cruelty, would also be eligible to adjust to LPR status.

Other provisions of the proposed earned adjustment program. The other earned adjustment-related provisions of the SOLVE Act include the following:

- Principal and derivative applications under the earned adjustment provision would *not* be subject to the yearly caps on the number of visas that can be issued each year.
- The government would not be permitted to use information provided in earned adjustment applications for any purpose other than adjudicating the applications.
- The employers of undocumented workers applying for earned adjustment would *not* be subject to civil or criminal liability for having employed the workers. However, they still would be subject to all other labor and employment law provisions.
- Adverse determinations on applications for earned adjustment would be subject to judicial review.
- Organizations that receive funding from the Legal Services Corporation would be allowed to provide legal assistance directly

relating to the SOLVE Act's earned adjustment program.

Transitional status for immigrant workers not covered by the earned adjustment program. The SOLVE Act would provide for a transitional status for undocumented workers who are currently present in the U.S. (as of May 4, 2004) but who cannot meet the other earned adjustment requirements.

- This transitional status would be good for a maximum of five years and would provide the people to whom it was granted work authorization and permission to travel outside the U.S.
- Persons granted transitional status would be eligible to adjust to LPR status if they could show that they had worked two years after receiving work authorization and if they could meet the other requirements for earned adjustment.
- The spouse and children of persons who adjusted from transitional status to LPR status would also be eligible to adjust to LPR status.

TITLE II: FAMILY REUNIFICATION

The SOLVE Act proposes reforms to the current family-based immigration system, addressing the unconscionable backlogs in this system that keep families separated for years. The act's proposals include:

- Reclassifying the spouses and children (unmarried and under 21 years of age) of LPRs as "immediate relatives," which would mean that such family members would not be subject to per-country immigration limitations.
- Making a visa immediately available to family members who have been waiting for more than five years.
- Repealing the three-year and ten-year bars to reentry for persons who are seeking admission to the U.S. after having been previously unlawfully present in the U.S. and having departed voluntarily, and removing the permanent bar for having unlawfully reentered the U.S. after previously having been unlawfully present in the U.S.
- Amending the income test for affidavits of support so that sponsors would have to show that they have enough income to support both themselves (and any dependents) as well as the person(s) immigrating at or above 100 percent (instead of 125 percent, as the requirement is currently) of the federal poverty income guidelines.
- Amending the age until which derivative citizenship can be acquired to 21 years of age (currently it is 18 years of age).

TITLE III: TEMPORARY WORKER PROGRAM

SOLVE would amend the current H-2B nonagricultural seasonal worker visa program and create a new H-1D program for workers employed in low-skilled positions other than agriculture. Under these programs, temporary workers not only would have access to a path toward permanent lawful status in the U.S.; they also would be covered by the act's labor protections.

Temporary worker visa programs. The SOLVE Act would create a new program, H-1D, through which employers could hire foreign workers to fill positions that they could not find U.S. workers to fill. The act would make 250,000 visas available for such H-1D workers. Each visa would be valid for two years and would be renewable for two additional two-year terms (i.e., it would be valid and renewable for up to six years). The act would create a second program, H-2B, for nonagricultural migrant workers. One

hundred thousand visas would be available for H-2B workers; each visa would be valid initially for nine months and be renewable for up to forty months. Members of H-1D and H-2B workers' immediate families would be allowed to accompany the workers to the U.S., but they would be eligible to be employed in the U.S. only if they, too, qualified for a temporary worker visa.

Under the SOLVE Act, temporary H-1D and H-2B workers would have "job portability," meaning that they would be allowed to move to another H-1D or H-2B job after three months on the job through which they acquired their visa. However, the three-month requirement could be waived for any worker who showed that his or her employer violated a term of the visa sponsorship, that the employer violated any other law or regulation relating to the worker's employment, or that the worker's personal circumstances had changed so as to require a change of employer.

The H-1D and H-2B programs proposed in the SOLVE Act would include a path to lawful permanent residence status for the workers who participated in them. Either the temporary worker's employer could immediately file a permanent resident visa petition on behalf of the worker, or the worker could self-petition after two years of employment. Spouses and children of such workers would be eligible for derivative permanent resident status, and such adjustment applications would not be subject to the caps on the number of permanent resident visas that may be issued each year.

Employment and labor law protections. SOLVE would reverse the Supreme Court's decision in *Hoffman* by establishing that neither back pay remedies nor any other monetary relief for unlawful employment practices shall be denied a wronged employee even if the employee was hired in violation of immigration laws.

The act also would require that the DHS, which is charged with enforcing immigration law, check with the Dept. of Labor (DOL) or the National Labor Relations Board (NLRB) whenever it receives information from any source that would create a suspicion that enforcing the law in a particular situation or site may involve the DHS in a labor dispute (e.g., between an employer and immigrant employees who believe the employer has treated them unfairly). The act lays out questions the DHS should ask the informant, including whether there is a labor dispute in progress at the work site and if the subjects of the information have raised workplace complaints or grievances. The SOLVE Act would *not* prohibit the DHS from acting on such information, even if it determined that there may be a labor dispute in progress at the site. It *would*, however, require the DHS to ensure "to the extent possible" that any immigrant worker arrested or detained as a result of such an enforcement action is not removed from the U.S. without the DHS first notifying the appropriate enforcement agency that has jurisdiction over the workplace violation.

Under the SOLVE Act's provisions, immigrants who have filed a workplace claim or who are material witnesses in any pending or anticipated proceeding involving a workplace claim would be granted a stay of removal plus work authorization unless the DOL could prove to the immigration judge (by a preponderance of the evidence) either that the removal proceedings are unrelated to the workplace claim or that the claim was filed in bad faith.

The act also would strengthen the requirements an employer must meet in order to hire workers through a temporary worker program. In particular, the SOLVE Act would require such em-

ployers to attest to the following:

- That the H-1D or H-2B job position pays the prevailing wage as determined in a collective bargaining agreement, or if no collective bargaining agreement exists, as determined under the provisions of the appropriate statute (i.e., either the Davis-Bacon Act or the McNamara-O'Hara Service Act). The act would require that, if none of these methods for determining the prevailing wage apply to the job in question, the employer must calculate the prevailing wage to be the mean of "the highest 66 percent of the wage data provided by the Department of Labor's Bureau of Labor Statistics, Occupational Employment Survey."

- That the employer will offer the same wages, benefits, and working conditions for H-1D or H-2B temporary workers as those provided to its other workers employed in the same occupation and place of employment.

- That the employer will impose no restrictions or obligations on temporary workers that it does not impose on U.S. workers.

Along with this attestation, the employer would have to submit to the DOL a copy of the job offer describing the wages and other terms and conditions of employment.

The SOLVE Act would confer on H-1D and H-2B workers all rights and remedies available under federal, state, or local labor and employment laws. Workers under the temporary worker program would be provided "whistle blower" protection, i.e., the act would make it unlawful for employers to intimidate, threaten, or discriminate against a worker because the worker disclosed information about or cooperates or seeks to cooperate in an investigation of the employer's compliance with the requirements of the temporary worker program. Finally, the SOLVE Act would give H-1D and H-2B workers a private right of action against employers who fail to comply with the provisions and requirements of the temporary worker program.

More information on the SOLVE Act that advocates might find useful is available on the website of the American Immigration Lawyers Association: www.aila.org. A summary of the first comprehensive immigration reform bill introduced in Congress this year, the Hagel-Daschle bill, is available on NILC's website (www.nilc.org), as is NILC's response to President Bush's immigration reform principles.

DHS ISSUES NEW GUIDANCE FOR TREATMENT OF NON-U.S. CITIZEN ARRESTEES

In response to criticism leveled by the U.S. Justice Dept.'s Office of the Inspector General (OIG) against government agencies for their treatment of non-U.S. citizens who were arrested and detained in connection with the government's investigation of the Sept. 11, 2001, attacks, the Dept. of Homeland Security's undersecretary for border and transportation security has issued new guidance regarding how noncitizens arrested by U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP) officers are to be treated.

In its June 2, 2003, report, the OIG detailed numerous instances of abuse suffered by post-9/11 detainees, including being held too long without being informed of the charges against them, being prevented from meeting with family and counsel, and being subjected to unduly harsh treatment. (For more, see "OIG Report Criticizes the Government's Treatment of 9/11 Detainees," IMMIGRANTS' RIGHTS UPDATE, July 15, 2003, p. 1.)

The guidance issued by Undersecretary Asa Hutchinson "is

intended to refine and clarify existing procedures to ensure that aliens are promptly notified of their custody status and of the immigration charges to be lodged against them, while retaining sufficient flexibility in emergency or other extraordinary circumstances," according to the Mar. 30, 2004, memo containing the guidance.

The memo instructs that, absent an "emergency or other extraordinary circumstance," when a noncitizen is arrested, a determination should be made within 48 hours (1) whether the person is to be kept in custody or released on bond, and (2) whether an arrest warrant for the person will be issued and whether he or she will be issued a Notice to Appear (NTA). The decision whether to keep the person in custody or to release the person should be documented on Form I-286 (Notice of Custody Determination), and the officer who makes the decision should note on the form the time and date that he or she made the decision.

The officer should also note on the I-286 whatever immigration-related charge the officer believes reasonably applies to the detained person, including the provision of the INA under which the charge would be brought. The completed I-286 should then be served on the detained person within 48 hours of the time the person was arrested. The officer who serves the form should write on it the time and date when he or she served it and should direct the detained person to sign the form. If the person refuses to sign it, the officer should note this refusal on the form. If the form is not served within 48 hours, the officer should write on the file copy of the form an explanation for why it was not served within the normal time limit.

When an emergency or other extraordinary circumstance makes it impracticable to decide within 48 hours of a noncitizen's arrest whether to hold or release the arrestee and whether to issue him or her an NTA, "every effort shall be made to make the custody determination and charging decision, and to notify the alien thereof, as soon as practicable," the memo directs. In such instances, a detailed written explanation of why the custody determination and charging decision could not be made within 48 hours must be placed in the person's A-file.

The memo provides guidance regarding what constitutes an emergency or other extraordinary circumstance. It could include

1. A "significant" disruption to infrastructure or logistics caused by such factors as "terrorism, weather, natural catastrophe, power outage, serious transportation emergency or serious civil disturbance";

2. A "compelling law enforcement need," such as an "influx of large numbers of detained aliens that overwhelms agency resources and makes it unable to logistically meet the general servicing requirements"; or

3. Factors unique to the person who was arrested, such as "the need for medical care or a particularized compelling law enforcement need."

Any decision to delay a custody determination and charging decision based on a "compelling law enforcement need" should be made by either a special agent in charge, a border protection chief, a field office director, or other officer whose authority is equivalent to these officials'. A detailed written report of why the official made the decision should be forwarded to ICE headquarters and a copy of it provided to ICE's principal legal advisor. The official and the principal legal advisor should review the official's

decision no later than 30 days after it was made to determine whether the factors that led to the decision still exist.

Noncitizens who are kept in custody should be served with an NTA within 72 hours of their arrest—or, if an emergency or other extraordinary circumstance prevents this from being practicable, they should be served with it as soon as practicable.

If a noncitizen is being detained and/or charged because the Federal Bureau of Investigation is interested in the person "for reasons related to . . . national security," ICE's local chief counsel, in coordination with ICE headquarters' National Security Law Division, "must approve any national security related NTA charges pertaining to" the noncitizen; and the 48-hour (for custody and charging determinations) and 72-hour (for serving the NTA on the noncitizen) time limits still apply.

According to the memo:

ICE personnel and attorneys are directed to independently review the individual circumstances of each case in which the FBI requests [that a noncitizen be detained] solely based upon information regarding [the person's] possible association with terrorism. ICE personnel and attorneys must carefully study the underlying facts in each case and make assessments as to both the necessity for detention and the appropriate conditions of confinement in every case. This will ensure that ICE can make the proper recommendations to the immigration courts on bond, detention and removal. This independent and individualized assessment is essential because ICE attorneys are officers of the court and must have confidence in the representations made to the court.

If an NTA is served on a detained noncitizen, it must be served while the person is in the custody of the Special Agent in Charge (SAC) Office in whose jurisdiction the person was first arrested—unless "exigent circumstances" make this impracticable. In such a case, however, the SAC in whose jurisdiction the person was arrested is responsible for ensuring that the NTA is served on the noncitizen as soon as practicable in whatever detention facility to which he or she has been transferred. It is the arresting office's duty to ensure that the NTA is also served on the Executive Office for Immigration Review.

The memo also reminds field office directors to be vigilant in "ensuring the integrity of the Post Order Custody Review (POCR) process," i.e., the process for determining whether a person who has been ordered removed from the U.S., but who for whatever reasons has not been removed within 90 days of the time the order was issued, should be kept in ICE custody beyond the 90-day period. The steps in the process are the following:

1. At the end of the 90-day period, the field office director reviews the detainee's case to determine whether the person is a threat to public safety or a flight risk. A detainee found to be neither should be released on an order of supervision; but a detainee who is found to be either may be detained under the field office's authority for an additional 90 days. 8 CFR § 241.4.

2. At the end of any second 90-day period, the field office director again must decide whether or not to release the detainee. If the decision is not to release, the case must be referred to the ICE headquarters' Post-Order Detention Unit.

3. The Post-Order Detention Unit reviews the case first under 8 CFR sec. 241.13, then under 8 CFR sec. 241.14. Under the former

regulation, a detained noncitizen must be released from custody if no significant likelihood exists that he or she will be removed from the U.S. in the reasonably foreseeable future. Such a non-citizen may be kept in custody only if special circumstances justify his or her continued detention. Under 8 CFR sec. 241.14, such circumstances include: national security or terrorism concerns; that the person has a highly contagious disease which is a threat to public safety; that releasing the person would result in serious adverse foreign policy consequences; or that the person is considered especially dangerous.

If it is likely that the person *will* be removed from the U.S. in the reasonably foreseeable future, the Post-Order Detention Unit must determine whether the person is a threat to public safety or a flight risk; and if the detainee is found to be neither, he or she should be released on an order of supervision.

Hutchinson's memo is titled "Guidance on ICE Implementation of Policy and Practice Changes Recommended by the Department of Justice Inspector General" and is addressed to Michael J. Garcia, asst. sec. for U.S. Immigration and Customs Enforcement, and Robert Bonner, commissioner, U.S. Customs and Border Protection. According to the memo, the Depts. of Homeland Security and Justice "are currently reviewing and discussing approaches" to better coordinating their handling of cases "in which the FBI has expressed interest on account of national security concerns," and the memo promises that the departments will be providing "additional details on the process that will be implemented" in future circumstances such as those that obtained after the 9/11 attacks.

HOMELAND SECURITY ENHANCEMENT ACT PROVISIONS SPARK SHARP DISAGREEMENT – Witnesses who testified recently before the Senate Judiciary Committee's Subcommittee on Immigration, Border Security and Citizenship disagreed sharply on whether extending more authority to state and local law enforcement officers to enforce federal immigration law would enhance or detract from the U.S.'s security. Much of the witnesses' testimony, as well as the subcommittee members' questions and statements, focused on a bill currently pending in the Senate, the Homeland Security Enhancement Act (HSEA, S. 1906), whose counterpart in the House of Representatives is the Clear Law Enforcement for Criminal Alien Removal (CLEAR) Act (HR 2671).

The HSEA would criminalize all immigration law violations committed by non-U.S. citizens. It would force states to enforce immigration law by withholding State Criminal Alien Assistance Program funds from them if they do not repeal policies that limit police enforcement of immigration laws (the SCAAP reimburses states for the costs of incarcerating noncitizens). And it would authorize entering immigration information into the National Crime Information Center (NCIC) criminal database. (For more on the HSEA, see "Senate State/Local Immigration Enforcement Bill Goes Further Than House 'CLEAR Act' Bill," IMMIGRANTS' RIGHTS UPDATE, Dec. 18, 2003, p. 1.)

Witnesses called by the subcommittee's Republican majority were Kris W. Kobach, former counsel to the U.S. attorney general, professor of law at the University of Missouri-Kansas City School of Law, and current candidate for Congress from Kansas; E.J. Picolo, regional director, Florida Dept. of Law Enforcement (FDLE); and Michelle Malkin, a syndicated columnist, Fox News

commentator, and author of *Invasion: How America Still Welcomes Terrorists, Criminals, and Other Foreign Menaces to Our Shores* (Regnery Publishing, 2002).

The Democratic minority was permitted to call one witness: David A. Harris, Balk Professor of Law and Values, University of Toledo College of Law.

Harris argued that having state and local law enforcement authorities enforce immigration law would destroy relationships of trust that police have built with immigrant communities through community policing. This is a relationship that promotes public safety because it encourages immigrants to report crimes, both as victims and as witnesses. Malkin, in contrast, argued that it is not in fact a bad thing for lawbreakers (by which she meant persons who have violated immigration law) to experience the consequences of their lawbreaking that would occur if their contact with police resulted in their illegal immigration status being discovered. For his part, Kobach expressed doubt that immigrants report crimes to police.

Both Kobach and Malkin invoked the Sept. 11, 2001, terrorist attacks and specific vicious crimes committed by undocumented immigrants as justification for allowing state and local police to enforce immigration law. Neither explained how provisions such as those contained in the HSEA could have prevented the 9/11 attacks, nor how they would counter the failure of federal immigration agents to pick up and process for deportation persons arrested for or convicted of criminal charges.

Both suggested that the HSEA would allow police to inquire about a person's immigration status in the course of arresting the person for a criminal violation. But neither the CLEAR Act nor the HSEA contains language specifically restricting local law enforcement officers from inquiring about a person's immigration status unless they have arrested the person. Nor did Kobach or Malkin address one of the most troubling issues that the HSEA raises: the racial and ethnic profiling that inevitably informs law enforcement officers' decisions about whom to question regarding immigration status.

The HSEA would provide that local and state law enforcement officers would not be disqualified from enforcing immigration law simply because they lacked training in it. "The absurdity of this is plain on its face," Harris testified. "The shortsightedness it shows will doom local police agencies to suffer adverse consequences for years to come." Neither Malkin nor Kobach explained how officers would understand, interpret, and enforce complex immigration law without first being trained in it.

The HSEA's explicit authorization of immigration law enforcement without the enforcers' first obtaining training in the law conflicts with section 287(g) of the Immigration and Nationality Act, which allows individual states to enter into a memorandum of understanding (MOU) with the federal government allowing trained state or local officers to enforce immigration law. Florida is one of two states that have entered into such an MOU with the Dept. of Homeland Security.

Sen. Edward Kennedy, the only Democratic member of the subcommittee to actually attend the hearing, pointed to the Florida MOU as a model for state-federal cooperation on immigration enforcement. The Florida MOU strictly limits Florida officers' immigration-related law enforcement activity to domestic security and antiterrorism cases carried out by domestic security task

forces under the supervision of federal immigration agents. E.J. Pico, the FDLE regional director, testified that Gov. Jeb Bush had expressed that he felt "trepidation" regarding state law enforcement officers becoming immigration enforcers, and that it is the official state position to give them only limited immigration-related authority. In contrast, the HSEA would explicitly give all state and local law enforcement officers expansive immigration enforcement authority.

Kobach argued Attorney General John Ashcroft's contention that state and local police have "inherent authority" to enforce civil immigration provisions. That view is in conflict with a 1996 Dept. of Justice Office of Legal Counsel ruling that concluded the opposite. According to Kobach, that portion of the 1996 opinion has been withdrawn. But the DOJ's own legal opinion on the issue has never been made public, and an appeal of a Freedom of Information Act request to compel its production is still pending. Sen. Kennedy pointed out that three police chiefs from the area of Kansas that Kobach seeks to represent in Congress, including the Kansas City police chief, have submitted letters stating that they oppose being saddled with the additional responsibility of enforcing immigration law.

Sen. Jeff Sessions of Alabama, a sponsor of the HSEA but not a member of the subcommittee, argued that under the HSEA, state and local police participation in immigration law enforcement activity would be totally voluntary. However, as Harris pointed out in his written statement, if the HSEA were to become law, state and local jurisdictions that have policies limiting the degree to which law enforcement officers can inquire into immigration status face the loss of SCAAP funds if those policies are not repealed.

The hearing was held on Apr. 22, 2004. The day before the hearing, the conservative Heritage Foundation issued a briefing paper criticizing provisions similar to the HSEA's that are contained in the proposed CLEAR Act. According to the paper, extending immigration law enforcement authority to state and local officers would force police to shift their priorities from criminal investigations to investigations of immigration status and would undermine trust in immigration communities. Entering immigration information into the NCIC database would undermine the NCIC's effectiveness. Moreover, under the CLEAR Act's broad provisions immunizing state and local officers from being held liable for violations, persons whose rights the police violated would have no recourse for redress of their complaints. Finally, the Heritage Foundation's briefing paper argues, statutory authority already exists for police to arrest noncitizens who commit crimes.

Statements from the witnesses who testified before the subcommittee and from committee members Orrin Hatch (R-UT) and Patrick Leahy (D-VT) are available at <http://judiciary.senate.gov/hearing.cfm?id=1156>.

The fact that the HSEA has only four cosponsors indicates that it has not generated substantial support in the Senate. But its eventual success cannot be ruled out, particularly as comprehensive immigration reform proposals gain momentum in the Congress and their supporters look for an enforcement component.

US-VISIT: POLICY FOR CORRECTING BAD DATA LEAVES MANY QUESTIONS UNANSWERED

— The policy recently announced by the

U.S. Dept. of Homeland Security whereby people can correct erroneous information that the DHS's US-VISIT system contains about them leaves many questions unanswered. US-VISIT—the U.S. Visitor and Immigrant Status Indicator Technology system—presents enormous potential for error, invasion of privacy, and violation of international privacy laws and human rights standards. Advocates fear that in its current form, the DHS's redress policy does not allow for fair review and rapid appeals of erroneous determinations made as a result of flaws in US-VISIT.

US-VISIT is the federal government's new electronic entry/exit system, whose purpose is to accurately track who has entered the U.S., who has exited it, and who has overstayed their nonimmigrant visa. The "entry" part of the program began on Jan. 5, 2004, and consists primarily of photographing and fingerprinting nonimmigrant visitors entering the country at any of 115 airports and 14 major seaports. Persons from the 27 countries whose nationals may travel to the U.S. as visitors without first obtaining a visa (i.e., the "visa-waiver countries") were originally not required to be processed through the program. (For more background, see "US-VISIT: 'Very Risky' Electronic Entry/Exit System Slated for 2004 Debut," IMMIGRANTS' RIGHTS UPDATE, Nov. 24, 2003.) By Sept. 30, 2004, entering visitors from visa-waiver countries also will be fingerprinted and photographed.

The DHS's US-VISIT redress policy, which is dated Mar. 15, 2004, describes a three-stage process by which individuals can inquire about and amend incorrect and incomplete data. The first stage occurs at the port of entry's primary inspection lane and is intended to immediately correct errors in the following categories of data about the incoming traveler: name, date of birth, flight information, and country-specific document number and document type. These corrections can be made on the spot and manually by a U.S. Customs and Border Protection (CBP) officer. For biometric types of data errors (mismatches), the CBP officer sends a "data correction" request to US-VISIT.

The second stage allows those processed through US-VISIT to seek review of their records for "accuracy, relevancy, timeliness or completeness." They must send a letter to the US-VISIT privacy officer in Washington, DC, explaining why they believe their records are not accurate, relevant, timely, or complete and specifying the amendment or correction sought.

For a requester's identity to be verified and the request processed, she or he must provide:

1. Full name as listed in passport and/or visa
2. Mailing address
3. Contact telephone number (optional)
4. Date and place of birth
5. Date of arrival and/or departure from the U.S.
6. U.S. port of arrival and/or departure
7. Name of airline or sea vessel (optional)
8. Airline flight number or cruise line ticket number
9. Passport number and country that issued the passport
10. U.S. visa number

The request must be signed, with the signature either notarized or signed under penalty of perjury as provided for in 28 USC sec. 1746. The redress policy says that a response to the request is expected to take twenty business days, but that it may not be possible for this time limit to be met.

Requesters who are not satisfied with the result of this review

can move to the third stage of the redress process: They can appeal their cases to DHS Privacy Officer Nuala O'Connor Kelly. She will review the appeal, conduct an investigation, and provide final adjudication.

Advocates are gratified that the DHS has begun to consider the issue of redress for people who find themselves more or less severely inconvenienced by US-VISIT's flaws. However, US-VISIT is already being implemented despite the fact that many questions about the accuracy of the records it relies on—and how erroneous records are to be corrected—remain unanswered. Moreover, no provision has been made for independent evaluation of either the program or the redress procedure. When entry of a person's name and other information into the US-VISIT system results in a "hit" (i.e., a match with information contained in any of the various databases the system taps into), it is still unclear exactly what happens to the person. If such "hits" result in individuals being falsely identified as security threats and they are either detained or sent back to their country of origin, their access to the redress process would probably be severely limited, and thus the consequences of such a false "hit" could be serious and long-lasting.

Indications are that US-VISIT is being implemented incompletely and unevenly. For one thing, the "exit" portion of the entry/exit system has not been fully implemented. For another, when lines grow long at ports of entry, CBP officers move the lines along by waving visitors on through, without putting them through the US-VISIT screening process. A result of failing to implement the system uniformly will likely be increased inaccuracies in it, which will translate into greater inconvenience—or even long-term hardship—for travelers to the U.S. who find themselves victims of bad information.

In order for the implementation of US-VISIT to be consistent with the U.S.'s tradition of respecting individual rights and liberties, it must not needlessly undermine privacy, result in profiling based on national origin, or rely on inaccurate data or unreliable technology. Advocates have therefore written to the DHS privacy officer seeking answers to their questions about the redress policy. Their questions are:

1. How long does it take to receive a response to the "data correction" request sent to US-VISIT regarding biometric information?
2. Where does the traveler have to wait during the "data correction" period?
3. How long does data review in the second stage of the redress process take? Where is the traveler during that process?
4. How would an individual know what particular record is not accurate, relevant, timely, or complete? To what records would he or she have access? What reasons will be considered reasonable justifications for review?
5. If a person is denied entry into the U.S., which federal agencies will be notified about the questions surrounding his or her access to the U.S.? Is his or her government notified that one of its citizens has been denied access into the U.S.? What type of information will be shared with that government?
6. What happens to persons denied admission because of a US-VISIT "hit"? Are they sent back to their point of origin under an expedited removal order? Will such individuals be barred from returning to the U.S. for a certain period of time? Will passports

of affected persons be stamped "admission refused"? How will the redress process take place if an individual is in detention or returned to his or her home country?

7. Are any individuals who do not "pass" the US-VISIT screening admitted to the U.S. anyway? If so, will individuals who must appeal in the third stage of the redress process and who will be in the U.S. for more than 20 business days have their final decision from the DHS sent to their temporary address or to their country of residence?

8. If the records are sent to an individual's country of origin and he or she does not know that his or her appeal has been denied, will he or she have any problems when exiting the U.S.?

9. If an individual's record is to be amended based on an appeal, how long will it take to update those records in the US-VISIT system?

10. How will those persons affected be notified of the redress process?

Advocates who had a meeting with the DHS privacy officer in January have asked for another meeting to discuss their concerns about the adequacy of the redress policy. We will provide updates on any changes in the policy.

FLORIDA: BILL TO ALLOW UNDOCUMENTED IMMIGRANTS TO OBTAIN DRIVING CERTIFICATES IS SUPPORTED BY GOV. BUSH BUT WITHDRAWN BY SPONSOR

A bill introduced in the Florida Senate and endorsed by Gov. Jeb Bush which would have allowed undocumented immigrants to obtain driving certificates has been withdrawn by its sponsor under pressure from the Florida Sheriff's Association. It is likely that a separate bill will be introduced to study the issue.

Critics of the withdrawn bill charge that allowing undocumented immigrants to obtain driving certificates would legitimize their stay in the U.S. However, Gov. Bush has stated that such a policy would balance public safety with the everyday need to drive.

While immigrants' advocates welcome the fact that the governor and some members of the legislature support granting licenses to undocumented immigrants, many are concerned that the version of the bill that was introduced contained requirements that would have made it impossible to implement. For example, the bill would have required that foreign consulates obtain copies of applicants' criminal records in their countries of origin, despite the fact that many immigrants come from countries that are experiencing political turmoil or whose government bureaucracies are corrupt. Nor is it clear that consulates have the resources or ability to perform such a task. In addition, the bill would have exempted Cubans and Canadians from many of the more onerous prerequisites for obtaining a driving certificate.

Highlights of the withdrawn bill include the following:

- It would create a two-year driving permit for immigrants who do not meet current immigration status requirements for a driver's license.
- To be eligible for the permit, the applicant would have to be a citizen of a country that maintains diplomatic relations with the U.S., is not a threat to the U.S., and is not on a list of terrorist countries.
- Applicants would have to (1) present a consular ID card that contains a digital image and was produced using security measures and features to prevent tampering or counterfeiting that

satisfy the standard set by the Florida Dept. of Motor Vehicles (the DMV could accept other documents, including a passport, national identity card, or other similar proof of identity issued by the government of the applicant's country of citizenship); (2) present a second form of ID that could include, but would not be limited to, an employer ID card or an Individual Taxpayer Identification Number (ITIN, which is issued by the U.S. Internal Revenue Service); (3) submit fingerprints that would be used to conduct criminal background and security checks through the Florida Dept. of Law Enforcement (FDLE) and the FBI; (4) submit proof that they have resided in Florida for at least 6 months during the last 5 years preceding the date of application; (5) affirm that they have never been convicted of any crime that would constitute a felony in Florida, and that they are not wanted, either in their country of citizenship or in the U.S., for a crime that would constitute a felony in Florida; and (6) submit proof of ownership of a motor vehicle, proof of a lease, or document to the satisfaction of the DMV their necessity to operate a motor vehicle for employment, business, occupational, educational, medical, or religious reasons, for support of the applicant or the applicant's family, or for other similar reasons prescribed by the DMV.

- Before the applicant could be issued a driving permit, the embassy or consulate of the applicant's country of citizenship would have to provide the following information: (1) documentation that the applicant (a) has not been convicted of a crime in that country that would constitute a felony in Florida and (b) is not wanted for any crime; (2) a certified copy of the applicant's official driving record, if available; (3) certification that the form of ID submitted by the applicant to get a consular ID card or other form of ID issued by the consulate is legitimate; and (4) certification that the applicant's country of citizenship maintains a security system to prevent the issuance of multiple identities to one individual.

- Before issuing a driving permit, the DMV would have to: (1) verify through U.S. Citizenship and Immigration Services (CIS) that the applicant is not subject to an order of deportation; (2) conduct a criminal background check through the FDLE and the FBI; (3) verify through the FDLE and the FBI that the applicant is not a security risk to the state or the U.S.

- The driving permit would have to have a background that distinguished it from a driver's license, and it would be valid for only two years.

- Cuban immigrants would not have to comply with many of the requirements listed above. They would *not* have to: (1) be from a country that has diplomatic relations with the U.S. and that is not on a list of terrorist countries; (2) present a consular ID or other ID issued by the consulate of their country of citizenship (instead, they would have to present a form of ID prescribed by the DMV); (3) present a second form of ID; (4) demonstrate that they have resided in the state for at least 6 months; or (5) affirm that they have never been convicted of a crime in their country of citizenship. Nor would the consulate of their home country have to produce any information about their driving record or criminal background, nor would the DMV check with CIS to verify whether they are subject to an order of deportation.

- Foreign nationals who visit Florida would be able to obtain a driving permit if they provided proof of ownership or rental of a residence in Florida or proof of ownership of an established busi-

ness and proof of ownership or lease and registration of a motor vehicle in the state. This provision appears to be designed to welcome foreign visitors, such as Canadian "snowbirds," who regularly visit Florida but have not officially established residence in the state.

CIS RAISES FEES FOR APPLICATIONS AND PETITIONS – U.S. Citizenship and Immigration Services (CIS) has issued a final rule that raises the fees for immigration benefit applications and petitions, as well as the fee for "capturing" the fingerprints and photographs that must be filed with certain applications and petitions. According to the rule's summary in the Federal Register, application fees have been raised by approximately \$55 per application, and the fingerprint/photo fee has been raised by \$20. (Many immigration-related applications and petitions require that the fingerprint/photo fee be paid when they are filed, in addition to the regular application or petition fee.)

The final rule was effective Apr. 30, 2004. Any application or petition mailed, postmarked, or otherwise filed on or after April 30 must be accompanied by the new, higher fee.

The table below shows the new fees for the applications and petitions that probably are of the most interest to IMMIGRANTS' RIGHTS UPDATE readers.

69 Fed. Reg. 20527–36 (Apr. 15, 2004).

New Application and Petition Fees

Form No.	Description	Fee
I-90	Application to Replace Permanent Resident Card	\$185
I-129F	Petition for Alien Fiance(e)	165
I-130	Petition for Alien Relative	185
I-131	Application for Travel Document	165
I-140	Immigrant Petition for Alien Worker	190
I-212	Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal.	250
I-360	Petition for Amerasian, Widow(er), or Special Immigrant	185
I-485	Application to Register Permanent Residence or to Adjust Status	315
I-600/600A	Petition to Classify Orphan as an Immediate Relative/Application for Advance Processing or Orphan Petition	525
I-601	Application for Waiver of Grounds of Excludability	250
I-612	Application for Waiver of the Foreign Residence Requirement	250
I-687	For Filing Application for Status as a Temporary Resident.	240
I-690	Application for Waiver of Excludability	90
I-694	Notice of Appeal of Decision	105
I-695	Application for Replacement Employment Authorization or Temporary Residence Card	65
I-698	Application to Adjust Status from Temporary to Permanent Resident	175
I-751	Petition to Remove the Conditions on Residence	200

I-765	Application for Employment Authorization	175
I-817	Application for Family Unity Benefits	195
I-824	Application for Action on an Approved Application or Petition.	195
I-881	NACARA—Suspension of Deportation or Application for Special Rule Cancellation of Removal for adjudication by the Department of Homeland Security.	275
I-881	NACARA—Suspension of Deportation or Application for Special Rule Cancellation of Removal for adjudication by the Immigration Court.	155
I-914	Application for T Nonimmigrant Status	255
N-300	Application to File Declaration of Intention	115
N-336	Request for Hearing on a Decision in Naturalization Procedures	250
N-400	Application for Naturalization	320
N-470	Application to Preserve Residence for Naturalization Purposes	150
N-565	Application for Replacement Naturalization Citizenship Document	210
N-600	Application for Certification of Citizenship	240
N-600K	Application for Citizenship and Issuance of Certificate under Section 322	240
—	For Capturing Biometric Information (i.e., fingerprint/photo fee)	70

Litigation

9TH CIRCUIT WITHDRAWS OPINION IN *CAZAREZ-GUTIERREZ V. ASHCROFT*— A panel of the U.S. Court of Appeals for the Ninth Circuit has withdrawn the opinion it issued in *Cazarez-Gutierrez v. Ashcroft*, 356 F.3d 1015 (9th Cir. Jan. 26, 2004). In the prior opinion, the court found that the Board of Immigration Appeals erred in finding that a state conviction for simple drug possession constitutes an “aggravated felony” for immigration purposes. On that basis, the court granted the petition for review and remanded the case to the BIA to adjudicate the petitioner’s application for cancellation of removal (*see* “9th Circuit Overturns BIA Finding That State Conviction for Simple Drug Possession Is ‘Aggravated Felony,’” IMMIGRANTS’ RIGHTS UPDATE, Feb. 17, 2004, p. 6).

After that opinion issued, the court ordered supplemental briefing on whether the court is divested of jurisdiction over the petition for review by section 242(a)(2)(C) of the Immigration and Nationality Act. Section 242(a)(2)(C) bars appellate jurisdiction over petitions for review filed by immigrants who are removable for having committed certain criminal offenses, including not only aggravated felonies, but also any controlled substance offense. The court also requested that the supplemental briefs address whether the petition for review can be construed as a habeas petition and remanded to federal district court. Subsequently, the court issued an order withdrawing the prior opinion and directing that the supplemental briefing proceed as previously ordered.

Cazarez-Gutierrez v. Ashcroft,
No. 02-72978 (9th Cir., order of Apr. 26, 2004).

9TH CIRCUIT: MOTION FOR STAY OF REMOVAL TREATED AS MOTION FOR STAY OF VOLUNTARY DEPARTURE— The U.S. Court of Appeals for the Ninth Circuit has ruled that a motion for a stay of removal pending consideration of a petition for review should be treated as also constituting a motion for a stay of voluntary departure. The ruling resolves a question that was not addressed in several opinions over the past year that changed the circuit’s treatment of voluntary departure.

As background, in *Zazueta-Carrillo v. Ashcroft*, 322 F.3d 1166 (9th Cir. 2003), the court found that because of the statutory framework of removal proceedings, the filing of a petition for review no longer automatically stays voluntary departure, as had been the case with deportation proceedings. Judge Berzon filed a concurrence, emphasizing her conviction that if the court grants a stay of removal, it has equitable jurisdiction to stay voluntary departure. In *Zazueta*’s case, no stay motion had been filed. (For more on *Zazueta*, *see* “9th Circuit Finds Filing of Petition for Review Does Not Suspend Deadline for Voluntary Departure Granted by BIA,” IMMIGRANTS’ RIGHTS UPDATE, Apr. 8, 2003, p. 5).

Subsequently, in *El Himri v. Ashcroft*, 344 F.3d 1261 (9th Cir. 2003), the court followed Judge Berzon’s reasoning to find that it did have equitable power to grant a timely motion to stay the period of voluntary departure. The court also found that the traditional standard for granting a stay of removal also applies to a stay of voluntary departure (*see* “9th Circuit Rules Court Can Stay the Period for Voluntary Departure Pending Review of a Removal Order,” IRU, Oct. 21, 2003, p. 7).

In the most recent case, the petitioner filed a motion for stay of removal before the voluntary departure granted by the Board of Immigration Appeals expired, but did not file a motion to stay voluntary departure until later. The government had not opposed the stay of removal, but it did oppose the motion to stay voluntary departure. Stating that “[w]hether and in what circumstances this court has the power to entertain a motion to stay voluntary departure when that motion is filed after the period for voluntary departure has expired is an issue of first impression in this circuit,” the court noted that other circuits have disagreed on this issue. *Compare Velasquez v. Ashcroft*, 342 F.3d 55 (1st Cir. 2003) (finding plenary authority to reinstate an expired period of voluntary departure) *with Svidov v. Ashcroft*, 358 F.3d 722 (10th Cir. 2004) (declining to grant untimely motion to stay voluntary departure, where petitioner provided no explanation for failing to file a timely motion).

However, in this case the court decided to treat the petitioner’s timely motion for a stay of removal as also a motion to stay voluntary departure, thus avoiding the need to resolve whether the court has authority to stay voluntary departure where no timely motion has been made. The court noted that under *El Himri* the same standards and the same procedures apply to motions for stays of removal and motions to stay voluntary departure. The court also considered that where a petitioner files a motion for stay of removal before the expiration of voluntary departure, “it would border on ineffective assistance of counsel to fail to file a motion to stay voluntary departure simultaneously.” The court noted that there was no ineffective assistance in this case, because the petitioner applied for a stay of removal before *Zazueta* was decided and had no reason to believe that a motion to stay voluntary departure was also needed.

The court therefore granted the motion to stay voluntary departure *nunc pro tunc* to the date of the motion to stay removal. Because the court also dismissed the petition for review, upholding the BIA's denial of asylum in this case, the court noted that the stays of voluntary departure and removal will expire upon issuance of the mandate.

The ruling leaves unresolved whether and in what circumstances the court may grant a stay of voluntary departure where no stay motion was filed prior to the expiration of voluntary departure. The American Immigration Law Foundation has published an updated practice advisory that provides a more extensive treatment of this issue and addresses related recent developments in the Eighth Circuit. This is available at www.aifl.org.

Desta v. Ashcroft, No. 03-70477, 2004 U.S. App. LEXIS 7204 (9th Cir. Apr. 14, 2004).

FLORIDA COURT REVERSES RULING PERMITTING HOSPITAL TO REPATRIATE UNDOCUMENTED PATIENT – Florida's Fourth District Court of Appeals has reversed a guardianship court's determination that a hospital could discharge an undocumented person who required ongoing care and return him to his home country, Guatemala.

Luis Alberto Jimenez, an undocumented worker from Guatemala, suffered a traumatic brain injury and was admitted to Martin Memorial Medical Center. He remained in the hospital after being readmitted on an emergency basis after a discharge to a nursing home. Jimenez was incapacitated by his injury, necessitating the appointment of a guardian.

Jimenez's guardian filed a guardianship plan with the court, in accordance with its procedures. The plan stated that Jimenez would need twenty-four-hour nursing care at a hospital or skilled nursing facility. Martin Memorial intervened in the guardianship court's proceedings, claiming that the guardian was not acting in Jimenez's best interests, and sought permission to discharge Jimenez and transport him to Guatemala. Following an evidentiary hearing at which the court heard conflicting evidence about the Guatemalan medical system's ability to care for Jimenez's injuries, the court approved the hospital's petition.

In reversing the lower court's order, the court of appeals considered the regulations governing the discharge of patients from hospitals that treat Medicare patients, as well as the hospital's own discharge policies. The regulations require that hospitals develop a written discharge plan for any patient likely to suffer adverse consequences upon discharge and that patients be transferred to "appropriate facilities, agencies or outpatient services, as needed, for followup or ancillary care." 42 C.F.R. § 482.43. The hospital's discharge policies similarly required hospital staff to develop a discharge plan that identified the next level of appropriate care, to identify a specific facility where the patient could receive appropriate care, and to confirm that the care would be provided.

In reviewing the evidence introduced at trial in the guardianship court, the court found that only a letter from the vice minister of public health in Guatemala supported Jimenez's return to Guatemala. The court determined that the guardianship court erred in considering the letter, which could not have been admitted into evidence under the rules that govern evidence admissible at trial. Even if the letter could have been admitted, the court concluded,

it was not specific enough to satisfy either the regulations or the hospital's discharge policies.

The court also determined that the trial court did not have subject matter jurisdiction to deport Jimenez, because federal immigration law preempts the deportation arena. While it appears unlikely that Jimenez will be able to return to the U.S., this case provides an important clarification of law in a situation that is likely to recur.

Montejo Gaspar Montejo v. Martin Memorial Medical Center, Case No. 4D03-2638 (4th Dist. Ct. Apps., Fla.).

Employment Issues

OSC SETTLES DISCRIMINATION CASES IN NORTH CAROLINA AND NEW YORK – The Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) recently reached settlement agreements with two employers, one in North Carolina and the other in New York, both of which discriminated against non-U.S. citizens in the process of verifying their eligibility to be employed in the U.S.

The complainant in the North Carolina case alleged that Rex Healthcare, a private company that has several facilities in Wake County, North Carolina, unlawfully required proof of citizenship from non-U.S. citizen workers when they were completing the I-9 employment eligibility verification process. Specifically, the complainant alleged that Rex Healthcare required her to produce immigration-related documents while permitting U.S. citizens to present any legally acceptable combination of documents, including a Social Security card and driver's license. She also alleged that Rex Healthcare unlawfully retaliated against her for exercising her rights. Under the agreement, the employer agreed to pay a \$3,600 civil penalty, post antidiscrimination notices, educate its personnel, and refrain from discriminating against U.S. citizens and work-authorized immigrants during its employment eligibility verification process.

In the New York case, the OSC reached a settlement with Triangle Services, Inc., a cleaning services corporation with offices nationwide. The OSC's investigation found that Triangle fired a worker who is an asylum applicant when she could not comply with discriminatory procedures the company used to verify her employment eligibility. Though the Immigration and Nationality Act requires employers to examine documents from each new employee to verify his or her eligibility to work in the U.S., the INA also requires that employers treat all employees equally and that they not create eligibility verification standards for legal immigrants that are different from those they use for U.S. citizens. Triangle violated the law by rejecting the complainant's valid Social Security card when she presented it, even though the company routinely accepts Social Security cards from U.S. citizens completing the I-9 process. Instead of accepting the complainant's Social Security card, Triangle requested that she produce an unexpired employment authorization document issued by U.S. immigration authorities.

Under the terms of the agreement, Triangle agreed to pay the complainant \$1,433.90 in back pay and also pay a \$550 civil penalty. Triangle also agreed to refrain from discriminating against non-U.S. citizens during its employment eligibility verification process, provide training for personnel in all of its offices nation-

wide concerning their responsibilities under the INA, and post notices in all of its offices nationwide regarding the INA's anti-discrimination provision.

The OSC, which is part of the Civil Rights Division of the U.S. Justice Dept., enforces the INA's antidiscrimination provision, which prohibits employers from discriminating against individuals because of their citizenship or immigration status or their national origin when employers hire or fire workers, or recruit or refer them for a fee. The INA also prohibits employers from engaging in discriminatory practices when verifying employees' eligibility to be employed in the U.S. The INA requires employers to examine documents from new employees in order to verify their employment eligibility, and it prohibits employers from treating citizens and noncitizens unequally. It also prohibits retaliation against individuals who assert their rights under the INA, assist with investigations, or file discrimination complaints.

Since FY 2001, the OSC has handled more than 1,375 charges and other allegations of discrimination, recovered \$283,634 in back pay for victims of discrimination, and collected \$399,281 in civil penalties. And through its employer and employee hotlines, the OSC resolves thousands of potential disputes annually, and has already handled nearly 8,000 such calls this fiscal year.

Individuals seeking more information about the OSC may call its worker hotline at 1-800-255-7688 or visit its website: www.usdoj.gov/crt/osc.

Public Benefits Issues

HOUSE REJECTS BILL TO REQUIRE HEALTH PROVIDERS TO REPORT UNDOCUMENTED PATIENTS TO THE GOVERNMENT – The U.S. House of Representatives voted overwhelmingly on May 18, 2004, to reject HR 3722, a bill that among other things would have required health services providers to report undocumented non-U.S. citizen patients to immigration authorities as a condition of the providers receiving reimbursement from the federal government for emergency services administered to such patients. The Undocumented Alien Emergency Medical Assistance Amendments of 2004, sponsored by Rep. Dana Rohrabacher (R-CA), were defeated on a vote of 88 to 331.

During the floor debate, many House members, including Reps. Hilda Solis (D-CA), Jim Kolbe (R-AZ), Robert Menendez (D-NJ), Rubén Hinojosa (D-TX), David Dreier (R-CA), Joseph Crowley (D-NY), and Jan Schakowsky (D-IL), spoke out against the bill. They argued that the legislation would further burden employers, hospitals, and health workers, and would be devastating for immigrant families and the U.S.'s public health system.

A transcript of the House debate and a tally of the final vote on HR 3722 is available at www.nilc.org.

MOMENTUM FOR IMMIGRANT AMENDMENTS BUILDS AS TANF BILL IS EXTENDED FOR THREE MONTHS WITHOUT CHANGE – Senate action on legislation to reauthorize the Temporary Assistance for Needy Families (TANF) program for five years was suspended in early April when Senate Democrats and Republicans were unable to agree on how the bill should move forward. Several proposed amendments to the TANF reauthorization bill that would benefit immigrants had gained momentum in the weeks leading up to the anticipated consideration of the bill.

The Senate began debate on the reauthorization bill on Monday, Mar. 29, 2004, but Senate Majority Leader Bill Frist (R-TN) pulled it from the floor three days later, after failing to win a procedural vote to end debate. Although senators filed more than 50 amendments to the bill, they voted on only one, offered by Senators Olympia Snowe (R-ME) and Christopher Dodd (D-CT), which would add \$6 billion in child care funding over the next five years. The child care amendment passed by a vote of 78-20.

Among the immigrant-related amendments that have gained momentum are the following:

Immigrant Children's Health Improvement Act (ICHIA). Filed by Senators Bob Graham (D-FL) and Lincoln Chafee (R-RI), this provision would give states the option of providing Medicaid and the State Children's Health Insurance Program (SCHIP) benefits to lawfully present pregnant women and children, regardless of when they entered the United States.

TANF state option. Sen. Hillary Rodham Clinton (D-NY) filed an amendment that would grant states the option of providing TANF to "qualified" immigrants during the five-year period during which they currently are barred from receiving TANF benefits. Under current law, "qualified" immigrants who entered the U.S. on or after Aug. 22, 1996, must wait five years from their time of entry before they are eligible for TANF-funded services, including child care, education and job training programs (such as vocational English-as-a-second-language programs), and transportation vouchers. This amendment would give states more flexibility to design programs that serve their low-income populations.

Section 411 (states' use of their own funds to provide services). Senators Jeff Bingaman (D-NM) and John Cornyn (R-TX) offered an amendment that would clarify that state and local governments can continue to use their own funds to provide health services—including primary and preventive health care—to immigrants, without being required to enact a new law.

Women Immigrants Safe Harbor Act (WISH). Sen. Clinton planned to offer an amendment that would allow victims of domestic violence, trafficking, and crime ("U" visa applicants) to receive TANF, Medicaid, SCHIP, food stamps, housing assistance, and Supplemental Security Income.

Supplemental Security Income (SSI) for refugees, asylees, Cuban/Haitian entrants, and other immigrants who were admitted for humanitarian reasons. Sen. Herbert Kohl (D-WI) planned to offer an amendment that would extend SSI eligibility to these categories of immigrants for two additional years, so they would be eligible for nine instead of only seven years. Representatives Ben Cardin (D-MD), Amo Houghton (R-NY), Phil English (R-PA), Sandy Levin (D-MI), and Nancy Johnson (D-CT) introduced a similar bill in the House of Representatives.

Although the next steps in this debate are not clear, Congress has extended the current program without change until June 30, 2004. This is the sixth extension of the TANF program since the original authorization expired in 2002. Advocates for immigrants continue to pursue strategies for passing the above amendments.

WORKERS' RIGHTS TRAINING SLATED FOR SOUTHERN CALIFORNIA, MON., JUNE 7 – An immigrant workers' rights training will be held Mon., June 7, 2004, in Orange, Calif. For more information and to register, visit www.nilc.org/trainings/index.htm.

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