

On 5/23/07, the Senate resumed consideration of amendments to the CIR bill (S. 1348). Notably, the Senate passed Senator Feinstein's amendment on unaccompanied alien children and Senator Bingaman's amendment to halve the number of Y visas. Two troubling amendments proposed by Senators Cornyn and Coleman are slated for consideration on Thursday. Details of all the day's proceedings are included below.

### **Summary of Senate Proceedings—5/23/07**

Following on the heels of yesterday's defeat of an amendment to eliminate the new worker program, the Senate reconvened this morning to resume debate over comprehensive immigration reform.

First on the morning agenda—a list read by Senator Grassley (R-IA) on his view of the fifteen main “flaws” in the bill currently on the floor. “Amnesty” was provided in 1986, he said, and it failed. Seeking to avoid this scenario playing out again through passage of an immigration bill in its current form, Senator Grassley promised to introduce a series of amendments with an eye toward ensuring no form of “amnesty” is provided for this time around.

### **Grassley Amendment to Eliminate Judicial Review on Visa Revocations (#1166)**

To this end, Senator Grassley introduced the first of his promised attempts to root out amnesty in all forms from the bill, an amendment seeking to abolish the last remnant of judicial review on visa revocations. Currently, limited judicial review of visa revocations is available, but only in removal proceedings if the revocation is the sole ground for removal. Senator Grassley argued that even this limited concession to due process threatens the security of our country and virtually invites terrorists to enter, remain here, and wreak havoc. As a result, he said, visa revocations should be treated just as visa denials are, with no opportunity for the individual to explain his/her case before a judge. Treating these individuals otherwise and allowing them a hearing before a judge has made such revocations “ineffective as an anti-terrorism tool,” since granting them due process rights and an opportunity for judicial review lets them remain on U.S. soil until their case is heard.

Senator Menendez (D-NJ) next took the podium to offer his “strong opposition” to Senator Grassley's amendment. “Undermining due process, the rule of law, judicial review,” on the grounds that this is justified as an anti-terrorism measure, he argued, is a misleading, “slippery slope” argument that will be recited often during this Senate debate. Eliminating the already severely restricted judicial review of visa revocations, as Senator Grassley's amendment calls for, he said, is an “arbitrary and capricious action” that removes any judicial oversight over executive branch visa revocations, unfairly punishes innocent individuals, and potentially sets free those who might actually pose a terrorist threat. “Why would we want to set terrorists free and deport them?” he asked. “We should be trying to keep them” under our control. Senator Menendez concluded that, far from aiding anti-terrorism efforts, Senator Grassley's amendment actually achieves the opposite, increasing, rather than decreasing, the chance of terrorism being perpetrated.

Senator Kennedy (D-MA) echoed Senator Menendez's opposition to the amendment, citing many instances where individuals have been prematurely or incorrectly deported, only for the government to realize later that a mistake was made. While such a mistake might be of little consequence to the government, he argued, it actually results in a "tremendous and unnecessary upheaval" in the wrongly-deported individual's life. Furthermore, he added, individuals who come to the U.S. and are granted a visa have already gone through multiple and thorough background checks to ensure that no potential for terrorism exists even before they come here. Senator Whitehouse (D-RI) concluded opposition to the bill, arguing that "strong security means smart security," and "this amendment simply goes too far" in "trampling on the core values of separation of powers and judicial review."

Final resolution of this amendment is still pending.

### **Bingaman Amendment to Cut the New Worker Program in Half (#1169)**

The next amendment on the agenda was offered by Senator Bingaman (D-NM), with support offered by Senator Sessions (R-AL). Though Senator Bingaman said he didn't agree with Senator Dorgan's effort yesterday to eliminate the new worker program entirely, he did believe the program should be curtailed. His amendment therefore proposed reducing the annual cap on the new worker "Y visa" program from 400,000 to 200,000 annually. The amendment also proposed eliminating the annual market-based escalator, allowing for an increase of up to 200,000 additional Y visas annually, based on economic fluctuations. Only after Congress studies the program and its effectiveness in this limited version, he argued, should the cap be raised above 200,000 and an escalator mechanism be implemented. Senator Bingaman introduced a similar amendment during last year's Senate debate, and it passed on a voice vote (after a Motion to Table (kill) the amendment was rejected, 18-79).

Opposition to this amendment was led by Senator Kennedy, who explained that the numbers in the bill were not arbitrarily set, but were, in fact, based on recommendations from experts and careful calculations during the writing of the bill. That said, he conceded that while he opposes the amendment overall, he agrees with Senator Bingaman's contention that more congressional studies need to be done on the program in the future to make sure the number of Y visas allotted per year is the correct one.

Senator Martinez also expressed opposition to the amendment, stressing the need employers have in his state of Florida for new workers. Cutting the new worker program in half would leave those employers struggling to succeed and would thereby cripple the economy in the process. Just before voting on the amendment took place, U.S. Commerce Secretary Carlos M. Gutierrez issued the following statement on behalf of the Bush Administration: *"A robust temporary worker program is an essential component of border security, and I urge the Senate to reject the Bingaman amendment. One of the fundamental flaws of the 1986 legislation was its failure to provide a legal channel for*

*the workers our economy needs to enter this country in an orderly way. A central component of the bipartisan agreement announced last week is a remedy to this problem through a robust temporary worker program.”*

As planned, voting on the Bingaman amendment commenced at 2:40 pm, and after the votes were tallied, the amendment to cut the new worker program in half was accepted, 74-24.

### **Graham Amendment on Mandatory Minimum Penalties for Unlawful Reentry (#1173)**

Senator Graham introduced an amendment calling for minimum penalties for those who have been removed from the country and attempt to reenter unlawfully. The amendment calls for a minimum mandatory jail sentence of 60 days for anyone previously removed and who attempt an unlawful reentry or is found to be present unlawfully in this country. It also calls for jail sentences ranging from a minimum of one year to a maximum of 20 years for those who attempt to reenter unlawfully after having been convicted, prior to removal, of as little as 3 misdemeanors or 1 felony. Senators Kyl (R-AZ) and Chambliss (R-GA) declared their support for Senator Graham’s amendment.

In expressing opposition to this amendment, Senators Kennedy and Bingaman both invoked the words of the late Chief Justice William Rehnquist, who referred to attempts to impose mandatory minimum punishments as “feel good” political efforts to appear tough on crime, but that actually result in “the law of unintended consequences.” One of these unintended consequences, Senator Bingaman stated, is an overcrowding of our nation’s prisons, with taxpayers footing the bill. As it stands now, a substantial amount, 24%, of our nation’s prisons are filled with people who have committed nothing more than immigration offenses, Senator Bingaman added. If this amendment is accepted and implemented, he concluded, this number will only rise, clogging the prison system for years given the harshness of the penalties called for, and forcing the American taxpayer to bear a significant portion of the burden.

This amendment was accepted by unanimous consent.

### **Feinstein Amendment on the Treatment of Unaccompanied Alien Children (#1146)**

Senator Feinstein (D-CA) introduced an amendment that attempts to improve the way the federal government treats those unaccompanied alien children in its custody who have no other family members in this country,. The amendment provides much needed guidance to the federal government on how these children should be treated when they are in removal proceedings or repatriated to their country of origin.

This amendment was agreed to by voice vote.

### **Gregg Amendment on Increasing Fencing and Other Barriers at the Border**

Senator Gregg (R-NH) introduced an amendment to provide additional resources aimed at shoring up the southwest border, above what is already called for in the underlying bill. Specifically, the amendment calls for 375 miles of real and virtual fencing along the border, extra watch towers (above what is already called for in the underlying bill) to monitor unlawful crossings, additional CBP agents (above what is already called for in the underlying bill) manning the border, and additional detention beds (above what is already called for in the underlying bill). It also requires certification that the requirements have been satisfied before implementation of certain other provisions in the larger bill can be triggered, including the new worker program. Finally, and perhaps most disturbingly, the amendment calls for a near impossible trigger to be met before the new worker program and other provisions are implemented: that the Secretary of DHS certify in writing that they have achieved and demonstrated operational control over 100% of the U.S.-Mexico land border.

Senator Kennedy countered Senator Gregg's arguments by asserting that, among the many flaws in his amendment, the most fundamental and potentially damaging one is that it actually weakens, rather than strengthens, security. Senator Kennedy stressed that both national security and border security experts—with whom the architects of this bill consulted while constructing it—say that the best strategy for securing the border is by employing a comprehensive approach. To this end, the crafters of the bill carefully considered what resources were necessary to ensure security, and this was written into the bill. Delaying the new worker program, for example, while waiting for the triggers in Senator Gregg's amendment to be met would only hinder national security and border enforcement efforts, not enhance them. Senators Specter (R-PA) and Salazar (R-CO) expressed their strong agreement with Senator Kennedy, and urged defeat of the Gregg amendment.

Senator Kennedy initially made a motion to “table” (end debate and permanently kill) the amendment, but later withdrew it. The amendment eventually was accepted by voice vote.

### **Cornyn Amendment Expanding Restrictions on Immigration Benefits and Due Process (#1184)**

Senator Cornyn (R-TX) next introduced his amendment, cosponsored with Senators Nelson (D-NE) and DeMint (R-SC). The amendment was presented in two parts. The first part would provide what Senator Cornyn refers to as “technical corrections to drafting oversights” in the underlying bill, extending provisions such that they deny immigration benefits to alien smugglers and others considered security or criminal threats.

The second part of the amendment aims to expand restrictions on immigration benefits and due process, closing what Senator Cornyn terms “loopholes” in the bill allowing legalization of absconders, those who have failed to deport after being ordered deported, or who have reentered the country unlawfully after being removed.

Senator Menendez countered the arguments set forth by Senator Cornyn, stating that far from being “technical oversights,” the provisions in question actually address substantive due process concerns. Given the weight of the provisions being addressed by the amendment, in fact, Senator Menendez requested that voting be delayed until tomorrow so that Senators might have more time to consider the potentially devastating ramifications of Senator Cornyn’s amendment should it pass. Senator Cornyn agreed, and the voting was set aside for the evening and will be further debated and voted on tomorrow.

### **Leahy Amendment (#1165)**

Senator Leahy (D-VT) amendment to clarify rules applicable to aliens employed as dairy workers. This amendment was accepted by unanimous consent.

### **Hutchison Amendment (#1168)**

Senator Hutchison (R-TX) amendment to provide local officials and the Secretary of Homeland Security greater involvement in decisions regarding the location of border fencing. This amendment was accepted by unanimous consent.

*Note: at the end of the day, the amendments below were discussed, but not formally debated. They could come up for a vote tomorrow or at some later time.*

### **Dodd Amendment to Increase Family Reunification Regarding Parents of USCs**

Senator Dodd introduced an amendment seeking to increase family unification. The amendment would address provisions in the current bill curtailing provisions for parents of USC sponsors. In particular, it would increase the green card cap on visas issued to parents of USCs to 90,000, up from the 40,000 set aside in the underlying bill, making sure sufficient numbers of visas are available to those parents coming to the U.S. It would also lengthen parent visitor stays to 180 days, up from the 30 days allowed for in the underlying bill. Finally, the amendment would make penalties for parent overstays applicable only to those parents, not their USC sponsors.

Senator Menendez then spoke in strong favor of this amendment, chastising those who characterize family reunification as mere “chain migration,” and declaring that those who denigrate parents coming to the US, wanting to join their USC children, have simply chosen to dismiss the very essence of what America was built on.

### **Coleman Amendment to Allow Local Law Enforcement to Ask Immigration Status (#1158)**

Senator Coleman (R-MN) introduced an amendment urging enforcement of the original intent of Section 642(b) of IIRAIRA. The amendment would therefore eliminate so-called “sanctuary cities” that limit the exchange of immigration information. Specifically, the amendment would ban local “sanctuary policies” that prevent state and local law enforcement officers from asking about immigration status during routine stops, including stops for traffic violations. In essence, therefore, this misguided amendment would allow any government entity to inquire about an individual’s immigration status if they have probable cause to believe the individual is undocumented.

### **Akaka Amendment Regarding Children of Filipino WWII Veterans**

Senator Akaka (D-HI) introduced an amendment that would exempt from the numerical limitations on family-based immigrants the unmarried and married sons and daughters of naturalized Filipino World War II veterans. Senator Kennedy expressed his support for this amendment.

*In general, AILA believes this “bargain” bill is unacceptable and unworkable **in its current form**. However, while the process is still very much in flux, we are working closely with our allies to improve the bargain as much as possible during Senate floor debate over the next few weeks. We will keep you posted about amendment information as it becomes available.*