

# CRS Report for Congress

## Immigration Legislation and Issues in the 110<sup>th</sup> Congress

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**Prepared for Members and  
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# Immigration Legislation and Issues in the 110<sup>th</sup> Congress

## Summary

Comprehensive immigration reform was the subject of much discussion at the start of the 110<sup>th</sup> Congress. In the spring of 2007, the Senate considered several broad immigration reform measures aimed at addressing a host of perceived problems with the U.S. immigration system. These measures combined border security and interior enforcement provisions with provisions on temporary workers, permanent admissions, and unauthorized aliens. In June 2007, the Senate voted on a motion to invoke cloture on one of these measures (S. 1639), which, if approved, would have ultimately brought the bill to a vote. The motion failed, however, and the bill was subsequently pulled from the Senate floor.

In October 2007, the Senate considered a proposal that has been included in various comprehensive measures. Known as the DREAM Act, this bill (S. 2205) would enable certain unauthorized alien students to obtain legal status. The Senate failed to invoke cloture on S. 2205.

At the same time, the 110<sup>th</sup> Congress has enacted some immigration-related provisions. Among them are refugee-related provisions included in the FY2007 Revised Continuing Appropriations Resolution (P.L. 110-5); the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act (P.L. 110-28); a measure to increase the number of Iraqi and Afghani translators and interpreters who may be admitted to the United States as special immigrants (P.L. 110-36); the Consolidated Appropriations Act, 2008 (P.L. 110-161); and the National Defense Authorization Act for Fiscal Year 2008 (P.L. 110-181). P.L. 110-161 also contains provisions on employment eligibility verification, visa issuances, and other aspects of the U.S. immigration system. In addition, the 110<sup>th</sup> Congress has enacted provisions on border security and the Visa Waiver Program as part of a law providing for the implementation of the recommendations of the National Commission on Terrorist Attacks Upon the United States (P.L. 110-53).

It is unclear whether the 110<sup>th</sup> Congress will again tackle comprehensive immigration reform. It may, however, consider legislation on selected immigration reform issues, such as foreign workers. Additional border security measures may also be considered. Among the other immigration-related issues that the 110<sup>th</sup> Congress may address in the second session are state and local enforcement of immigration laws, employment eligibility verification and worksite enforcement, Iraqi refugees, and documentary requirements for admission.

This report discusses these and other immigration-related issues that have seen legislative action or are of significant congressional interest. Department of Homeland Security (DHS) appropriations are addressed in CRS Report RL34004, *Homeland Security Department: FY2008 Appropriations*, and, for the most part, are not covered here. This report will be updated as legislative developments occur.

# Contents

Introduction .....	1
Foreign Workers and Students .....	2
Foreign Workers .....	2
Agricultural Workers .....	3
Temporary Nonagricultural Workers .....	4
Temporary Workers in Specialty Occupations .....	5
Temporary Admission of Professional Athletes and Entertainers .....	7
Temporary Admission of Fashion Models .....	7
Permanent Employment .....	8
“STEM” Students .....	9
Unauthorized Alien Students .....	10
Document Security .....	12
Visa Waiver Program .....	13
Border Security .....	14
Resources at the Border .....	15
Resources at POE .....	15
Resources Between POE .....	15
Barriers at the Border .....	16
Western Hemisphere Travel Initiative .....	16
State and Local Enforcement of Immigration Law .....	17
Employment Eligibility Verification and Worksite Enforcement .....	18
U.S. Refugee Program .....	22
Resettlement Funding .....	23
Iraqi Refugees .....	23
Other Issues and Legislation .....	25
Victims of Trafficking .....	25
Alien Smuggling .....	26
SSI Extension for Refugees and Asylees .....	27
Unaccompanied Alien Children .....	27
Religious Workers .....	28
Immigrant Investor Pilot Program .....	28
Temporary Protected Status .....	28
Grounds for Terrorist Exclusion and Removal .....	29
Commonwealth of the Northern Mariana Islands .....	30
Military Service-Based Naturalization .....	30
Waivers for Foreign Medical Graduates .....	31
Other Legislation Receiving Action .....	31

Ban on Travel to Burma .....	31
Gang Activity .....	31
Recruitment or Use of Child Soldiers .....	31
Health-Related Grounds for Exclusion .....	32
State Criminal Alien Assistance Program Amendments .....	32
Immigration Relief for September 11 Families .....	32
Legislation .....	32
Enacted .....	32
Receiving Action .....	33

# Immigration Legislation and Issues in the 110<sup>th</sup> Congress

## Introduction

Comprehensive immigration reform was the subject of much discussion at the start of the 110<sup>th</sup> Congress.<sup>1</sup> In the 109<sup>th</sup> Congress, both the House and the Senate passed major immigration bills, but they were never reconciled.<sup>2</sup> During the first session of the 110<sup>th</sup> Congress, a bipartisan group of Senators developed broad immigration reform legislation with the active involvement of the Bush Administration. Aimed at addressing a host of perceived problems with the U.S. immigration system, this legislation combined border security and interior enforcement provisions with provisions on temporary workers, permanent admissions, and unauthorized aliens. The Senate considered several immigration reform measures (S. 1348, S.Amdt.1150 to S. 1348, S. 1639) in May and June of 2007. On June 28, 2007, the Senate voted on a motion to invoke cloture on S. 1639, which, if approved, would have ultimately brought the bill to a vote. The cloture motion failed, however, on a vote of 46 to 53, and the Senate Majority Leader pulled the bill from the Senate floor.

It is unclear whether comprehensive immigration reform legislation will be taken up again in the 110<sup>th</sup> Congress. Selected components of comprehensive reform, however, have been, and may in the future, be considered separately. In October 2007, the Senate considered, as a stand-alone bill, a proposal on unauthorized alien students, which has been included in various comprehensive reform bills. The proposal, known as the DREAM Act, would enable certain unauthorized students to obtain legal status. The Senate failed to invoke cloture on this bill.

At the same time, the 110<sup>th</sup> Congress has enacted some immigration-related provisions. Among them are provisions on border security and the Visa Waiver Program in P.L. 110-53, and refugee-related provisions in P.L. 110-5, P.L. 110-28, P.L. 110-36, P.L. 110-161, and P.L. 110-181. P.L. 110-161 also contains language on employment eligibility verification, visa issuances, and other aspects of the U.S. immigration system. P.L. 110-229 includes provisions to apply U.S. immigration law to the Commonwealth of the Northern Mariana Islands, a U.S. territory in the Pacific.

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<sup>1</sup> For an overview of immigration reform issues before the 110<sup>th</sup> Congress, see CRS Report RS22574, *Immigration Reform: Brief Synthesis of Issue*, by Ruth Ellen Wasem.

<sup>2</sup> See CRS Report RL33125, *Immigration Legislation and Issues in the 109<sup>th</sup> Congress*, coordinated by Andorra Bruno.

This report discusses immigration-related issues that have seen legislative action or are of significant congressional interest. Department of Homeland Security (DHS) appropriations are addressed in a separate report and, for the most part, are not covered here.<sup>3</sup> The final section of this report lists enacted legislation and selected bills receiving action.

## Foreign Workers and Students

The Immigration and Nationality Act (INA)<sup>4</sup> provides for the temporary and permanent admission to the United States of various categories of foreign workers and business personnel. It also provides for the temporary admission of foreign students. Temporary visitors, including workers, business personnel, and students, enter as nonimmigrants. As such, they are admitted for a temporary period of time and a specific purpose. Foreign workers and others who are admitted permanently enter as legal permanent residents (LPRs).

### Foreign Workers

The main nonimmigrant category for temporary workers is the H visa, which includes visa classifications for agricultural workers (H-2A visa), nonagricultural workers (H-2B visa), and professional specialty workers (H-1B visa), among others. In addition, certain temporary workers and business personnel enter under other visa categories. For example, persons with extraordinary ability in the sciences, arts, education, business, or athletics are admitted on O visas; internationally recognized athletes, members of internationally recognized entertainment groups, artists, or entertainers come on P visas.<sup>5</sup> Issuances of temporary employment-based visas have risen steadily over the past decade.<sup>6</sup>

With respect to permanent admissions of foreign workers and business personnel, there are five employment-based preference categories. Most employment-based LPRs enter under the first three categories, which, as detailed below, encompass aliens of extraordinary ability as well as unskilled workers. These three categories have been the focus of recent efforts to reform the permanent employment-based immigration system. The smaller fourth and fifth preference categories, which respectively cover special immigrants and immigrant investors, are discussed separately in other sections of this report (Iraqi special immigrants are discussed in the “Iraqi Refugees” section; religious workers — the largest special immigrant subcategory — and immigrant investors are covered in the “Other Issues

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<sup>3</sup> See CRS Report RL34004, *Homeland Security Department: FY2008 Appropriations*, coordinated by Jennifer E. Lake and Blas Nuñez-Neto.

<sup>4</sup> Act of June 27, 1952, ch. 477; 66 Stat. 163; codified as amended at 8 U.S.C. §§1101 *et seq.* The INA is the basis of current immigration law.

<sup>5</sup> For a full discussion and analysis of nonimmigrant visas, see CRS Report RL31381, *U.S. Immigration Policy on Temporary Admissions*, by Ruth Ellen Wasem and Chad C. Haddal.

<sup>6</sup> See CRS Report RL33977, *Immigration of Foreign Workers: Labor Market Tests and Protections*, by Ruth Ellen Wasem.

and Legislation” section). The current annual limitation on employment-based LPR admissions is 140,000 (plus any unused family preference visas from the prior year).<sup>7</sup>

**Agricultural Workers.** The H-2A nonimmigrant visa allows for the temporary admission of foreign workers to the United States to perform agricultural work of a seasonal or temporary nature, provided that U.S. workers are not available.<sup>8</sup> Employers who want to import H-2A workers must first apply to the U.S. Department of Labor (DOL) for a certification that there are not sufficient U.S. workers who are qualified and available to perform the work, and that the employment of foreign workers will not adversely affect the wages and working conditions of U.S. workers who are similarly employed. Employers must pay their H-2A workers and similarly employed U.S. workers the highest of the federal or applicable state minimum wage, the prevailing wage rate, or the adverse effect wage rate (AEWR).<sup>9</sup> They also must provide workers with housing, transportation, and other benefits, including workers’ compensation insurance.

Various bills have been introduced in the 110<sup>th</sup> Congress that address foreign temporary agricultural workers.<sup>10</sup> Some of these bills, including H.R. 371/S. 237/S. 340 (all identical and known as AgJOBS) and H.R. 1792, propose a complete overhaul of the H-2A program. Both AgJOBS and H.R. 1792 would streamline the process of importing H-2A workers and would make changes to existing H-2A requirements regarding minimum benefits, wages, and working conditions. The streamlining and other changes proposed by the measures are different, however. For example, both AgJOBS and H.R. 1792 would make changes to existing H-2A wage requirements. AgJOBS would freeze the AEWR at the January 2003 level for three years after the date of enactment, while, under H.R. 1792, H-2A employers would no longer be subject to the AEWR. S. 1639, which was considered in the Senate, and H.R. 1645 (STRIVE Act), which was the subject of a hearing by the House Judiciary Committee’s Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, include H-2A reform provisions like those in AgJOBS. H.R. 2954 contains H-2A reform provisions similar to those in H.R. 1792.

Instead of reforming the H-2A program, some measures before the 110<sup>th</sup> Congress would establish new agricultural worker programs. H.R. 2413 would direct the Secretary of Agriculture to establish a new W seasonal agricultural worker program. Unlike the H-2A program, which is not subject to a numerical cap, the new

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<sup>7</sup> For additional background information, see CRS Report RL32235, *U.S. Immigration Policy on Permanent Admissions*, by Ruth Ellen Wasem (hereafter cited as CRS Report RL32235).

<sup>8</sup> For further information about the H-2A program, see CRS Report RL32044, *Immigration: Policy Considerations Related to Guest Worker Programs*, by Andorra Bruno (hereafter cited as CRS Report RL32044).

<sup>9</sup> The prevailing wage rate is the average wage paid to similarly employed workers in the occupation in the area of intended employment. The AEWR is an hourly wage rate set by DOL for each state or region, based upon data gathered by the Department of Agriculture in quarterly wage surveys. See CRS Report RL32861, *Farm Labor: The Adverse Effect Wage Rate (AEWR)*, by William G. Whittaker.

<sup>10</sup> For a more detailed discussion of these bills, see CRS Report RL32044.

program would include monthly and annual numerical limitations. S. 330 also proposes a new W temporary worker program, but it would cover both agricultural and nonagricultural work.

In addition to its H-2A reform provisions, AgJOBS proposes a legalization program for agricultural workers. Under the program, the Secretary of DHS would grant a temporary resident status (termed “blue card status”) to an alien worker who had performed a requisite amount of agricultural employment in the United States during the 24-month period ending on December 31, 2006, and who meets other requirements. No more than 1.5 million blue cards could be issued during the five-year period beginning on the date of enactment. To be eligible to adjust to LPR status, the alien in blue card status would have to meet additional work and other requirements. Existing numerical limits under the INA would not apply to adjustments of status under the bill. Similar provisions are included in H.R. 1645.<sup>11</sup> By contrast, neither H.R. 1792 nor H.R. 2413 would establish a legalization program for unauthorized agricultural workers. For its part, S. 330 would provide for unauthorized workers who meet specified requirements to participate in its new temporary worker program, but would not provide a mechanism for them to obtain LPR status.

**Temporary Nonagricultural Workers.** The H-2B nonimmigrant visa allows for the temporary admission of foreign workers to the United States to perform nonagricultural temporary work, provided that U.S. workers are not available.<sup>12</sup> Prospective H-2B employers must first apply to DOL for a certification that U.S. workers capable of performing the work are not available and that the employment of alien workers will not adversely affect the wages and working conditions of similarly employed U.S. workers. H-2B employers must pay their workers at least the prevailing wage rate. There is a statutory annual cap of 66,000 on the number of aliens who may be issued H-2B visas or otherwise provided with H-2B status. In recent years, various comprehensive immigration reform bills have proposed to overhaul the H-2B program and/or establish new guest worker programs for H-2B-like workers. For example, S. 1639, which the Senate considered in June 2007, would establish a new guest worker program to replace the H-2B program.

In the aftermath of the Senate’s unsuccessful cloture vote on S. 1639, attention has been focused on an expired INA provision exempting certain returning H-2B workers from the 66,000 cap. This provision, which was in effect from FY2005 through FY2007, exempted from the H-2B cap, returning H-2B workers who had been counted against the cap in any one of the three prior fiscal years. Bills that would re-enact an H-2B returning worker exemption have been introduced in the House and Senate. H.R. 5495 and H.R. 5849 would exempt from the FY2008 cap returning H-2B workers who were counted against the cap in FY2005, FY2006, or FY2007. H.R. 5233 would exempt from the FY2008 and FY2009 caps returning

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<sup>11</sup> While, as noted above, S. 1639 contains H-2A provisions similar to those in AgJOBS, the agricultural worker legalization program proposed in S. 1639 includes some notably different provisions than AgJOBS. For further information, see discussion of S. 1639 in CRS Report RL32044.

<sup>12</sup> For further information about the H-2B program, see CRS Report RL32044.



workers who were counted against the H-2B cap in any one of the three fiscal years preceding the year at issue. S. 2839 includes a provision (§2) that would exempt from the FY2008, FY2009, and FY2010 H-2B caps returning workers who were counted against the cap in FY2005, FY2006, FY2007, or FY2008.

Other bills propose to revise the expired H-2B returning worker exemption to cover workers who were *present* in the United States as H-2B nonimmigrants in any one of the prior three fiscal years, but who were not necessarily counted against the cap in any of those years. S. 988 would exempt from the H-2B cap for each fiscal year through FY2012 workers who were present in the United States in H-2B status in any one of the three years preceding the year at issue. H.R. 1843 would similarly revise the exemption and would make it a permanent INA provision. A returning H-2B worker exemption was included in the FY2008 Commerce, Justice, Science, and Related Agencies appropriations bill (H.R. 3093), as passed by the Senate. For FY2008, §540 of the Senate-passed version of H.R. 3093 would have exempted from the H-2B cap, aliens who had been present in the United States as H-2B nonimmigrants in any one of the past three years. This provision was not included in the House-passed version of H.R. 3093, and it is not included in the Consolidated Appropriations Act, 2008 (P.L. 110-161).

**Temporary Workers in Specialty Occupations.** The largest classification of H visas is the H-1B visa for workers in specialty occupations.<sup>13</sup> An employer wishing to bring in an H-1B nonimmigrant must attest in a labor certification application (LCA) to DOL that the employer will pay the nonimmigrant the greater of the actual wages paid to other employees in the same job or the prevailing wages for that occupation; the employer will provide working conditions for the nonimmigrant that do not cause the working conditions of the other employees to be adversely affected; and there is no strike or lockout. The employer also must post at the workplace the application to hire nonimmigrants. Firms categorized as H-1B dependent (generally if at least 15% of the employees are H-1B workers) must also attest that they have attempted to recruit U.S. workers and that they have not laid off U.S. workers 90 days prior to or after hiring any H-1B nonimmigrants.

Although most employment-based nonimmigrant visas are not numerically limited, the H-1B visa is subject to an annual cap of 65,000. For the past few years, the H-1B visa limit has been reached before the beginning of the fiscal year. DHS's U.S. Citizenship and Immigration Services (USCIS) announced that the FY2009 H-1B cap was reached within the first few days it accepted petitions. At the same time, current law exempts some H-1B workers from the annual cap. For example, up to 20,000 aliens holding a master's or higher degree are exempt from the H-1B cap each year. This 20,000 limit is quickly met.

Multiple bills on the H-1B visa have been introduced in the 110<sup>th</sup> Congress. A variety of constituencies are advocating substantial increases in H-1B admissions.

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<sup>13</sup> For additional information on the H-1B visa, see CRS Report RL30498, *Immigration: Legislative Issues on Nonimmigrant Professional Specialty (H-1B) Workers*, by Ruth Ellen Wasem.

Among the bills to increase admissions, S. 1038/H.R. 1930 would amend the INA to exempt from the annual H-1B visa cap an alien who has earned a master's or higher degree from an accredited U.S. university; or has been awarded a medical specialty certification based on post-doctoral training and experience in the United States. S. 1038/H.R. 1930 further would increase the annual H-1B cap, with an escalator clause that would provide a 20% increase for the following year if the previous year's ceiling is reached. S. 1092 would amend the INA to increase the annual H-1B cap to 115,000 in FY2007 and 195,000 in FY2008. It also would eliminate the 20,000 annual cap on aliens with masters' or higher degrees who can enter the United States without being subject to H-1B visa limits. H.R. 1758 would amend the INA to provide an additional 65,000 H-1B visas in each fiscal year from FY2008 through FY2012 for persons who have a master's or Ph.D. degree and meet the requirements for such status. Under this bill, the employers of these workers would be required to make scholarship payments to institutions of higher education. Taking yet a different approach, H.R. 5642 would set the ceiling on total H-1B admissions at 195,000 for FY2008 and FY2009.

A second set of bills, including S. 1035, S. 31, and H.R. 2538, focuses on strengthening H-1B requirements and expanding enforcement. S. 1035 aims to enhance labor market protections pertaining to H-1B visas. Specifically, this bill would require that employers seeking to hire an H-1B visa holder pledge that they have made a good-faith effort to hire U.S. workers first and that the H-1B visa holder will not displace a U.S. worker. S. 1035 also would prohibit employers from hiring H-1B employees who are then outsourced to other companies, and would prohibit companies from hiring H-1B employees if they employ more than 50 people and more than 50% of their employees are H-1B visa holders. Another bill — S. 31 — would increase penalties on employers for violating the LCA, provide H-1B aliens with whistle-blower protections, and require USCIS to submit to Congress a fraud risk assessment of the H-1B visa program. H.R. 2538 would alter the LCA process by requiring H-1B employers to use whichever of its three proposed wage determination methods results in the highest wages. It also would prohibit employers from outsourcing or otherwise contracting for the placement of an H-1B nonimmigrant with another employer. In addition, H.R. 2538 would eliminate the exemption from the H-1B cap for certain aliens with a U.S. master's or higher degree.

A third set of bills includes provisions to both increase admissions and expand enforcement. Among the bills of this type, S. 1351 would increase the H-1B cap to 150,000 in FY2008 with an escalator clause for subsequent years. It also would strengthen labor market protections for U.S. workers competing with potential H-1B workers and would expand the investigative and enforcement authority of DOL. S. 1397 and H.R. 5630 would exempt from the H-1B ceilings any alien who has: earned a master's or higher degree in science, technology, engineering, or mathematics from an institution of higher education in the United States; or been awarded a medical specialty certification based on post-doctoral training and experience in the United States. Up to 20,000 aliens who have earned a master's or higher degree in science, technology, engineering, or mathematics from an institution of higher education outside the United States would also be exempted under S. 1397 and H.R. 5630. S. 1397 would raise the annual H-1B limit to 115,000 for FY2007 and rely on a market-based calculation to potentially escalate the limit above 115,000 for each

subsequent fiscal year. S. 1397 also includes enforcement provisions on application fraud and misrepresentation, employer penalties, and DOL investigations. H.R. 5630 would raise the annual H-1B limit to 130,000 for FY2008 with an escalator clause for subsequent years. H.R. 5630 also would strengthen labor market protections for U.S. workers competing with potential H-1B workers. S. 1639 includes a variety of revisions to the H-1B provisions in the INA. Among other things, it would raise the FY2008 cap to 115,000 and provide that in subsequent years DHS may issue additional H-1B visas up to a 180,000 cap. It also would require the submission of Internal Revenue Service W-2 forms as part of the H-1B renewal petition. S. 1639 draws on the labor market protections proposed in S. 1035.

As originally passed by the Senate, §532 of the FY2008 Labor, Health and Human Services, Education and Related Agencies appropriations bill (H.R. 3043) would have required employers to pay a supplemental fee of \$3,500 for each H-1B hired, with a reduced amount (\$1,750) paid by small businesses with 25 or fewer employees. Public hospitals would have been exempt from the supplemental fee. The fees would have been allocated largely to programs for gifted and talented students and for education in science, technology, engineering, and math. The final version of the bill, which was enacted as part of P.L. 110-161, does not include these Senate provisions.

#### **Temporary Admission of Professional Athletes and Entertainers.**

In 1990, when Congress replaced the former H-1B visa category for aliens of distinguished merit and ability with the current H-1B professional specialty worker visa category (discussed above), it also established the O and P visa categories.<sup>14</sup> Generally, the O visa is reserved for the highest level of accomplishment and covers a fairly broad set of occupations and endeavors, including artists, athletics, entertainers, and scientists. Those holding an O visa may stay up to three years, with a one-year renewal option. The P visa has a somewhat lower standard of achievement than the O visa and is restricted to a narrower band of occupations and endeavors. The P visa is used by an alien who performs as an artist, athlete, or entertainer (individually or as part of a group or team) and who seeks to enter the United States temporarily and solely for the purpose of performing in that capacity. P-1 visas are for athletes and members of entertainment groups at an internationally recognized level of performance. Individual athletes on P visas may stay in intervals of up to 5 years at a time, up to 10 years in total; other P visa holders may stay up to one year. H.R. 5060, which has been ordered reported by the House Judiciary Committee, would amend the law to enable P visas for individual athletes to be renewed in five-year increments, apparently without limit. In addition, the House has passed H.R. 1312, which would provide for expedited adjudication of O or P visa petitions that are not processed within 30 days of filing, if the petitioner is a nonprofit arts organization or is filing on behalf of such an organization.

**Temporary Admission of Fashion Models.** Under current law, fashion models are admitted under the H-1B visa category (see above). H.R. 4080, as approved by the House Judiciary Committee's Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, would remove fashion

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<sup>14</sup> Immigration Act of 1990, P.L. 101-649.

models from the H-1B category and create a new subcategory for fashion models under the P visa category (described in the preceding section). Under H.R. 4080, models, like individual athletes on P visas, could stay in intervals of up to 5 years, up to 10 years in total. An amendment adopted by the subcommittee would place a cap of 1,000 on the number of P visas that could be issued to models annually.

**Permanent Employment.** As mentioned above, most employment-based LPRs enter under one of the first three preference categories. These categories are (1) priority workers (that is, persons of extraordinary ability in the arts, sciences, education, business, or athletics; outstanding professors and researchers; and certain multinational executives and managers); (2) members of the professions holding advanced degrees or persons of exceptional ability; and (3) skilled workers with at least two years of training, professionals with baccalaureate degrees, and unskilled workers.

LPR admissions under these categories have exceeded the ceilings in recent years, fueling pressure to revise admissions levels in the law upward.<sup>15</sup> Replacing or supplementing the current employment-based preference system with a “merit-based” point system is also garnering considerable interest for the first time in over a decade.<sup>16</sup> Another recurring option is to no longer count the derivative family members (i.e., spouses and minor children) of employment-based LPRs as part of the numerical ceiling.

The effort to increase levels of employment-based immigration is complicated by the backlogs in *family-based* immigration due to the sheer volume of aliens eligible to immigrate to the United States. Citizens and LPRs often wait years for their relatives’ petitions to be processed and visa numbers to become available, raising questions about the advisability of increasing employment-based immigration before resolving the family-based backlogs. Meanwhile, others question whether the United States can accommodate higher levels of immigration and frequently cite the costs borne by local communities faced with increases in educational expenses, medical care, human services, and infrastructure expansion, which are sparked by population growth.

Title V of S. 1639, the immigration bill considered in the Senate in June 2007, would substantially revise legal permanent admissions. In terms of employment-based immigration, the first three preference categories, as described above, would be eliminated and replaced with a point system. This proposed point system would be multi-tiered, with a tier for “merit-based” immigrants. The merit point tier would be based on a total of 100 points divided between four factors: employment, education, English and civics, and family relationships.<sup>17</sup>

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<sup>15</sup> For an explanation of these trends, see CRS Report RL32235.

<sup>16</sup> See CRS Report RL34030, *Point Systems for Immigrant Selection: Options and Issues*, by Ruth Ellen Wasem and Chad C. Haddal.

<sup>17</sup> For further discussion of the point system proposed in S. 1639, see *Ibid.*

Among the other pending bills on employment-based LPRs is H.R. 1645. It would increase the annual number of employment-based LPRs from 140,000 to 290,000 and would no longer count the derivative family members of employment-based LPRs as part of the numerical ceiling. At the same time, it would cap the total number of employment-based LPRs and their derivatives at 800,000 annually.<sup>18</sup>

S. 1038/H.R. 1930, the SKIL Act of 2007, would expand employment-based immigration by exempting aliens with advanced degrees and specialized occupations from the worldwide numerical limits. Moreover, S. 1038/H.R. 1930 would no longer count the derivative family members of employment-based LPRs as part of the numerical ceiling. S. 1397 would likewise no longer count the derivative family members of employment-based LPRs as part of the numerical ceiling, and also would exempt from the ceiling certain aliens who have earned advanced degrees in science, technology, engineering, or math and have been working in these fields in the United States for three years.

The Senate-passed version of H.R. 3043 included language (§533) to re-capture an estimated 61,000 employment-based visas that were not used in 1996 and 1997, and to re-allocate these visas to LPRs who are nurses. Employers petitioning for these re-captured visas would have been required to pay a \$1,500 fee, which would have been used for nursing education in the United States. P.L. 110-161 does not include these Senate provisions.

## **“STEM” Students**

Alongside pending proposals to increase temporary and permanent immigration of high-skilled workers are related proposals for student visa reform for foreign students intending to pursue studies in a field related to science, technology, engineering, or math (STEM). S. 1639 and H.R. 1645 would create a new F nonimmigrant visa category specifically designed for students in STEM fields of study. Students obtaining the newly created visa would not need to demonstrate an intent to depart the United States upon completion of their studies. Students in this category could also pursue optional practical training periods of up to 24 months after completing their degrees. Furthermore, under these bills, foreign students on any F-class nonimmigrant visas would be allowed to pursue off-campus work provided that the employer attempted to first hire a similarly qualified U.S. citizen for a period of 21 days prior to employment. Employers would be required to pay foreign students the higher of the average or prevailing wage in the field of employment.

In addition to establishing a new F visa category for STEM students, H.R. 1645 would add a provision to INA §201(b) for foreign nationals who obtain (or have obtained) a master’s or higher degree at a U.S. accredited university. These foreign nationals would be exempted from the worldwide numerical limits on permanent admissions. Another provision in the act proposes to exempt from the numerical limits aliens who have earned a master’s or higher degree in a STEM field and have been working in a related field in the United States in a nonimmigrant status during the three-year period preceding their application for an employment-based immigrant

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<sup>18</sup> See CRS Report RL32235.

visa.<sup>19</sup> These exemptions from the LPR numerical limits would apply not only to current and future students, but also would apply retroactively to foreign nationals who received degrees from U.S. universities prior to the enactment of the legislation. S. 1639 has no similar provision.

## Unauthorized Alien Students

Unauthorized alien students comprise a subpopulation of the larger unauthorized alien population in the United States. They are distinct from foreign students. Although they are foreign nationals, unauthorized alien students, unlike foreign students, are not in the United States legally on nonimmigrant visas to study at U.S. institutions. Instead, by definition, they are in the country illegally. Unauthorized alien students are eligible for free public elementary and secondary education, but many of them who want to attend college face various obstacles. Among these obstacles, a provision enacted in 1996 as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA; Division C of P.L. 104-208, §505) discourages states and localities from granting unauthorized aliens certain “postsecondary education benefits,” widely interpreted to refer to “in-state” residency status for tuition purposes. Under the Higher Education Act (HEA) of 1965, as amended, unauthorized aliens are also ineligible for federal student financial aid. More broadly, as unauthorized aliens, they are unable to work legally and are subject to removal from the United States.

Bills have been introduced in recent Congresses to provide relief to unauthorized alien students by repealing the 1996 provision and enabling certain unauthorized alien students to adjust to LPR status in the United States.<sup>20</sup> These bills are commonly referred to as the DREAM Act (whether or not they carry that name). In the 110<sup>th</sup> Congress, DREAM Act legislation has been introduced both in stand-alone bills and as part of larger comprehensive immigration reform measures. S. 774 and H.R. 1275 are similar, but not identical, stand-alone DREAM Act bills before the 110<sup>th</sup> Congress. They would repeal the IIRIRA provision and thereby eliminate the restriction on state provision of postsecondary educational benefits to unauthorized aliens. Both bills also would enable eligible unauthorized students to adjust to LPR status in the United States through an immigration procedure known as *cancellation of removal*. Cancellation of removal is a discretionary form of relief authorized by the INA that an alien can apply for while in removal proceedings before an immigration judge. Aliens granted cancellation of removal have their status adjusted to LPR status.

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<sup>19</sup> From the language of H.R. 1645, CRS could not ascertain whether the provision would require that only the employment occur in the United States, or whether the advanced degree must also be from a U.S. higher education institution.

<sup>20</sup> For a discussion of bills introduced in the 109<sup>th</sup> and 110<sup>th</sup> Congress, see CRS Report RL33863, *Unauthorized Alien Students: Issues and “DREAM Act” Legislation*, by Andorra Bruno (hereafter cited as CRS Report RL33863). For a discussion of bills introduced in earlier Congresses, see CRS Report RL31365, *Unauthorized Alien Students: Legislation in the 107<sup>th</sup> and 108<sup>th</sup> Congresses*, by Andorra Bruno and Jeffrey J. Kuenzi.

Under S. 774 and H.R. 1275, aliens could affirmatively apply for cancellation of removal without being placed in removal proceedings. To be eligible for cancellation of removal/adjustment of status under these bills, the alien would have to demonstrate that he or she met various requirements, including that he or she had been physically present in the United States for a continuous period of not less than five years immediately preceding the date of enactment and had not yet reached age 16 at the time of initial entry. Both bills also would require the alien to demonstrate that he or she had been admitted to an institution of higher education in the United States, or had earned a high school diploma or the equivalent in the United States.

There would be no limit on the number of aliens who could be granted cancellation of removal/adjustment of status under S. 774 and H.R. 1275. An alien granted cancellation of removal under these bills would be adjusted initially to *conditional* permanent resident status. Such conditional status would be valid for six years and would be subject to termination. To have the condition removed and become a full-fledged LPR, the alien would have to submit an application during a specified period and meet additional requirements, including acquisition of a college degree (or completion at least two years in a bachelor's or higher degree program) or service in the uniformed services for at least two years.<sup>21</sup>

S. 2205, another stand-alone DREAM Act bill, was introduced in October 2007. On October 24, 2007, the Senate voted on a motion to invoke cloture on S. 2205. The motion failed on a vote of 52 to 44. S. 2205 contains legalization provisions similar to those in S. 774 and H.R. 1275. Under S. 2205, eligible unauthorized students could adjust to LPR status through the cancellation of removal procedure. To be eligible for cancellation of removal/adjustment of status under S. 2205, as under S. 774 and H.R. 1275, the alien would have to demonstrate, among other requirements, that he or she had been physically present in the United States for a continuous period of not less than five years immediately preceding the date of enactment, had not yet reached age 16 at the time of initial entry, and had been admitted to an institution of higher education in the United States or had earned a high school diploma or the equivalent in the United States. In a requirement not included in S. 774 and H.R. 1275, the alien would also have to show that he or she was under age 30 on the date of enactment.

As under S. 774 and H.R. 1275, an alien granted cancellation of removal under S. 2205 would be adjusted initially to conditional permanent resident status. To have the condition removed and become a full-fledged LPR, the alien would have to meet additional requirements, including acquisition of a college degree (or completion of at least two years in a bachelor's or higher degree program) or service in the uniformed services for at least two years. There would be no limit on the number of aliens who could be granted cancellation of removal/adjustment of status. Unlike S. 774, H.R. 1275, and DREAM Act bills introduced in past Congresses, S. 2205 would not repeal the IIRIRA provision and thereby eliminate the restriction on state provision of postsecondary educational benefits to unauthorized aliens.

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<sup>21</sup> For a discussion of the differences between S. 774 and H.R. 1275, see CRS Report RL33863.

In addition to these free-standing bills, DREAM Act provisions have been included in larger comprehensive immigration reform bills. H.R. 1645 contains a DREAM Act subtitle in Title VI that is nearly identical to S. 774, as discussed above. A version of the DREAM Act also was included in S. 1639, the immigration bill that the Senate considered but failed to invoke cloture on in June 2007. The S. 1639 version of the DREAM Act, however, is substantially different than the other DREAM Act bills in the 110th Congress. S. 1639's DREAM Act provisions are tied to other provisions in the bill to enable certain unauthorized aliens in the United States to obtain legal status under a new "Z" nonimmigrant visa category. S. 1639, like most other DREAM Act bills, would couple adjustment of status provisions for unauthorized students with language addressing the IIRIRA provision that places restrictions on state provision of educational benefits to unauthorized aliens. Unlike most other DREAM Act bills, however, S. 1639 would not completely repeal the IIRIRA provision. Instead, §616(a) of S. 1639 would make the provision inapplicable with respect to aliens with probationary Z or Z status.<sup>22</sup>

## Document Security

Two federal agencies issue most immigration-related identity documents. The Department of State (DOS) is responsible for issuing visas to foreign nationals and passports to U.S. citizens. Among other uses, these documents are used by persons seeking admission to the United States, as all must demonstrate that they are either foreign nationals with valid documents or U.S. citizens. DHS issues most other immigration documents, which foreign nationals need for various purposes within the United States. For example, the INA requires employers — when hiring citizens and foreign nationals alike — to examine specified documents presented by the employee, which may include immigration documents, to verify employment eligibility and establish identity.

For well over a decade, the security of immigration documents has been an issue. Initially, the emphasis was on issuing documents that were tamper-resistant and difficult to counterfeit in order to impede document fraud and unauthorized employment. Since the terrorist attacks of September 11, 2001, the policy priorities have centered on preventing identity fraud, with a sharp focus on intercepting terrorist travel and other security threats.

There is a consensus that immigration documents should include biometric identifiers (e.g., digitized photos or finger scans), but determining what type of biometric identifier to use poses a variety of technical issues. Congress imposed a statutory requirement in 1996 for DOS's Bureau of Consular Affairs to issue a biometric border crossing card, known today as a laser visa. In 2001 and 2002, Congress added requirements that all visas be biometric. Since October 2004, the Bureau of Consular Affairs has been issuing machine-readable visas that use biometric identifiers in addition to the photograph that has been collected for some

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<sup>22</sup> For further information on the version of the DREAM Act included in S. 1639, see CRS Report RL32044.



time.<sup>23</sup> Immigration documents issued by USCIS in DHS likewise include biometric identifiers. The permanent resident card, commonly called a “green card,” is the document LPRs use to establish their status. According to USCIS, approximately 14.6 million biometric “green cards” were issued between FY1998 and FY2006. Aliens who are temporarily in the United States and eligible to work file a request for an employment authorization document (EAD). Over 8.3 million biometric EADs were issued between FY1998 and FY2006, according to USCIS.

The United States does not require its citizens to have legal documents that verify their citizenship and identity (i.e., national identification cards). The INA does require all U.S. citizens to present a valid passport when entering and departing the United States, but gives the President the authority to waive this requirement. P.L. 108-458, while not directly amending the President’s passport waiver authority, requires the Secretary of Homeland Security, in consultation with the Secretary of State, to develop and implement a plan that requires a document that denotes identity and citizenship for all entries into the United States. This statutory directive, discussed in a separate section below, is known as the Western Hemisphere Travel Initiative (WHTI).

Striking a balance among the facilitation of legitimate travel and trade, the integrity of immigration documents, the security of personal identification documents, the protection of personal privacy and civil liberties, and the deterrence of foreign security threats remains a challenge for Congress. The Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53) requires DHS, in conjunction with the Director of National Intelligence and the heads of other relevant federal agencies, to submit a report to Congress outlining the actions the U.S. government has taken to collaborate with international partners to increase border security, enhance document security, and exchange information about terrorists.

A number of bills before the 110<sup>th</sup> Congress include provisions aimed at improving document security. Provisions that would require that immigration documents comply with specified authentication, documentation, and machine readable standards are included in H.R. 1645, H.R. 2954, S. 330, and S. 1348. Provisions to expand document fraud training for DHS officers are included in H.R. 2954, S. 1348, and S. 1984. For its part, S. 276 would revise the criminal penalties for immigration and visa fraud, including trafficking in counterfeit immigration documents.

## **Visa Waiver Program**

The Visa Waiver Program (VWP) allows nationals from certain countries to enter the United States as temporary visitors (nonimmigrants) for business or

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<sup>23</sup> §414 of the USA Patriot Act (PL. 107-56) and § 303 of the Enhanced Border Security and Visa Reform Act (P.L. 107-173) require that visas and other travel documents contain a biometric identifier and are tamper-resistant.

pleasure without first obtaining a visa from a U.S. consulate abroad.<sup>24</sup> The VWP constitutes one of the few exceptions under the INA in which foreign nationals are admitted into the United States without a valid visa.

To qualify for the VWP, the INA specifies that a country must meet certain requirements. For example, the country must offer reciprocal privileges to U.S. citizens; the country must issue its nationals machine-readable passports that incorporate biometric identifiers; and the country's inclusion in the VWP must not compromise the law enforcement or security interests of the United States. Among the other requirements for VWP participation, the country must have a low nonimmigrant refusal rate (normally less than 3%).<sup>25</sup>

P.L. 110-53 modifies the VWP by adding criteria to qualify as a VWP country. Among other new requirements, P.L. 110-53 mandates that the Secretary of DHS, in consultation with the Secretary of State, develop and implement an electronic travel authorization system, through which each alien would electronically provide, in advance of travel, the biographical information necessary to determine whether the alien is eligible to travel to the United States and enter under the VWP. P.L. 110-53 also requires that, by August 3, 2008, the Secretary of DHS establish an exit system that records the departure of every alien who enters under the VWP and leaves the United States by air.

Finally, the act allows the Secretary of DHS, in consultation with the Secretary of State, to waive the nonimmigrant refusal rate requirement for admission to the VWP on the date on which the Secretary of DHS certifies to Congress that an air exit system is in place that can verify the departure of not less than 97% of all foreign nationals who exit through U.S. airports. This waiver authority is also contingent on the Secretary of DHS certifying to Congress that the electronic travel authorization system discussed above is operational. In addition, after June 30, 2009, the air exit system would have to incorporate biometric identifiers and be able to match an alien's biometric information with relevant watch lists and manifest information. Otherwise, the Secretary of DHS's authority to waive the nonimmigrant refusal rate would be suspended until the air exit system had the specified biometric capacity. In order to participate in the VWP, a country receiving a nonimmigrant visa refusal rate waiver could not have a refusal rate above 10% and would have to meet other requirements.

## Border Security

DHS is charged with protecting U.S. borders from weapons of mass destruction, terrorists, smugglers, and unauthorized aliens. Border security involves securing the many means by which people and things can enter the country. Operationally, this

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<sup>24</sup> For more information on the Visa Waiver Program, see CRS Report RL32221, *Visa Waiver Program*, by Alison Siskin.

<sup>25</sup> The nonimmigrant refusal rate is the percentage of all nonimmigrant visa applications that are denied. For purposes of the VWP, the rate does not include applications that are originally denied, but then approved when the alien presents additional information.

means controlling the official ports of entry (POE) through which legitimate travelers and commerce enter the country, and patrolling the nation's land and maritime borders to safeguard against and interdict illegal entries.

Border security has been a key immigration issue for the 110<sup>th</sup> Congress. There has been much debate about whether DHS has sufficient resources to fulfill its border security mission, and a number of bills have been considered that would add resources to the border, including personnel, infrastructure, and technology. Other bills would institute new, or modify existing, programs within the Department.

## Resources at the Border

A number of bills have been introduced that would add resources for Customs and Border Protection (CBP), the lead agency at DHS charged with securing U.S. borders at and between official ports of entry (POE). *At* ports of entry, CBP officers are responsible for conducting immigration, customs, and agricultural inspections on entering aliens. *Between* ports of entry, the U.S. Border Patrol (USBP), a component of CBP, enforces U.S. immigration law and other federal laws along the border. In the course of discharging its duties, the USBP patrols over 8,000 miles of U.S. international borders with Mexico and Canada and the coastal waters around Florida and Puerto Rico. The following discussion focuses on key provisions on border resources that have been enacted by the 110<sup>th</sup> Congress and selected other provisions that are pending.

**Resources at POE.** P.L. 110-53 authorizes the hiring of 200 additional CBP officers in FY2008 to be deployed to the 20 busiest international airports. The act also requires DHS to submit a report to Congress concerning the ongoing efforts to secure the northern border with Canada, including an assessment of northern border vulnerabilities and recommendations for addressing them. A number of other bills, including S. 1639, the broad immigration bill the Senate considered last year, would authorize the hiring of 500 additional CBP officers each year from FY2008 through FY2012. Additionally, in an effort to contain attrition within the CBP workforce, Division E of P.L. 110-161 extends to CBP officers the same federal retirement program enhancements currently offered to federal law enforcement officers.<sup>26</sup>

**Resources Between POE.** A number of bills in the 110<sup>th</sup> Congress, including S. 1639 and H.R. 4088, would authorize increases in the USBP agent manpower. H.R. 4088 also would direct CBP to establish a program to recruit former Armed Forces personnel and to offer recruitment incentives such as student loan repayments and bonuses; allow DHS to deploy USBP agents to states whose governors have declared states of emergency and have requested agents to be assigned there; and give the USBP administrative control over all assets used by their agents. Many of these bills, including H.R. 4088 and S. 1639, would also direct DHS to acquire additional remote video surveillance cameras, sensors, radars, and unmanned aerial vehicles in order to create a "virtual fence" along the international

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<sup>26</sup> For more information about the federal retirement system and the enhancements offered to law enforcement officers, see CRS Report 98-810, *Federal Employees' Retirement System: Benefits and Financing*, by Patrick Purcell.

borders, and to create a comprehensive national border security strategy. Division E of P.L. 110-161 requires DHS to submit a land border security plan to Congress every other year starting on January 31, 2008.

The Senate-passed version of the FY2008 DHS appropriations bill (H.R. 2638) includes a \$3 billion emergency supplemental appropriation to be used to, among other things, bring the overall USBP workforce to 23,000 agents, construct 700 miles of fencing along the southern border, and deploy 105 camera and radar towers and four unmanned aerial vehicles to the border. Although P.L. 110-161 includes \$3 billion in emergency funding for border security purposes, these specific provisions are not included in the act.

## **Barriers at the Border**

Congress has repeatedly shown interest in the deployment of barriers along the U.S. international land border.<sup>27</sup> In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), which, among other things, explicitly gave the Attorney General broad authority to construct barriers along the border and specified where fencing was to be constructed. In 2006, Congress passed the Secure Fence Act (P.L. 109-367), which, among other things, amended the fencing language in IIRIRA to direct DHS to construct five separate stretches of fencing along the southern border totaling 850 miles, and to impose deadlines for the construction of fencing and the installation of an interlocking surveillance camera system along specified border areas. These requirements have again been modified by provisions in P.L. 110-161. The Secretary of Homeland Security is now required to construct reinforced fencing along not less than 700 miles of the southwest border, in locations where fencing is deemed most practical and effective. In carrying out this requirement, the Secretary is further directed to identify either 370 miles or “other mileage” along the southwest border where fencing would be most practical and effective in deterring smugglers and illegal aliens, and to complete construction of fencing in identified areas by December 31, 2008. A number of bills, including H.R. 4088, would direct CBP to expand the current road, fencing, and vehicle barrier infrastructure at the border.

P.L. 110-161 also imposes new consultation requirements on the Secretary of Homeland Security when carrying out duties under the border barrier section, and conditions appropriations under the act upon compliance with these requirements. The act specifies that this consultation requirement does not create or negate any right to legal action by an affected person or entity.

## **Western Hemisphere Travel Initiative**

The Western Hemisphere Travel Initiative (WHTI) was enacted by the Intelligence Reform and Terrorism Prevention Act (P.L. 108-458) and requires the Secretary of Homeland Security, in consultation with the Secretary of State, to develop and implement a plan as expeditiously as possible to require a passport or

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<sup>27</sup> For additional background, see CRS Report RL33659, *Border Security: Barriers Along the U.S. International Border*, by Blas Nuñez-Neto and Michael John Garcia.

other document, or combination of documents, “deemed by the Secretary of Homeland Security to be sufficient to denote identity and citizenship,” for all travelers entering the United States. The deadline for implementation was eased by §546 of P.L. 109-295, which required implementation not later than three months after the Secretaries of State and Homeland Security certified that specified requirements had been met, or June 1, 2009, whichever was earlier. Division E of P.L. 110-161 further eases the deadline for implementation by prohibiting DHS from implementing WHTI before the *later* of the following two dates: June 1, 2009, or three months after the Secretaries of State and Homeland Security certify that a series of implementation requirements have been met. Despite this legislation, as of January 31, 2008, DHS has ended the practice of accepting oral declarations of U.S. citizenship at the land border and is requiring U.S. citizens to present a passport, some other accepted biometric document, or the combination of a driver’s license and a birth certificate in order to re-enter the country.

The 110<sup>th</sup> Congress also has enacted P.L. 110-53, which requires DHS to enter into a pilot program with at least one state to create an enhanced driver’s license (EDL) that would be considered a valid entry document under the WHTI requirements. Under P.L. 110-53, DHS’s participation in such a pilot program is required prior to the full implementation of WHTI at the land borders.<sup>28</sup> In addition, P.L. 110-53 requires DHS to perform a cost-benefit analysis of the WHTI program and to develop proposals for reducing the fees associated with the passport card currently being developed for the program.

Other related bills before the 110<sup>th</sup> Congress include H.R. 1061. It would, among other things, allow the current registered traveler and registered shipper program documentation<sup>29</sup> to be valid proof of citizenship under the WHTI requirements; this would codify something that DHS has already begun implementing administratively.<sup>30</sup>

## **State and Local Enforcement of Immigration Law**

The authority for state and local law enforcement officials to enforce immigration law has generally been construed to be limited to the criminal provisions of the INA; the enforcement of the civil provisions, which includes apprehension and removal of deportable aliens, has been viewed as a federal responsibility, with states

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<sup>28</sup> DHS is currently participating in an enhanced driver’s license pilot program with the state of Washington.

<sup>29</sup> Current registered traveler programs include NEXUS, between the United States and Canada, and the Secure Electronic Network for Travelers’ Rapid Inspection (SENTRI), between the United States and Mexico. These programs expedite the entry of registered foreigners by providing them with dedicated lanes and radio identification frequency enabled cards. The Free and Secure Trade (FAST) program is a fully electronic expedited cargo release program in place at the Northern and Southern borders. FAST uses electronic data transmissions and transponder technology to expedite the processing of shipments at land border ports of entry.

<sup>30</sup> CRS site visit to the northern border, August 26, 2007-September 1, 2007.

playing an incidental supporting role.<sup>31</sup> One of the broadest grants of authority for state and local immigration enforcement activity stems from §133 of IIRIRA, which amended INA §287 by adding a new provision. This provision, commonly referred to as the 287(g) program, authorizes the Attorney General (now the Secretary of Homeland Security) to enter into written agreements with states and local governments to allow their law enforcement officers to perform certain immigration law enforcement functions.

Some bills in the 110<sup>th</sup> Congress would modify or expand the 287(g) program. For example, S. 1639 would require DHS to reimburse states and local governments for training provided to their law enforcement officers under the 287(g) program and for the cost of any equipment required by the agreement. S. 1269 would create a web-based curriculum that could be used to train state and local law enforcement officers on immigration law enforcement. Other related bills, such as Senate-passed H.R. 2638 and H.R. 4088, would create grant programs to reimburse states and local communities for unauthorized immigration-related expenses that they may incur.

Lastly, some bills (including S. 1269, S. 2717, H.R. 842, and H.R. 2954) would “reaffirm the existing inherent authority of States,” as sovereign entities (including their law enforcement personnel), to investigate, identify, apprehend, arrest, detain, or transfer into federal custody aliens in the United States in the course of carrying out routine duties. S. 2717 and H.R. 842 would also require DHS to designate one detention facility within each state as a central facility for law enforcement entities within that state to place aliens. Under S. 1269, S. 2717, and H.R. 842, DHS would be further required to take aliens into federal custody within a specified period of time after their apprehension by state and local law enforcement officers.

## **Employment Eligibility Verification and Worksite Enforcement**

Employment eligibility verification and worksite enforcement have been key issues in the debate over comprehensive immigration reform. They are widely viewed as essential components of a strategy to reduce unauthorized immigration. There appears to be considerable congressional support to expand verification requirements and bolster worksite enforcement efforts. In some cases, this support seems to be linked to support for other proposals to establish new temporary worker programs and to legalize the status of unauthorized aliens in the United States.

Under INA §274A, it is unlawful for an employer to knowingly hire, recruit or refer for a fee, or continue to employ an alien who is not authorized to be so employed. Employers are required to participate in a paper-based employment eligibility verification system, commonly referred to as the I-9 system, in which they examine documents presented by new hires to verify identity and work eligibility,

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<sup>31</sup> For more information about state and local law enforcement authorities to enforce immigration law, see CRS Report RL32270, *Enforcing Immigration Law: The Role of State and Local Law Enforcement*, by Blas Nuñez-Neto, Michael John Garcia, and Karma Ester.

and complete and retain I-9 verification forms. In addition, employers may elect to participate in an electronic employment eligibility verification pilot program that was established under IIRIRA. Participants in the program, now known as E-verify (formerly, the Basic Pilot program and then the Employment Eligibility Verification System), electronically verify new hires' employment authorization through Social Security Administration (SSA) and, if necessary, DHS databases. The program is scheduled to expire in November 2008. Employers violating prohibitions on unlawful employment may be subject to civil and/or criminal penalties. Enforcement of these provisions is termed worksite enforcement.<sup>32</sup>

P.L. 110-161 includes provisions related to E-Verify that build on current law regarding entities required to participate in an employment eligibility verification pilot program. Under IIRIRA §402(e)(1), as amended, "each Department of the Federal Government shall elect to participate in a [employment eligibility verification] pilot program," and the Secretary of Homeland Security shall help ensure that "a significant portion of the total hiring within each Department ... is covered under such a program." Each Member of Congress, each officer of Congress, and the head of each legislative branch agency likewise "shall elect to participate in a pilot program."<sup>33</sup> A provision in Division B of P.L. 110-161 on Commerce, Justice, Science, and Related Agencies appropriations (§541) directs that none of the funds made available may be used in contravention of IIRIRA §402(e)(1). A provision in Division E on DHS appropriations (§557) states that none of the funds made available to the Office of the Secretary and Executive Management may be used for any new hires that are not verified through E-Verify. Several FY2008 appropriations bills (H.R. 3043, H.R. 3074, H.R. 3093, and H.R. 3161<sup>34</sup>), as passed by the House, contained identical language to prohibit any funds made available in the acts to be used to enter into contracts with entities that do not participate in E-verify,<sup>35</sup> but these provisions are not included in P.L. 110-161.

A variety of other bills introduced in the 110th Congress would require all employers to conduct electronic employment eligibility verification and would make other changes to current law related to employment eligibility verification and worksite enforcement. Title III of S. 1639 would amend INA §274A to establish a

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<sup>32</sup> For further discussion of unauthorized employment, see CRS Report RL33973, *Unauthorized Employment in the United States: Issues and Options*, by Andorra Bruno.

<sup>33</sup> 8 U.S.C. 1324a note. Three employment eligibility verification pilot programs were originally authorized by IIRIRA. E-Verify is the only one still in operation.

<sup>34</sup> These are FY2008 appropriations bills for the Departments of Labor, Health and Human Services, and Education, and Related Agencies (H.R. 3043); Transportation, Housing and Urban Development, and Related Agencies (H.R. 3074); Commerce, Justice, Science, and Related Agencies (H.R. 3093); and Agriculture, Rural Development, Food and Drug Administration, and Related Agencies (H.R. 3161).

<sup>35</sup> In a related development, the Bush Administration announced in August 2007 that it would commence a rule-making process to require all federal contractors and vendors to use E-verify. See White House (G.W. Bush), "Fact Sheet: Improving Border Security and Immigration Within Existing Law," August 10, 2007, item #14, at [<http://www.whitehouse.gov/news/releases/2007/08/print/20070810.html>], visited May 8, 2008.

new employment eligibility verification system (EEVS; modeled on the current largely voluntary electronic system). Under S. 1639, it would be unlawful for an employer or other entity to hire, or recruit or refer for a fee, an individual for employment in the United States without verifying identity and employment eligibility, as specified. Over time, participation in the new electronic EEVS would become mandatory. As of the date of enactment, the Secretary of DHS would be authorized to require any employer or industry that is a federal contractor, part of the critical infrastructure, or directly related to U.S. national or homeland security to participate in the new EEVS. This requirement could be applied to both newly hired and current employees. No later than 18 months after the date of enactment, all employers would be required to participate in the new EEVS with respect to newly hired employees and certain current employees. No later than three years after enactment, all employers would be required to participate with respect to new employees and all employees not previously verified through the EEVS.

Under S. 1639, individuals who receive final notices that the system cannot confirm their employment eligibility (known under the bill, as under E-Verify, as final nonconfirmation notices) could seek administrative and judicial review, as specified. The current I-9 system would remain in place with some modifications. Changes would also be made to existing monetary penalties for employer violations.<sup>36</sup> Among its other employment eligibility verification and worksite enforcement-related provisions, S. 1639 would provide for the disclosure of certain taxpayer identity information by SSA to DHS (§304); require SSA to issue more secure Social Security cards (§305); and establish a voluntary program through which participating employers could submit employees' fingerprints to verify identity and employment eligibility (§307).

Title III of H.R. 1645 would likewise amend INA §274A to establish a new electronic employment verification system. Under this bill, it would be unlawful for an employer or other entity to hire an individual for employment in the United States without verifying identity and employment eligibility, as specified. Unlike under S. 1639, these verification requirements, for the most part, would not apply in cases of recruitment or referral for a fee. Requirements to participate in the new electronic system with respect to new hires would be phased-in. "Critical employers"<sup>37</sup> would have to participate no later than one year after enactment. Large, mid-sized, and small employers, as defined in the bill, would be required to participate in the system no later than two, three, and four years after enactment, respectively. This schedule for participation, however, would be contingent on the Comptroller General of the United States submitting annual certifications that the system's databases are updated in a timely fashion; there are low error rates in verification; the system has not and will not result in increased discrimination; workers' private information is protected; and staffing and funding are adequate. In the absence of such certifications, employer participation requirements would be waived or delayed. In addition to the

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<sup>36</sup> These changes, however, are somewhat unclear.

<sup>37</sup> Critical employers under the bill are U.S. agencies and departments (including the Armed Forces), state governments, and other employers who employ individuals working at a federal, state, or local government building, military base, nuclear energy site, weapon site, or airport.



participation requirements with respect to new hires, H.R. 1645 includes a separate requirement that critical employers complete a one-time reverification of all individuals currently employed at these facilities.

Under H.R. 1645, individuals who are terminated from employment as a result of a final nonconfirmation could seek administrative and judicial review. The current I-9 system would remain in place with some modifications. In addition, H.R. 1645 would increase monetary penalties for employer violations of INA prohibitions on unlawful employment. Like S. 1639, H.R. 1645 contains provisions on the disclosure of taxpayer identity information by SSA to DHS (§306(b)), and on enhancing the security of Social Security cards. The provisions in the two bills differ, however. With respect to Social Security cards, H.R. 1645 includes language like that in H.R. 98 and H.R. 2954 discussed below, to require the issuance of Social Security cards with a machine-readable electronic identification strip unique to the bearer and a digitized photograph. Furthermore, H.R. 1645 would amend INA §274B on unfair immigration-related employment practices to, among other changes, add new antidiscrimination requirements related to the electronic verification system (§303).

H.R. 4088/S. 2366/S. 2368 would phase in a requirement that all employers conduct employment authorization verification through the existing E-verify system. Initially this requirement would apply only to new hires. Not later than four years after enactment, however, employers would have to verify that all their employees are authorized to work. These bills also would require SSA to share information with DHS in certain circumstances.

H.R. 98 and H.R. 2954 would require Social Security cards to include an encrypted machine-readable electronic identification strip unique to the bearer and a digitized photograph. Under the bills, new hires would have to present a Social Security card of this type to their employers, who would use it to verify the worker's identity and work authorization. Employment eligibility verification would be conducted by accessing a database to be established by DHS that would contain DHS and SSA data. These verification requirements would take effect two years after the date of enactment and would apply to any employment commencing on or after that effective date. H.R. 98 and H.R. 2954 would increase penalties on employers who violate prohibitions on unlawful employment, but would do so differently. H.R. 2954 also would require SSA to share data with DHS in certain circumstances.

Sections 102 and 103 of H.R. 5515 would replace the DHS-administered E-Verify system with two new verification systems to be established by SSA: the Electronic Employment Verification System (EEVS) and the Secure Employment Eligibility Verification System (SEEVs). Under H.R. 5515, employers and other entities would be required to verify identity and employment eligibility in cases of hiring and in certain cases of referral or recruitment for a fee. Not later than three years after enactment, employers would be required to participate in either the EEVS or the SEEVs. The EEVS would be modeled broadly on E-Verify, although it would differ from the current system in key ways. For example, the EEVS would use information from a government database, the National Directory of New Hires, that

is not currently part of E-Verify.<sup>38</sup> Like H.R. 1645, H.R. 5515 would enable individuals who are terminated from employment as a result of a disapproval notice (akin to a final nonconfirmation under E-Verify) to seek administrative and judicial review. The SEEVs, which H.R. 5515 would direct SSA to establish by regulation, would provide for identity authentication and employment eligibility verification. It would use the services of private sector entities to enroll new employees by means of identity authentication, protect authenticated information through biometric technology, and verify employment eligibility. Employees would be afforded the same rights and protections in connection with responses to inquiries under the SEEVs as under the EEVs.

H.R. 5515 also would increase monetary penalties for employer violations of INA §274A prohibitions on unlawful employment (§104) and would amend INA §274B on unfair immigration-related employment practices to add new antidiscrimination requirements related to the EEVs and the SEEVs (§103). In addition, the bill would provide for the disclosure of certain information in the National Directory of New Hires (discussed above) by the Department of Health and Human Services to DHS (§106).

## U.S. Refugee Program

The admission of refugees to the United States and their resettlement here are authorized by the INA.<sup>39</sup> The U.S. worldwide refugee ceiling for FY2008 is 80,000, with 70,000 of these numbers allocated among the regions of the world and the remaining 10,000 comprising an “unallocated reserve” to be used if, and where, additional refugee slots are needed. As of April 30, 2008, FY2008 refugee admissions stood at 23,072. FY2007 refugee admissions totaled 48,281. Refugee numbers that are unused in a fiscal year are lost; they do not carry over into the following year.

DOS handles overseas processing of refugees, which is conducted through a system of three priorities for admission. Priority One (P-1) covers compelling protection cases and individuals for whom no durable solution exists, who are referred to the U.S. refugee program by UNHCR, a U.S. embassy, or a designated nongovernmental organization (NGO). All nationalities are eligible for P-1 processing. Priority Two (P-2) covers groups of special humanitarian concern to the United States. It includes specific groups within certain nationalities, clans, or ethnic groups, such as Iranian religious minorities. Priority Three (P-3) comprises family reunification cases involving spouses, unmarried children under age 21, and parents

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<sup>38</sup> Established under the Social Security Act, the National Directory of New Hires is an automated directory that is part of the Department of Health and Human Service’s Federal Parent Locator Service. It contains employer-provided information on new hires. Act of August 14, 1935, ch. 531, as amended, §§453(i), 453A.

<sup>39</sup> The Refugee Act (P.L. 96-212, March 17, 1980) amended the INA to establish procedures for the admission of refugees to the United States. For additional information on the U.S. refugee program, see CRS Report RL31269, *Refugee Admissions and Resettlement Policy*, by Andorra Bruno (hereafter cited as CRS Report RL31269).

of persons who were admitted to the United States as refugees or granted asylum. Seventeen nationalities are eligible for P-3 processing in FY2008.<sup>40</sup> In most cases, to be considered for refugee resettlement in the United States, an individual must be outside his or her country of nationality.

The “Lautenberg amendment,” first enacted in 1989, requires the Attorney General (now the Secretary of DHS) to designate categories of former Soviet and Indochinese nationals for whom less evidence is needed to prove refugee status, and provides for adjustment to LPR status for certain former Soviet and Indochinese nationals denied refugee status. P.L. 108-199 amended the Lautenberg amendment to add a new provision, known as the “Specter amendment,” that directs the Attorney General to establish categories of Iranian religious minorities who may qualify for refugee status under the Lautenberg amendment’s reduced evidentiary standard. P.L. 110-5 extends the Lautenberg amendment through FY2007, and P.L. 110-161 (Division J, §634(k)) extends the amendment through FY2008.

The “McCain amendment,” first enacted in 1996, made the adult children of certain Vietnamese refugees eligible for U.S. refugee resettlement. P.L. 107-185 revised the amendment for FY2002 and FY2003. Among its provisions, this law enabled adult children previously denied resettlement to have their cases reconsidered. Subsequent laws extended the amendment, as revised, through FY2007. P.L. 110-161 (Division J, §634(f)) extends the amendment through FY2009. H.R. 3096, as passed by the House, would state that it is U.S. policy to offer refugee resettlement to nationals of Vietnam who were eligible for a U.S. refugee program, but who were deemed ineligible because of an administrative error or who, for reasons beyond their control, did not apply by the relevant deadlines.

**Resettlement Funding.** The Department of Health and Human Services’ Office of Refugee Resettlement (HHS/ORR), within the Administration for Children and Families, administers an initial transitional assistance program for temporarily dependent refugees and Cuban/Haitian entrants. P.L. 110-5 provides \$587.8 million for refugee assistance for FY2007, and P.L. 110-161, Division G provides \$667.3 million for such assistance for FY2008, subject to a rescission of 1.747%. Refugees are also eligible for federal public assistance programs.<sup>41</sup>

## Iraqi Refugees

According to the United Nations High Commissioner for Refugees (UNHCR), more than 2 million Iraqis have left their homes for neighboring states, mainly Syria

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<sup>40</sup> For further information, see U.S. Department of State, U.S. Department of Homeland Security, and U.S. Department of Health and Human Services, *Proposed Refugee Admissions for Fiscal Year 2008: Report to the Congress*, at [<http://www.state.gov/g/prm/refadm/rls/rpts/2007/92585.htm>], visited May 8, 2008.

<sup>41</sup> For further information on assistance available to refugees, see CRS Report RL31269.

and Jordan.<sup>42</sup> The plight of Iraqi refugees is of congressional interest, and multiple bills have been introduced in the 110<sup>th</sup> Congress to facilitate the resettlement of Iraqi refugees in the United States.

Iraqi refugees are eligible for resettlement in the United States through the U.S. refugee program. As of April 30, 2008, FY2008 admissions of Iraqi refugees totaled 3,601. Like all nationalities, Iraqis are eligible for refugee processing under Priority One of the priority system outlined in the preceding section. With respect to Priority Two, the National Defense Authorization Act for Fiscal Year 2008 (P.L. 110-181) specifies certain groups of Iraqis that are to be processed under this processing priority. These new Priority Two groups include Iraqis who are or were employed by the U.S. government in Iraq; Iraqis who are or were employed in Iraq by a media or non-governmental organization headquartered in the United States, or by an entity closely associated with the U.S. mission in Iraq that has received U.S. government funding; and Iraqis who are members of a persecuted religious or minority group and have close family members in the United States. Iraqis are also among the 17 nationalities eligible for Priority Three processing in FY2008. In most cases, as mentioned above, an individual must be outside his or her country of nationality to be considered for refugee resettlement in the United States. P.L. 110-181 requires the Secretary of State to establish an in-country refugee processing program for Iraqis. Iraqi refugee provisions similar to those in P.L. 110-181 are included in S. 1651 and the Senate-passed version of H.R. 1585.

Beyond the formal refugee program, other immigration mechanisms have been established to facilitate the admission to the United States of Iraqis who have worked for or been closely associated with the U.S. government, including the U.S. military. Provisions enacted in 2006 authorize DHS to grant LPR status as *special immigrants* to certain nationals of Iraq or Afghanistan who worked directly with the U.S. Armed Forces as translators for at least one year, and their spouses and children. This program was initially capped at 50 aliens (excluding spouses and children) annually.<sup>43</sup> P.L. 110-28 and P.L. 110-36 expand this program to authorize DHS to grant special immigrant status to nationals of Iraq or Afghanistan who have worked directly with the U.S. Armed Forces, or under Chief of Mission authority, as translators or interpreters. These laws also increase the annual cap on this program to 500 for FY2007 and FY2008.<sup>44</sup> P.L. 110-36 further establishes that an individual's absence from the United States due to his or her work with the Chief of Mission or U.S. Armed Forces as a translator or interpreter, some of which work was done in Iraq or Afghanistan, will not be considered a break in U.S. continuous residence for purposes of naturalization under the INA.

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<sup>42</sup> United Nations High Commissioner for Refugees, "The Iraq Situation," at [<http://www.unhcr.org/cgi-bin/texis/vtx/iraq?page=intro>], visited May 8, 2008. Also see CRS Report RL33936, *Iraqi Refugees and Internally Displaced Persons: A Deepening Humanitarian Crisis?*, coordinated by Rhoda Margesson (hereafter cited as CRS Report RL33936).

<sup>43</sup> P.L. 109-163, §1059.

<sup>44</sup> The cap reverts to 50 for FY2009 and subsequent years.

P.L. 110-181, in addition to making changes to the refugee program discussed above, broadens DHS's authority to provide special immigrant status to certain nationals of Iraq. It also grants the Secretary of State the authority to provide such status in consultation with DHS. Under the law, Iraqi nationals are eligible for special immigrant status if they were employed by or on behalf of the U.S. government in Iraq on or after March 20, 2003, for not less than one year; provided documented valuable service to the U.S. government; and have experienced "an ongoing serious threat as a consequence of the alien's employment by the United States government." This special immigrant program is capped at 5,000 principal aliens (excluding spouses and children) for each of the five fiscal years after the date of enactment. S. 2829, as passed by the Senate, would amend P.L. 110-181 to change the reference to "each of the five fiscal years after the date of enactment" to "fiscal years 2008 through 2012." This bill also would grant the Secretary of Homeland Security or the Secretary of State the authority to convert an approved petition for special immigrant status under the special immigrant program for Afghani or Iraqi translators or interpreters described above to an approved petition for special immigrant status under the special immigrant program established by P.L. 110-181, if a visa for the former program were not immediately available. Such a converted petition would not be subject to the eligibility requirements of the P.L. 110-181 program but would be subject to that program's 5,000 annual cap.

As mentioned above, aliens admitted to the United States as refugees are eligible for resettlement assistance and for federal public assistance, provided that they meet the relevant requirements. While special immigrants as a whole are not eligible for such assistance, P.L. 110-161 includes a provision making Iraqis and Afghans who are admitted as special immigrants eligible for the same resettlement assistance, entitlement programs, and other benefits as refugees for up to six months. P.L. 110-181 extends this period of eligibility to up to eight months for Iraqi special immigrants only.

## Other Issues and Legislation

### Victims of Trafficking

The most recent U.S. government reports on human trafficking estimate that there are between 14,500 and 17,500 victims trafficked into the United States each year.<sup>45</sup> In 2000, Congress passed the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA; P.L. 106-386), which created a new nonimmigrant category for trafficking victims (T visa),<sup>46</sup> established avenues for relief from removal for trafficking victims, and created several programs to help trafficking victims in the

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<sup>45</sup> See, for example, U.S. Department of Justice, *Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons: Fiscal Year 2005*, June 2006, p. 3, at [<http://www.usdoj.gov/ag/annualreports/tr2005/agreport/humantrafficking2005.pdf>], visited May 8, 2008.

<sup>46</sup> P.L. 106-386 amended the INA to add §101(a)(15)(T). Although T nonimmigrant status is often referred to as the T visa, it is not technically a visa if it is given to aliens present in the United States.

United States. Congress reauthorized VTVPA in 2003 and 2005,<sup>47</sup> providing new authorizations for existing grant programs, creating new grant programs, and amending the T visa. Authorizations for current anti-trafficking grant programs expired at the end of FY2007.

The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2007 (H.R. 3887) was reported by the House Foreign Affairs Committee on November 6, 2007.<sup>48</sup> H.R. 3887 would reauthorize the grant programs under the VTVPA as amended; create new grant programs for U.S. citizen victims of severe forms of trafficking; and establish a system to monitor and evaluate all assistance under the act. The bill would also create an Office to Monitor and Combat Trafficking within DOS and require the Departments of Justice and Labor to appoint Coordinators to Combat Human Trafficking.

Furthermore, H.R. 3887 would require DOS consular officers to provide certain aliens interviewing for nonimmigrant visas with information concerning U.S. laws against trafficking in persons (TIP) and assistance for TIP victims in the United States. The bill would direct the Secretary of State to deny certain temporary employment visas to aliens who would be working at a diplomatic mission or international institution where an alien had been subject to trafficking or exploitation within the previous two years, or where an individual working at the mission or institution had left the United States because of credible evidence of a trafficking offense. H.R. 3887 also would amend the requirements for the T visa and would broaden access to relief from removal for trafficking victims.

H.R. 3887 and S. 1703, another trafficking bill that was ordered reported by the Senate Judiciary Committee last year, would amend the federal criminal code to grant U.S. courts jurisdiction over cases involving peonage, slavery, and trafficking in persons (even if the offense occurred outside the United States) in which the alleged offender is brought into, or found in, the United States not more than 10 years after such offense.

## **Alien Smuggling**

Many contend that the smuggling of aliens into the United States constitutes a significant risk to national security and public safety. Because smugglers facilitate the illegal entry of persons into the United States, some maintain that terrorists may use existing smuggling routes and organizations to enter undetected. In addition to generating billions of dollars in revenue for criminal enterprises, alien smuggling can lead to collateral crimes such as homicide, rape, robbery, and the manufacturing and distribution of fraudulent documents. The main alien smuggling statute (INA §274) delineates the criminal penalties, asset seizure rules, and prima facie evidentiary requirements for smuggling offenses.

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<sup>47</sup> P.L. 108-193 and P.L. 109-162.

<sup>48</sup> Among other provisions, H.R. 3887 contains most of the provisions in The Trafficking Victims Protection Reauthorization Act of 2007 (H.R. 270).

Division B of H.R. 2830, as passed by the House, would amend the alien smuggling provisions of both the INA and Title 18 of the U.S. Code. House-passed H.R. 2399 and its companion bill (S. 2463) and H.R. 4088/S. 2366/S. 2368 (SAVE Act) all contain similar language. These bills would essentially expand the scope of activity prohibited under INA §274. They would, for example, add a provision to INA §274 that would affirmatively assert extraterritorial jurisdiction for acts of alien smuggling that occur outside the United States. These proposals would also heighten the criminal penalties for various smuggling offenses and would narrow and modify the scope of the religious denomination exemption, which offers a limited defense to alien smuggling for religious groups sponsoring aliens to work as missionaries within the United States. Furthermore, these bills would alter Section 2237 of Title 18 of the U.S. Code by increasing the penalties for individuals piloting a maritime vessel who fail to heed the orders of a federal law enforcement officer if the offense is done in the course of violating INA §274 or certain other provisions related to human trafficking.

## **SSI Extension for Refugees and Asylees**

Refugees, asylees, and a few other specified humanitarian categories are eligible for supplemental security income (SSI) benefits for seven years after arrival in the United States. (The original presumption was that they would become naturalized citizens within seven years.) Other LPRs must have a substantial work history — generally 10 years (40 quarters) of work documented by Social Security or other employment records — or a military connection to become eligible for SSI. There are various proposals to extend the period of eligibility beyond seven years. Most notably, H.R. 2608, as passed by the House, would extend for two years (through FY2010) the eligibility of certain refugees, asylees, and aliens in other specified humanitarian categories for SSI benefits. In addition, House-passed H.R. 2608 would make LPRs with pending applications for naturalization, who were formerly refugees or asylees or fell under certain specified humanitarian categories, eligible for SSI benefits during fiscal years 2008 through 2010. The related bill in the Senate is S. 821.

## **Unaccompanied Alien Children**

The Unaccompanied Alien Child Protection Act (S. 844), which addresses several of the issues and charges that advocates have raised surrounding unaccompanied alien children (UAC), has again been introduced in the 110<sup>th</sup> Congress. In the 109<sup>th</sup> Congress, a similar bill (S. 119) was passed in the Senate. S. 844 would provide for several changes to the INA. Among them, it would establish in statute the right of UAC to consult with a consular officer prior to repatriation, criteria for treatment and detention of UAC, and the preference order of child placement. The legislation additionally would grant the Office of Refugee Resettlement, which is tasked with managing the federal government's UAC program, access to children in DHS's custody to determine the child's age. Notably, the legislation also would provide for the appointment of child advocates for UAC, including counsel for all children in the custody of DHS who are not being repatriated to a contiguous country. These advocates would largely serve on a pro bono basis. This same legislation was offered as a floor amendment (S.Amdt. 1146)

to S.Amdt. 1150 to S. 1348 and passed the Senate by a voice vote. Provisions addressing UAC issues and establishing stricter reporting requirements for the agencies with UAC jurisdiction have been included in §236 of H.R. 3887, as reported by the House Foreign Affairs Committee (discussed above).

## Religious Workers

The fourth category of the employment-based preference system (see discussion of permanent employment-based immigration in the “Foreign Workers” section above) is known as “special immigrants,” and the largest number of special immigrants are ministers of religion and religious workers. Religious work is currently defined as habitual employment in an occupation that is primarily related to a traditional religious function and that is recognized as a religious occupation within the denomination. Although the INA provision authorizing the admission of ministers of religion is a permanent provision, the provision authorizing the admission of religious workers has always had a “sunset” date. Congress has extended the sunset date several times, and the provision is currently set to expire at the end of FY2008. On April 15, 2008, the House passed H.R. 5570, which would amend the INA to extend the sunset date to January 1, 2010.

## Immigrant Investor Pilot Program

There is currently one immigrant visa set aside specifically for foreign investors (immigrant investors) coming to the United States. Immigrant investors comprise the fifth employment-based preference category (see discussion of permanent employment-based immigration in the “Foreign Workers” section above), and the visa is commonly referred to as the EB-5 visa. In 1992, a pilot program was authorized under the EB-5 visa category to achieve the economic activity and job creation goals of that category by encouraging investment in economic units known as Regional Centers.<sup>49</sup> These Regional Centers were designed to more easily facilitate investment, as well as target investment toward specific geographic areas. P.L. 108-156 extended the pilot program through FY2008. On April 2, 2008, the House Committee on the Judiciary ordered reported H.R. 5569, which would extend the EB-5 Regional Center pilot program for five years through FY2013.

## Temporary Protected Status

When civil unrest, violence, or natural disasters erupt in spots around the world, concerns arise over whether nationals from these troubled places who are in the United States will be safe if they are required to return home at the end of their authorized period of stay. Provisions exist in the INA to offer temporary protected status (TPS) or other forms of relief from removal, under specified circumstances. TPS is blanket relief that may be granted under the following conditions: There is

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<sup>49</sup> §610 of P.L. 102-395. A Regional Center is defined as any economic unit, public or private, engaged in the promotion of economic growth, improved regional productivity, job creation and increased domestic capital investment. For more information on Regional Centers for immigrant investors, see CRS Report RL33844, *Foreign Investor Visas: Policies and Issues*, by Chad C. Haddal.



ongoing armed conflict posing serious threat to personal safety; a foreign state requests TPS because it temporarily cannot handle the return of nationals due to environmental disaster; or there are extraordinary and temporary conditions in a foreign state that prevent aliens from returning, provided that granting TPS is consistent with U.S. national interests.

The Secretary of Homeland Security, in consultation with the Secretary of State, can issue TPS for periods of 6 to 18 months and can extend these periods if conditions do not change in the designated country. The United States currently provides TPS to nationals from seven countries: Burundi, El Salvador, Honduras, Liberia, Nicaragua, Somalia, and Sudan. In September 2006, the Bush Administration announced that Liberian TPS would expire on October 1, 2007, stating that country conditions caused by the civil war had improved. In July 2007, the House passed under suspension H.R. 3123, which would extend Liberia's TPS designation until September 30, 2008, and would extend work authorization for Liberian nationals with TPS until April 1, 2008. On September 12, 2007, President George W. Bush directed the Secretary of Homeland Security to defer the enforced departure of Liberians with TPS until March 31, 2009.

## Grounds for Terrorist Exclusion and Removal

Certain terrorism-related activities — including membership in a terrorist organization and providing material support to a terrorist entity — are grounds for the exclusion and removal of aliens from the United States. These activities also make aliens ineligible for various forms of relief from removal (e.g., asylum).<sup>50</sup> While bills introduced early in the 110<sup>th</sup> Congress propose to expand the scope of terrorism-related activity having immigration consequences,<sup>51</sup> legislation that has been considered and enacted more recently narrows the application of the INA's terrorism-related provisions and provides immigration authorities with greater discretion to waive the terrorism-related grounds for the removal and exclusion of aliens.

P.L. 110-161, enacted in December 2007, exempts 10 groups from being considered “terrorist organizations” for INA purposes, and expands immigration officials' ability to waive the application of specific terrorism-related INA provisions. In addition, the act expressly designates the Taliban as a terrorist organization.

H.R. 5690, as passed by the House, would exempt the African National Congress (ANC) from treatment as a terrorist organization on the basis of ANC membership or anti-apartheid activities undertaken during the period of apartheid rule in South Africa (1948 to 1990). The bill would allow the Secretaries of State and Homeland Security to admit individuals irrespective of any activities undertaken in opposition to apartheid rule in South Africa. The bill would also require the

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<sup>50</sup> For additional background, see CRS Report RL32564, *Immigration: Terrorist Grounds for Exclusion of Aliens*, by Michael John Garcia and Ruth Ellen Wasem.

<sup>51</sup> See, for example, S. 1348 (as introduced), which would make aliens described in the INA terrorism-related grounds for inadmissibility and deportability ineligible for various immigration benefits and types of relief from removal.

Secretary of State, in coordination with other agencies, to take all necessary steps to ensure that databases used to determine admissibility to the United States are updated so that they are consistent with the exemptions provided in the bill.

## **Commonwealth of the Northern Mariana Islands**

Title VII of P.L. 110-229 makes the INA applicable to the Commonwealth of the Northern Mariana Islands (CNMI), a U.S. territory in the Pacific that has not been subject to U.S. immigration law. The law establishes a transition period for implementing the INA in the CNMI. It aims, in particular, to provide federal regulation and oversight of the admission of foreign workers to the CNMI. It also authorizes DHS, the Attorney General, and DOL to establish operations in the CNMI. Nearly identical provisions are included in H.R. 3079, as passed by the House last year and reported without amendment by the Senate Energy and Resources Committee. The Senate Committee on Energy and Natural Resources also ordered reported a related bill (S. 1634) on January 30, 2008.

## **Military Service-Based Naturalization**

The Kendell Frederick Citizenship Assistance Act (H.R. 2884), as passed by the House, would permit the use, in naturalization applications based on military service, of fingerprints taken by the Department of Defense (DOD) at the time of enlistment, rather than requiring service members to obtain and submit separate fingerprints in accordance with DHS naturalization requirements, provided that the naturalization application is filed within 24 months after enlistment. A related bill (S. 2516) has been introduced in the Senate. Also in the Senate, S. 2840, as ordered reported by the Senate Judiciary Committee, would expedite certain military service-related applications by establishing a Federal Bureau of Investigation (FBI) liaison office in USCIS to monitor the completion of FBI background checks and by establishing a deadline for processing such naturalization applications. These requirements would apply to naturalization applications filed by or on behalf of current and former service members based on military service, the spouses of current service members posted abroad, surviving spouses and children of service members who died on active-duty service, and deceased service members eligible for posthumous citizenship. The amendments to current law proposed by S. 2840 would sunset five years after the date of enactment.

It appears that the immediate problem of requiring fingerprints from military service members has been addressed by USCIS. The fingerprint requirement is not in the statutes or regulations governing naturalization; rather, it is the practice to submit fingerprints to be used in conducting the FBI background checks on naturalization applicants. In testimony before the Senate Committee on Armed Forces, USCIS Director Emilio Gonzalez noted that USCIS, in collaboration with DOD and the FBI, had instituted a change in the fingerprinting process permitting U.S. military personnel to sign a release authorizing the use of fingerprints provided at enlistment for immigration purposes.

## Waivers for Foreign Medical Graduates

Foreign medical graduates (FMGs) may enter the United States on J-1 nonimmigrant visas in order to receive graduate medical education and training. Such FMGs must return to their home countries after completing their education or training for at least two years before they can apply for certain other nonimmigrant visas or LPR status, unless they are granted a waiver of the foreign residency requirement. States are able to request waivers on behalf of FMGs under a temporary program, known as the “Conrad State Program.” Established by a 1994 law, this program initially applied to aliens who acquired J status before June 1, 1996. The program has been extended several times, most recently by P.L. 109-177, which amended the 1994 law to cover aliens acquiring J status before June 1, 2008. H.R. 5571, as ordered reported by the House Judiciary Committee, would further extend the Conrad State Program until June 1, 2013.

## Other Legislation Receiving Action

**Ban on Travel to Burma.** Both chambers have passed different versions of legislation (H.R. 3890) that would expand the ban on travel to the United States of the leadership of the Myanmar junta, known as the Burmese State Peace and Development Council (SPDC), and the Union Solidarity Development Association (USDA), a movement reportedly formed and supported by the SPDC. House-passed H.R. 3890 would require the Secretary of State to deny the issuance of a visa, and the Secretary of Homeland Security to deny admission to the United States, to any member of the former or present leadership of the SPDC or USDA, as well as to Burmese military members (including their families) involved in the repression of protests in Burma in August, September, and October 2007, and Burmese officials who have engaged in gross violations of internationally recognized human rights. Under the House-passed bill, such ban could be waived only if the President certifies to Congress that it is in the national interests of the United States. The Senate-passed version of H.R. 3890 would ban the issuance of visas to SPDC officials who have played a substantial role in political repression in Burma or in the commission of human rights abuses, and to other Burmese SPDC supporters, as identified by the President.<sup>52</sup>

**Gang Activity.** S. 456, as passed by the Senate, would revise and extend criminal penalties relating to criminal street gang activity. Certain immigration-related offenses, including the unlawful smuggling or harboring of unauthorized aliens, would be designated as gang crimes and would be subject to additional criminal penalties when committed to further activities of a criminal street gang. Gang-related offenses also would be subject to heightened sentencing guidelines when the defendant had unlawfully entered the United States.

**Recruitment or Use of Child Soldiers.** S. 2135, as passed by the Senate, would make aliens who have participated in the recruitment or use of child soldiers inadmissible, deportable, and ineligible for asylum or withholding of removal.

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<sup>52</sup> For background information, see CRS Report RL33479, *Burma-U.S. Relations*, by Larry A. Niksch.

**Health-Related Grounds for Exclusion.** The health-related grounds of inadmissibility in the INA bar the admission of any alien “who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to have a communicable disease of public health significance, which shall include infection with the etiologic agent for acquired immune deficiency syndrome.” Certain prospective immigrants who are determined to have a communicable disease of public health significance (including an alien who is HIV-positive) can obtain a waiver, which is discretionary. Section 305 of S. 2731, as reported by the Senate Foreign Relations Committee, would amend the INA to strike the reference to HIV/AIDS (i.e., “which shall include infection with the etiologic agent for acquired immune deficiency syndrome”) from the health-related grounds for exclusion.

**State Criminal Alien Assistance Program Amendments.** The State Criminal Alien Assistance Program (SCAAP) provides reimbursement to state and local governments for the direct costs associated with incarcerating undocumented criminal aliens. H.R. 1512, as passed by the House, would amend SCAAP to reimburse states for costs associated with the incarceration of unauthorized aliens *charged* with a felony or two or more misdemeanors. Currently, the states are only reimbursed for costs associated with incarcerating unauthorized aliens *convicted* of a felony or two or more misdemeanors.<sup>53</sup>

**Immigration Relief for September 11 Families.** H.R. 1071, which has been reported by the House Judiciary Committee, would provide immigration relief to surviving family members (i.e., spouse, child, or dependent son or daughter) of aliens who died during the September 11, 2001, terrorist attacks. An eligible family member would become an LPR so long as that individual and any of *his or her* family members are not inadmissible or deportable under the criminal or security grounds of the INA.

## Legislation

The following are immigration bills or bills with significant immigration provisions that have received legislative action in the 110<sup>th</sup> Congress beyond hearings. All of these measures are discussed earlier in the report.

### Enacted

**P.L. 110-5 (H.J.Res. 20).** Revised Continuing Appropriations Resolution, 2007. Contains refugee-related provisions. Passed House on January 31, 2007. Passed Senate on February 14, 2007. Signed on February 15, 2007.

**P.L. 110-28 (H.R. 2206).** U.S. Troop Readiness, Veterans’ Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007. Contains refugee-

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<sup>53</sup> For more information on the SCAAP program, see CRS Report, CRS Report RL3343, *Immigration: Frequently Asked Questions on the State Criminal Alien Assistance Program (SCAAP)*, by Karma Ester.

related provisions. Passed House on May 10, 2007. Passed Senate on May 17, 2007. Signed on May 25, 2007.

**P.L. 110-36 (S. 1104).** A bill to increase the number of Iraqi and Afghani translators and interpreters who may be admitted to the United States as special immigrants. Passed Senate on April 12, 2007. Reported by House Judiciary (H.Rept. 110-158) on May 21, 2007. Passed House, as amended, on May 22, 2007. Senate agreed to House amendments on May 24, 2007. Signed on June 15, 2007.

**P.L. 110-53 (H.R. 1).** Implementing Recommendations of the 9/11 Commission Act of 2007. Passed House on January 9, 2007. Passed Senate, as amended, on July 9, 2007. Senate agreed to conference report (H.Rept. 110-259) on July 26, 2006; House agreed on July 27, 2006. Signed on August 3, 2007.

**P.L. 110-161 (H.R. 2764).** Consolidated Appropriations Act, 2008. (Originally introduced as Department of State, Foreign Operations and Related Programs Appropriations Act, 2008.) Reported by House Appropriations Committee (H.Rept. 110-197) on June 18, 2007. Passed House on June 22, 2007. Reported by Senate Appropriations Committee (S.Rept. 110-128) on July 10, 2007. Passed Senate, as amended, on September 6, 2007. House agreed to Senate amendment, with amendments, on December 17, 2007. Senate agreed to House amendments, with amendment, on December 18, 2007. House agreed to Senate amendment on December 19, 2007. Signed on December 26, 2007.

**P.L. 110-181 (H.R. 4986).** National Defense Authorization Act for Fiscal Year 2008. Contains refugee-related provisions. Passed House on January 16, 2008. Passed Senate on January 22, 2008. Signed on January 28, 2008.

**P.L. 110-229 (S. 2739).** Consolidated Natural Resources Act of 2008. Contains provisions on the Commonwealth of the Northern Mariana Islands. Passed Senate on April 10, 2008. Passed House on April 29, 2008. Signed on May 8, 2008.

## Receiving Action

**H.R. 1071 (Maloney).** September 11 Family Humanitarian Relief and Patriotism Act. Ordered reported by House Judiciary Committee on August 2, 2007.

**H.R. 1312 (Berman).** Arts Require Timely Service (ARTS) Act. Reported by House Judiciary Committee (H.Rept. 110-540) on March 6, 2008. Passed House, as amended, on April 1, 2008.

**H.R. 1512 (Linda Sanchez).** A bill to amend the INA to provide for compensation to states incarcerating undocumented aliens charged with a felony or two or more misdemeanors. Reported by House Judiciary Committee (H.Rept. 110-618) on May 5, 2008. Passed House on May 8, 2008.

**H.R. 1585 (Skelton).** National Defense Authorization Act for Fiscal Year 2008. Contains refugee-related provisions. Reported by House Armed Services Committee on May 11, 2007. Passed House on May 17, 2007. Passed Senate, as amended, on October 1, 2007. House agreed to conference report (H.Rept. 110-477)

on December 12, 2007; Senate agreed on December 14, 2007. Vetoed on December 28, 2007. (See P.L. 110-181.)

**H.R. 2399 (Hill).** Alien Smuggling and Terrorism Prevention Act of 2007. Passed House, as amended, on May 22, 2007.

**H.R. 2608 (McDermott).** SSI Extension for Elderly and Disabled Refugees Act. Passed House on July 11, 2007.

**H.R. 2638 (D. Price).** Department of Homeland Security Appropriations Act, 2008. Reported by House Appropriations Committee (H.Rept. 110-181) on June 8, 2007. Passed House on June 15, 2007. Passed Senate, as amended, on July 26, 2007. (See P.L. 110-161.)

**H.R. 2830 (Oberstar).** Coast Guard Authorization Act of 2007. Reported by House Transportation Committee (H.Rept. 110-338, Part I) on September 20, 2007, Homeland Security Committee (H.Rept. 110-338, Part II.) on October 1, 2007, and Judiciary Committee (H.Rept. 110-338, Part III) on October 30, 2007; supplemental report filed by Judiciary Committee (H.Rept. 110-338, Part IV) on April 23, 2008. Passed House on April 24, 2008.

**H.R. 2884 (Cummings).** Kendell Frederick Citizenship Assistance Act. Reported by the House Judiciary Committee (H.Rept. 110-429) on November 6, 2007. Passed House, as amended, on November 6, 2007.

**H.R. 3043 (Obey).** Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2008. Contains provisions related to refugee assistance and employment eligibility verification. Reported by House Appropriations Committee (H.Rept. 110-321) on July 13, 2007. Passed House on July 19, 2007. Passed Senate, as amended, on October 23, 2007. House agreed to conference report (H.Rept. 110-424) on November 5, 2007; Senate defeated conference report on November 7, 2007. Senate agreed to amendment to bill on November 7, 2007; House agreed to Senate amendment on November 8, 2007. Vetoed on November 13, 2007. (See P.L. 110-161.)

**H.R. 3074 (Olver).** Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2008. Contains provision related to employment eligibility verification. Reported by House Appropriations Committee (H.Rept. 110-238) on July 18, 2007. Passed House on July 24, 2007. Passed Senate, as amended, on September 12, 2007. House agreed to conference report (H.Rept. 110-446) on November 14, 2007. (See P.L. 110-161.)

**H.R. 3079 (Christian-Christensen).** A bill to amend the joint resolution approving the Covenant to Establish a Commonwealth of the Northern Mariana Islands, and for other purposes. Reported by House Natural Resources Committee (H.Rept. 110-469, Part I) on December 4, 2007. Passed House, as amended, on December 11, 2007. Reported by Senate Energy and Resources Committee (S.Rept. 110-324) on April 10, 2008.

**H.R. 3093 (Mollohan).** Commerce, Justice, Science, and Related Agencies Appropriations Act, 2008. Contains provisions related to H-2B temporary workers and employment eligibility verification. Reported by House Appropriations Committee (H.Rept. 110-240) on July 19, 2007; supplemental report filed by Committee (H.Rept. 110-240, Part II) on July 25, 2007. Passed House on July 26 2007. Passed Senate, as amended, on October 16, 2007. (See P.L. 110-161.)

**H.R. 3096 (C. Smith).** Vietnam Human Rights Act of 2007. Passed House, as amended, on September 18, 2007.

**H.R. 3123 (Kennedy).** A bill to extend the designation of Liberia under section 244 of the INA so that Liberians can continue to be eligible for temporary protected status. Passed House on July 30, 2007.

**H.R. 3161 (DeLauro).** Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2008. Contains provision related to employment eligibility verification. Reported by House Appropriations Committee (H.Rept. 110-258) on July 24, 2007. Passed House on August 2, 2007. (See P.L. 110-161.)

**H.R. 3887 (Lantos).** William Wilberforce Trafficking Victims Protection Reauthorization Act of 2007. Reported by House Foreign Affairs Committee (H.Rept. 110-430, Part I) on November 6, 2007. Passed House, as amended, on December 4, 2007.

**H.R. 3890 (Lantos).** Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2007. Reported by House Foreign Affairs Committee (H.Rept. 110-418, Part I) on October 31, 2007. Passed House, as amended, on December 11, 2007. Passed Senate, as amended, on December 19, 2007.

**H.R. 4080 (Weiner).** A bill to amend the INA to establish a separate nonimmigrant classification for fashion models. Approved by House Immigration, Citizenship, Refugees, Border Security, and International Law Subcommittee on May 8, 2008.

**H.R. 5060 (Linda Sanchez).** A bill to amend the INA to allow athletes admitted as nonimmigrants described in section 101(a)(15)(P) of such Act to renew their period of authorized admission in five-year increments. Ordered reported by House Judiciary Committee on April 2, 2008.

**H.R. 5569 (Lofgren).** A bill to extend for five years the EB-5 regional center pilot program. Ordered reported by House Judiciary Committee on April 2, 2008.

**H.R. 5570 (Lofgren).** Religious Worker Visa Extension Act of 2008. Reported by House Judiciary Committee (H.Rept. 110-589) on April 14, 2008. Passed House, as amended, on April 15, 2008.

**H.R. 5571 (Lofgren).** A bill to extend for five years the program relating to waiver of the foreign country residence requirement with respect to international

medical graduates. Ordered reported by House Judiciary Committee on April 2, 2008.

**H.R. 5690 (Berman).** A bill to exempt the African National Congress from treatment as a terrorist organization for certain acts or events, provide relief for certain members of the African National Congress regarding admissibility, and for other purposes. Reported by the House Judiciary Committee (H.Rept. 110-620, Part I) on May 5, 2008. Passed House, as amended, on May 8, 2008.

**S. 456 (Feinstein).** Gang Abatement and Prevention Act of 2007. Reported by Senate Judiciary Committee (without written report) on July 30, 2007. Passed Senate, as amended, on September 21, 2007.

**S. 1634 (Akaka).** Northern Mariana Islands Covenant Implementation Act. Ordered reported by Senate Energy and Natural Resources Committee on January 30, 2008.

**S. 1703 (Durbin).** Trafficking in Persons Accountability Act of 2007. Ordered reported by Senate Judiciary Committee on September 20, 2007.

**S. 2135 (Durbin).** Child Soldiers Accountability Act of 2007. Reported by Senate Judiciary Committee (without written report) on December 11, 2007. Passed Senate, as amended, on December 19, 2007.

**S. 2731 (Biden).** Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008. Reported by Senate Foreign Relations Committee (S.Rept. 110-325) on April 15, 2008.

**S. 2829 (Kennedy).** A bill to make technical corrections to section 1244 of the National Defense Authorization Act for Fiscal Year 2008, which provides special immigrant status for certain Iraqis, and for other purposes. Passed Senate on April 28, 2008.

**S. 2840 (Schumer).** Military Personnel Citizenship Processing Act. Ordered reported by Senate Judiciary Committee on May 8, 2008.