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Immigration Reform Post-9/11

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I. INTRODUCTION

The events of 9/11 have changed the world we live in. The objective of this article is to discuss the impact of 9/11 on immigration and immigration-reform issues. Traditionally, perspectives on immigration were significantly defined by bi-partisan politics and the state of the economy. Unfortunately, the tragedy of 9/11 added another dimension to the already complex discussion on immigration. The approach to immigration issues and immigration reform has been considerably reshaped by 9/11 and national security concerns. In the beginning of President Bush's first term, members of his administration started to engage in serious debates about immigration reform. Even just prior to 9/11, the administration was becoming more comfortable with the idea of a worker program and they were beginning to say the word "regularization" despite the resistance. However, because the environment changed so dramatically after 9/11, now it is very hard to predict what will happen. One thing is for sure: despite the current uncertainty and the changed environment, immigration reform is inevitable.

II. WASHINGTON AND THE 9/11 COMMISSION

Political Environment

To understand immigration the first issue we need to address is the environment in Washington. Immigration is a very challenging and touchy issue. In the last several years, the topic of immigration has been more high-profile because of the changing demographics of the United States.[1] The Latino population is increasing tremendously, and advocacy groups are working very hard to get new immigrants to become citizens and register to vote. This growing group of voters has the potential to affect future elections. Many things are changing and politicians are slowly beginning to recognize the significant impact that immigrant populations will have. For example, two years ago Congress met to talk about the results of the U.S. Census, district by district. At the time, members of Congress did not realize that in many of the districts twenty-five percent of the people were foreign born.[2] Now some governors are begging for immigrants because they are losing

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    1. U.S. Census Bureau, *U.S.A. QuickFacts*, http://quickfacts.census.gov/qfd/states/00000.html (last visited April 8th, 2005).

    2. The discussion about U.S. Census results was not limited to Texas, Illinois, California, New Jersey, and Florida—the traditional states with high populations of immigrants. The results showed surprising numbers of growing immigrant populations in such states as Tennessee, South Carolina, North Carolina, Colorado, Kansas and Nebraska. *See id.* (U.S. Census figures indicating growth of immigrant populations in these states).

population. In short, the current environment in Washington strongly favors partisan politics. Therefore, it is very difficult to tackle immigration issues because they depend heavily on bi-partisan support in order to accomplish any kind of reform.

The Economy

The second issue that factors into immigration is economic stability. When the economy is good, it is easier to pass immigration laws. When the economy is bad, however, it is more difficult because of claims that immigrants take jobs from Americans. This notion is incorrect because much of the data clearly shows that immigrants do not take away jobs. Although our economy is stabilizing, the growth is still very uneven. Uncertainty exists partially because some local labor markets are doing well while others are not. This uneven growth and uncertainty merely add to people's fear of losing their jobs. There is a lag of eight or nine months from the time the economy gets better until the public understands the reality. An unstable economy overall has a very negative impact on immigration.

Homeland Security and Border Issues

The final issue affecting the immigration debate in Washington is 9/11. Every single piece of legislation, every activity that members of Congress look at, they do so through the lens of 9/11 and security. The recommendations of the 9/11 Commission are an important component of the security dimension.[3] This in turn significantly affects immigration legislation. Usually there is a fairly straight-forward procedure with commissions. First the commission is introduced, then a report comes out issuing recommendations, and a press conference is announced. Eventually the recommendations are shelved and everybody forgets about them. This has not happened with the 9/11 recommendations. The Chairman and the Vice-Chairman of the 9/11 Commission, Mr. Thomas Kean and Mr. Lee Hamilton, respectively, have testified about twenty-four times in front of committees.[4] Following the release of the 9/11 report, legislation was immediately introduced and more pieces of legislation are on the current agenda to implement the recommendations.[5]

There are provisions in that legislation that will have a dramatic impact on immigration. Whether the pieces of legislation will work to the benefit or to the detriment of immigration reform is unknown because most of it is a secret at this point. The American Immigration Lawyers Association (AILA) worked very hard

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3. *See* The 9/11 Commission, *Final Report of the National Commission on Terrorist Attacks Upon the United States* (2004), *available at* http://www.9-11commission.gov.1report (last visited April 7, 2005)(A majority of the provisions recommended by the commission focus on national security and improvements to U.S. security apparatus in all federal legislation.). The 9/11 Commission was initially established by Pub. L. No. 107-306, Titles I and VI (2002).

4. *See id.*

5. There were several pieces of legislation regarding security and immigration reform introduced in 2004. They include the SOLVE Act, the DREAM Act, the Immigration Reform Act and others. *See* American Immigration Lawyers Association, *AILA's Issue Packet,* http://www.aila.org/fileViewer.aspx?docID=10003 (last visited Feb. 18, 2005)(detailing immigration legislation introduced in the 108th Congress). Much of the information contained in the subsequent footnotes about the proposed immigration legislation in 2004 is taken from this issue.

before, during, and after the release of the 9/11 report to try to make sure that the recommended immigration provisions work well.

Why should we as a country be concerned about the new immigration provisions? If you look at the provisions there is a section relating to travel.[6] This section may impact everyone who uses our ports of entry. However, officials and the public are paying more attention to the intelligence provisions than to the travel section. This is problematic because these provisions have to do with terrorist movement, how to deal with the flow of people across the borders, documentation, entry-exit, and other complicated issues.

The legislation also starkly marks the different treatment of our northern and southern borders following 9/11. The northern border has the beginnings of what we call a virtual border. There is a facilitation of entry because of cooperation between the governments of Canada and the United States. However, many problems still remain. Practitioners know the reality: a Canadian who lives in Canada, works in the United States, and has been entering the U.S. for two or three years, may suddenly be denied entry. Despite the problems, generally the idea of a virtual border remains.

The southern border is different because the norm there is a hard border. Security experts claim that a layered, virtual border is more desirable than a hard border. One of the recommendations of the 9/11 Commission was for a virtual border, a layered border. This means that the border starts at our consulates and that the physical border is our last line of defense, not the first. The U.S. should facilitate the entry of trusted travelers so they can spend more time looking at the suspicious ones. The border needs to have an entry-exit system that works. The system also needs adequate and well-trained staff in order to work well. Furthermore, it needs sufficient money, databases that are accurate and operable, and an actual physical infrastructure. These are all very difficult issues that need to be tackled in order to create a safe and functioning system.

The largest concern is that the 9/11 Commission, while admitting some tough issues should be addressed, glossed over many of the problems that we are having at our borders right now. For instance, US-VISIT is an idea whose time has not come yet.[7] The databases at the border are barely operable because there is not enough staff and there are not enough lanes. There is not enough communication between primary and secondary stations. The databases are riddled with inaccuracy while Congress and the Bush Administration are appropriating only U.S. $382

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6. *See* 9/11 Commission Report, *supra* note 3, at 383 (2004)(This section discusses strategies intended to enhance national security by decreasing the use of travel channels by terrorists.).

7. The United States Visitor and Immigrant Status Indicator Technology (US-VISIT) program was announced by Secretary of Homeland Security Tom Ridge on April 29, 2003. The program was instituted under section 1008 of the USA PATRIOT Act, Pub. L. No. 107-56, 115 Stat. 272. Initially described as a "check in/check out" system, the program gathers information concerning non-citizens on criminal, immigration, and security-related matters. The program also uses scanning equipment to collect "biometric identifiers" such as fingerprints and photographs at major sea and air ports of entry. The information collected is available to officials at the U.S. Bureau of Immigration and Customs Enforcement (ICE), law enforcement agencies, immigration adjudication offices, and U.S. Consular offices. *See* DHS, "Department of Homeland Security Unveils US-VISIT Program" (Oct. 28, 2003), *available at* http://www.dhs.gov/dhspublic/interapp/press_release/press_release_0286.xml (last visited Feb.18, 2005); *see also* Patricia Medige, "Immigration Issues in a Security-Minded America," 33-MAR Colo. Law. 11 (2004) (detailing provisions of the US-VISIT program and their implications for practicing attorneys).

million for different projects. This is hardly enough money to deal with these projects. To install this system and have it functioning well will cost at least U.S. $9-$10 million. To have an appropriate entry-exit system we also need exits. However, some of the only exits are Mexico or Canada, which do not truly exist as "exits." It is a huge problem to develop this system. On top of all these problems, the 9/11 Commission has recommended that the system be developed immediately.[8]

The target deadline for these developments is the end of 2004 for the fifty biggest land ports, and 2005 for the other land ports. The only way that will happen is if the Bush Administration creatively redefines "entry" and "exit," which they are in the process of doing.[9] This appears to be a fake solution to a problem, not a real solution with real deadlines, funding, and adequately trained officers. Many lawyers and advocacy groups who work on immigration issues, including AILA, fear that the 9/11 Commission will promote the fake solutions because nobody is willing to say that finding solutions and fixing problems is difficult. No one is willing to admit that we are just learning how to resolve the tough border problems. The technology is insufficient and we do not have enough money. There will be major problems at the border if we do not address those issues. These problems will inevitably impact immigration.

These points are aptly highlighted by comparing effective legislation with bad legislation. There was legislation introduced in the Senate by Senators John McCain, Joe Lieberman,[10] and John Cornyn,[11] and in the House by Representatives Jeff Flake and Jim Kolbe.[12] This legislation may have to undergo some changes but will probably pass through Congress.[13] Most likely there will be additional

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8. *Supra* note 6 at 389 (recommending implementation of biometric entry/exit screening).

9. The Immigration and Naturalization Act, 8 U.S.C. § 1101 (2001) (originally enacted as Act of June 27, 1952, ch. 477, § 101, 66 Stat. 163)(INA). Entry is a highly regulated immigration doctrine. Prior to the enactment of the Illegal Immigration Reform and Immigration Responsibility Act, Pub. L. No. 104-208, 110 Stat. 3009-587 (Sept. 30, 1996)(IIRIRA), the event that determined a person's status with respect to removal was not admission, but "entry." Entry referred to a person's physical crossing into United States territory. Entry could be achieved by being inspected and authorized by an immigration officer, or by evading inspection, but physical presence as a result of parole did not constitute entry. The IIRIRA revised INA § 101(a)(13) by repealing the old definition of "entry" and replacing it with the new definition of "admission." INA § 101(a)(13) currently outlines the requirements for "seeking admission" into the U.S. Post-1996 admission requirements are regulated by the categories of inadmissibility found in INA § 101(a)(13). Non-citizens seeking admission are also subject to the inadmissibility grounds in INA § 212. Under the current INA regulations, in order to gain lawful re-entry into the U.S. a non-citizen must also have a record of an "exit" at a recognized port or border authority. *See* David Weissbrodt and Laura Danielson, *Immigration Law and Procedure in a Nutshell*, 210 (5th ed., St. Paul, MN: West Group, 2005)(describing inadmissibility grounds and the distinction between entry and admission).

10. S. 1461, 108th Cong. (2004).
11. S. 1387, 108th Cong. (2004).
12. H.R. 2899, 108th Cong. (2004).
13. *Supra* notes 10-12. These bills introduced by Senators McCain and Cornyn and Representatives Flake and Kolbe take important steps toward achieving reform but fall short in one way or another. For example, none of these initiatives recognizes the need to reduce the backlogs in family-based immigration. However, S. 1461/H.R. 2899 would allow undocumented immigrants living and working in the U.S. to become lawful temporary workers, permit them to change employers, and provide them with an option to become legal permanent residents through employer-sponsored petition or self-petition. This measure would encompass those who fall under current INA § 101(a)(15)(H)(ii)(a). The H-2A, H-2B, and H-1B programs would also create two new nonimmigrant worker visa categories: H-4A and H-4B temporary workers. S. 1461/H.R. 2899 would also offer undocumented people the opportunity to apply for temporary H-4B status. Applicants must have entered the U.S. before August 1, 2003, been employed since that date, and resided in the U.S. in an unlawful status from that date through the date of application for H-4B status.

S. 1387 would create a guest worker program with any country entering into an agreement with the U.S.

legislation introduced in the House, but legislation is expected to continue through-out this session and the next. There is major concern that damaging provisions will be snuck into the legislation.[14] There are so many uncertainties because nobody is sure what the process will be. The most troublesome provisions may appear in legislation that passes through Congress very quickly without much thought or discussion.

III. CURRENT STATE OF AFFAIRS

What are we looking for in legislation that would implement the 9/11 Commis-sion recommendations? The 9/11 Commission was very clear on the fact that it is important to have an immigration system that meets our basic commitments. The commission stated that a system that did not meet these basic commitments has helped lead us to the kind of security problems that we now have.

First of all, a steady source of funding is necessary. That includes getting enough money for an immigration system that works rather than having to beg every year for additional funding or for adjudicatory resources. There is a myth that the adjudication side of the budget should be funded through user fees, even though the year before it is not possible to know how many petitions or applications there will be in the upcoming year. Congress and the Bush Administration continue to give the Department of Homeland Security (DHS) and the United States Citizenship and Immigration Services (USCIS) unfunded, complicated mandates that draw from user fees.[15]

Second, vigorous protection of civil liberties, due process, and privacy are necessary. There must be that multi-tiered layer of protection to help protect these important rights. The physical border cannot be expected to be an all-encompassing protection mechanism that accomplishes everything at once. Therefore, enhanced staffing must be provided and more money must be spent at the consulate level. The consulates need to give more training and should be required to do pre-inspec-tion, clearance, and other admission checks. People also need access to counsel at the border. If there is a commercial issue, a lawyer can get to the border and deal with officials. However, if a person has issues at the border there is no access to counsel. Any sort of 9/11 legislation needs rigorous civil liberties, due process, and

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Enrolled workers would be eligible for a "W" visa and be placed in U.S. job openings, encompassing both seasonal and nonseasonal employment. Seasonal guestworkers would be limited to 270 days per calendar year, and nonseasonal guestworkers would be limited to twelve months (with two, one-year extensions permitted). Non-immigrants who hold "W" visas and have worked in the program for three continuous years may apply for legal permanent resident status from their home countries. *See* AILA, "Comprehensive Immigration Reform: Major Legislation Introduced," *available at* http://www.aila.org/infonet (last visited April 8, 2005).

14. For example, when the Development, Relief, and Education for Alien Minors (DREAM) Act passed through the Senate Judiciary Committee an amendment proposed by Senators Diane Feinstein and Charles Grassley was attached that would render otherwise qualifying students ineligible for federal financial grants. *See* AILA Issue Packet, *the Dream Act/Student Adjustment Act*, http://www.aila.org/fileViewer.aspx?docID=10545 (last visited Feb. 18, 2005); *see also* Mark R. von Sternberg, *Immigration and Nationality Law*, 38 Int'l Law. 415 (2004) (discussing the legislative history of the DREAM Act and details of the proposed amendment by Senator Feinstein).

15. *See* Ricardo Alonso-Zaldivar, "Immigration Reform Is Off Front Burner: A Bipartisan Senate Panel Says the Bush Administration is Unwilling to Promote a Guest-worker Program in an Election Year," L.A. Times, Mar. 24, 2004, at A14 (describing budget cuts for USCIS); *see generally* U.S. Citizenship and Immigration Services (USCIS) *available at* http://uscis.gov/graphics/index.htm (last visited Feb. 18, 2005)(Contains specific information about the USCIS budget and services.).

privacy protections. This will be a huge expansion of the power of the executive branch of the federal government, and there have to be concomitant protections built in. There needs to be sufficient funding, an adequate number of well trained officers, reasonable deadlines, accurate databases, technology that is up to the task, and congressional oversight. Congress has so far abdicated its responsibility in this area but at this point they need to take responsibility.

Third, there must be facilitation of the entry of trusted travelers. This means shrinking the haystack of people detained and examined so we can really focus on the people who mean to do the country harm. Tax dollars should be used to identify dangerous people, not people who are filling our labor market needs. Immigration reform is necessary in order to legalize the flow of people as much as possible. Right now, in our immigration laws there is no visa for a certain sector of workers.[16] There is no way for them to enter legally. Until the flow is legalized people will continue to enter illegally because there are jobs in the U.S. market. Unfortunately the current administration, instead of focusing on immigration reform, is conducting secret detentions, secret hearings, sweeps, and only focusing on the enforcement issues. If a dysfunctional law is enforced, and if the only policy created serves to strengthen the enforcement, then the result will simply create more dysfunction. That is what is happening now. Immigration reform is required as a security measure to help decide who is lawfully residing and working in this country.

Prioritization is also another necessary component of congressional action. The 9/11 Commission had a huge number of recommendations. If the American government tries to adopt all of them, they will do nothing well. Finally, the government has to send the message that the United States is a nation of immigrants that welcomes more immigrants. The U.S. cannot afford to keep sending the same message we are sending now that immigrants are terrorists. That is not accurate, and it is not productive or effective from a security point of view.

IV. IMMIGRATION REFORM

Where and how does immigration reform fit in? In 2004 the most notable immigration reform legislation was the SOLVE Act introduced by Senator Edward Kennedy and Representatives Robert Menéndez and Luís Gutiérrez.[17] The Act includes three parts that are necessary to have effective immigration reform.[18] All of the provisions must be implemented together or the whole thing will not function properly. The 1986 amnesty taught us that if we only attempt to legalize people, we cannot entirely solve the problems of the system.

What are the three components of the SOLVE Act? First, it requires an earned adjustment for people who are already here.[19] In order to carry this out a regularization

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16. *Supra* note 9. The INA § 101(a)(15), § 203(b), and § 214(c) outline the eligibility requirements for immigrant and non-immigrant work visas; *see also* Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002), 6 U.S.C. § 101 (2003)(abolishing INS and transferring functions to the Department of Homeland Security).

17. The Safe, Orderly Legal Visas and Enforcement (SOLVE) Act is a comprehensive immigration reform bill that was introduced on May 4, 2004. S. 2381/H.R. 4262, 108th Cong. (2004).

18. These three necessary measures are an earned adjustment for eligible people already living and working in the U.S., family reunification through backlog reduction, and a new "break-the-mold" temporary worker program.

19. The SOLVE Act includes an earned adjustment for immigrants who have been in the U.S. for five or

process must also be put into place. The regularization process should include specific requirements and a method to regularize the people who are already here. Some argue that is what happened in 1986. The problems in 1986 failed to change the structure because the reforms did not focus on the structure, but rather on the symptoms. Undocumented people are the symptom of a problem, not the problem itself. The real problem is that we do not have a system that reflects reality.

Second, the system needs to have functioning worker programs that allow people to enter and depart legally. These worker programs should include both short-term and long-term programs. The system needs a process that provides for worker protections and portability. The system needs a mechanism where people can bring their family here, and at the end of the period if they do not displace an American worker, they can adjust their status.[20] Currently with the H-1B Program about fifty percent of the workers stay and fifty percent return home. It is expected that more workers in this program would choose to only work temporarily in the U.S. and eventually return to their home countries. Most importantly the option to choose to leave or to stay in the U.S. should exist.

Third, the Act addresses family backlog reduction.[21] Under the current system there are immediate relatives of legal permanent residents, depending on what country they are from, waiting up to fifteen years to be able to enter the country and reunite with their family members. Blood is thicker than the border, and until the situation is addressed undocumented immigrants will keep coming into the U.S. This situation will continue as long as we rely on a provision in the law called "per-country limits."[22] The per-country limit from Mexico is adjusted in June or July of

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more years on the date of enactment and can demonstrate twenty-four months in the aggregate of employment in the U.S. and payment of taxes. The principal applicant's spouse and unmarried children under twenty-one would be eligible. The applications would be adjudicated outside the numerical limitations on immigrant visas, and grounds of inadmissibility related to undocumented status would be waived. Applicants would need to undergo criminal background checks and medical examinations, would need to register with the selective service, and would need to demonstrate an understanding of English and civics. *See* AILA, "Comprehensive Immigration Reform: Major Legislation Introduced," *available at* http://www.aila.org (last visited Apr.8, 2005)(describing the SOLVE Act).

        AILA also did some polling and collected data on this issue. The public generally understands that the millions of undocumented people living in the U.S. are, for the most part, not going home. They are also probably not going to be deported.

       20. The SOLVE Act contains provisions which would reform the current H-2B program and create a new H-1D program. Most importantly these programs include a path to permanent residency. A worker can self-petition for permanent residency after two years of employment or the employer can petition for the worker upon employment. The programs are not subject to a sunset provision and do not count toward the numerical caps. The program targets low and semi-skilled workers and excludes workers who qualify for other visas. There would be an allotment of 250,000 visas for H-1D workers and 100,000 visas for H-2B workers. The visas are renewable for up to forty months. Immediate family members can accompany the workers but are only eligible to work if they qualify for an H-2B, H-1D, or other work visa. *See id.* (AILA's *Issue Packet* describing the immigration measures proposed in the 108th Congress).

       21. The SOLVE Act would exempt immediate relatives from counting towards the 480,000 ceiling and would include spouses and children of permanent residents in the definition of immediate relatives. The Act would attempt to respond to inequities by allocating visas to immigrants waiting more than five years (due to per-country and world-wide caps) and recapture unused family-based visas to apply to the numerical caps. These provisions would also repeal the bars to re-entry and reduce the percentage on the income test. *See supra* note 19 (AILA *Issue Packet*).

       22. "Per-country limit" is a term that refers to the limited number of immigrant and non-immigrant visas allocated each year to certain countries. Immigrants subject to numerical limitation are divided into three categories: family-sponsored, employment-based, and diversity immigrants. The total annual limit on family-sponsored immigrants is at least 226,000, while the limit on the employment-based categories is 140,000. *See* INA

each year. At the southern border there is no legal way for people to come in after June or July. That does not make any sense legally or otherwise. Measures that facilitate family backlog reduction are necessary.

Those are the three essential parts of immigration reform. AILA believes that the most effective legislation will include these three pieces, an earned adjustment for people already in the U.S., an adequate workers' program, and a way to address backlog in family-based immigration. There was another bill introduced by Senators Tom Daschle and Chuck Hagel that contained similar kinds of provisions.[23] The bill introduced by the three border-state Republicans[24] is not the most desirable piece of legislation, but at least it has provisions dealing with the worker program and earned income adjustment. What is significant about that measure was the fact that three border-state *Republicans* introduced the reform. Senator John McCain also recently declared that as a nation we cannot maintain border security unless necessary immigration reform is carried out. Senator McCain understood the importance of putting all these provisions together.

As a country we must also deal with what President Bush suggested in early January 2004.[25] It was significant that the President of the United States talked about needing to reform our immigration laws. It was equally significant that he recognized that our immigration system should reflect how beneficial immigrants have been to our country. However, his proposal did not match the standard that

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§ 201(a); *see also* Weissbrodt *supra* note 9 at 120. Per-country limits have not always existed. Until 1986, no per-country limits applied to any country in employment-based categories. Under current law, no more than 9,800 visas can be issued to employment-based immigrants (including their spouses and children) from any single country. The quota bears no relation to demand: countries with large populations or a large number of emigrants have the same quota as countries with small populations or low emigration rates. *See* AILA Issue Paper, *Employment-Based Immigrants: Per-County Limits Make No Sense,* http://www.immigrationlinks.com/news/ news073.htm (last visited Feb. 18, 2005)(explaining why per-country limits foster problems such as backlog in the current immigration system).

    23. S. 2010, 108th Cong. (2004). The Immigration Reform Act of 2004 is a bipartisan Senate Bill that has provisions and a framework similar to the SOLVE Act. It is the first bipartisan comprehensive reform bill, which is significant because bipartisanship is necessary for any bill to pass Congress. With regard to family reunification, immediate relatives are no longer subtracted from the 480,000 cap on family-based immigration, the spouses and minor children of legal permanent residents are reclassified as immediate relatives, and derivative eligibility is expanded for all immediate relatives. The Act also includes a "Willing Worker" program that reforms the current H-2B program and creates a new H-2C program. Similar to the SOLVE Act, the caps in the H-2B program would be 100,000. This number would be reduced after five years.

    24. *Supra* note 13. The border state republicans, aside from Senator McCain, include Representatives Flake and Kolbe from Arizona, and Senator Cornyn from Texas.

    25. On January 7, 2004 the Bush Administration announced an immigration reform proposal that is essentially an uncapped temporary worker program designed to "match willing foreign workers with willing U.S. employers when no Americans can be found to fill the job." The program would grant participants temporary legal status and permit the working participants to remain in the U.S. for three years (with unspecified renewal period). The program would be open to undocumented people and foreign workers living abroad. These workers would be allowed to travel back and forth between their home countries and "enjoy the same protections that American workers have with respect to wages and employment rights." Some other provisions of the proposal generate questions and concerns. The proposal does not appear to create meaningful access to permanent legal status. It does not expressly prohibit temporary workers from applying for legal permanent residency but under current immigration laws there is no method for the undocumented to adjust. It is unclear if the plan will address the significant backlogs in legal immigration or will adequately deal with the existing three-year, ten-year, and permanent bars to entry. AILA is concerned that even if these temporary workers are allowed to pursue citizenship they will merely be placed in line behind those already in line. *See* White House Press Release "President Bush Proposes New Temporary Worker Program," *available at* http://www.whitehouse.gov/news/releases/2004/01/ 20040107-3.html (last visited Feb. 18, 2005)(Bush's proposal tacitly acknowledges that temporary workers are vital to the U.S. economy.).

we need, and so far he has not done anything to push it through. Additionally, the proposal does not appear to make much practical sense. It appears to be a worker program that allows undocumented people to enter the United States. However, because President Bush's proposal would not change current law, the people who have already entered the United States would not have the ability to adjust their status. Therefore, it seems unlikely that people would join the plan, although some may do so hoping the law will change. The process by which the President introduced his plan left everyone, even people in the Bush Administration itself, with a lot of questions. The President failed to brief people on Capitol Hill about it and did not brief any other organizations. He did not carefully pave the way for the introduction of this plan, which is a process that usually happens if legislation is to move through quickly.

However, important immigration plans still remain on the table. There are two pieces of legislation we are working very hard to get introduced before Congress leaves. These measures may lay the groundwork for other emerging immigration reform. One is the bill called AGJOBS, which would reform the H-2B program and allow adjustment of the status of workers who are already here.[26] It is an unprecedented agreement between growers and workers.[27]

The other piece of legislation is the DREAM Act.[28] The bill addresses the needs of children of undocumented people. It allows them to adjust their status and it allows the states to determine whether they can give those children in-state tuition. The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 took away the States' ability to do that. The DREAM Act has bipartisan support, and certain groups like AILA are trying to get it passed before the elections as down payment for the kind of reform that is necessary. The remaining time in Congress will be very short and is very split along partisan lines, which makes cooperation difficult. There are many obstacles to immigration reform but another group that contributes to the problem is the restrictionists in Congress.

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26. S. 1645/H.R. 3142, 108th Cong. (2004). The Agricultural Job Opportunity, Benefits, and Security (AGJOBS) Act of 2003 was introduced by Senators Edward Kennedy, Larry Craig, and Representatives Howard Berman and Chris Cannon. Under the bill agricultural workers would be eligible for temporary residence in the U.S. if they could demonstrate that they worked at least 575 hours or 100 days during twelve consecutive months (within any eighteen-month period before August 31, 2003). They must provide employment records or demonstrate by a preponderance of the evidence that they meet all eligibility requirements. Temporary residents may become eligible to adjust their status to legal permanent resident if they meet additional requirements. *See* § 101(c)(1)(A)(i-v); *AILA Issue Packet, supra* note 5.

27. The AGJOBS Act was under discussion for almost ten years. It has bipartisan support and sixty-four co-sponsors which makes it virtually a culture-proof vote. Mr. Larry Craig, the Republican lead sponsor from Idaho, brought it up as an amendment, and the Bush Administration had it shelved to avoid passing any immigration legislation before the 2004 election.

28. *See* von Sternberg, *supra* note 14, at 419 (describing DREAM Act provisions); *see also AILA's DREAM Act Report*, http://www.aila.org/fileViewer.aspx?docID=9850 (last visited Feb. 18, 2005). The DREAM Act (S.1545, 108th Cong., 1st Sess.) was proposed by Senators Orin Hatch and Richard Durban. The Act provides relief to undocumented, non-citizen students attending U.S. educational institutions by offering the opportunity for legal permanent residence. The Act would eliminate the restrictions established in Section 505 of the Illegal Immigration Reform and Immigrant Responsibility Act, *supra* note 9. S.1545 §4(a) would allow students who can show five years continuous physical presence, who are not yet sixteen, and can demonstrate "good moral character," to apply for conditional permanent residence. Other qualifying students are those who have graduated from a U.S. high school, have been accepted to a U.S. college, or have received a general equivalency diploma. An applicant would be granted conditional residence for a six-year period and would be eligible for permanent residence if they fulfilled any of the following conditions: graduation from a two-year or vocational college, two years service in the U.S. armed forces, or 910 hours of community service.

The Southern Poverty Law Center did a very good analysis of the restrictionist movement.[29] They come from the radical environmental and radical negative population movement. They do not want the United States to have a population of more than 250 million. It is not clear what they suggest should be done with the additional population that already resides here, but it is clear that they want to stop immigration. They claim that they like immigrants, but they do not like immigration. However, if you visit their web sites and receive their e-mails, you know that is not true. They believe immigration is bad for America. They think immigrants are bad for America, and quite frankly, they do not like the current flow. They do not like the places where people come from now. They have built relationships with the militia and racist organizations such as the Klu Klux Klan. They have also taken money from the eugenics movement. The main group of restrictionists is called the Federation for American Immigration Reform (FAIR).[30] There is another group, the Center for Immigration Studies (CIS), which bills itself as a non-partisan, non-biased think tank. Do not be fooled. Many members of CIS were originally from FAIR and their boards are intertwined. Every single report or recommendation they issue has to do with ending or reducing immigration.

There are members of the restrictionist group in Congress, formerly led by Senator Lamar Smith and now taken over by Representative Tom Tancredo. They create a lot of noise, and if one looks at the information from the Southern Poverty Law Center, you will find that these groups are interlinked.[31] Unfortunately the group is very persistent and they are very willing to send a lot of messages to Congress. They are also very willing to spend money. In the last election they went after Chris Cannon in the primary. They also went after Representatives Jim Kolbe and Jeff Flake and lost. However, they won a Republican primary in Missouri so Kris Kobach, who was one of the authors of the Patriot Act and many post-9/11 provisions, will be running in 2004 against a good democrat named Dennis Moore. Currently this group of restrictionists is primarily targeting the support of moderate Republicans.

This is a crucial point because when a caucus like the Republicans, who are already divided on immigration issues, is pressured by a noisy group like this it really distorts the legislative process. Currently, the disruptions appear to be working heavily in favor of the restrictionists. Representatives Tom Tancredo and Dana Rohrabacher introduced provisions requiring that health care emergency workers report undocumented people in the emergency room or lose certain federal funding.[32] They are attempting to insert this type of amendment into different legislation. Similar instances have already occurred. For instance, the Culbretson

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29. *See* Southern Poverty Law Center's *Intelligence Report*, Issue 106, Summer 2002, *available at* http://www. splcenter.org/intel/intelreport/article.jsp?pid=180 (last visited Feb. 18, 2005)(explaining restrictionist policies and naming legislators involved in the restrictionist movement).

30. See http://www.fairus.org for more information (last visited April 8, 2005).

31. *See* AILA's, *Restrictionist Watch*, Volume 1, Number 5 (Sept. 4, 2004), *available at* http://www.aila.org/file Viewer.aspx?docID=14126; *see also* the Southern Poverty Law Center's *Intelligence Report at* http://www. splcenter.org/intel/intelreport/article.jsp?aid=85; Rocky Mountain News *available at* http://www.rockymountain news.com/drmn/election/article/0,1299,DRMN_36_3245670,00.html (last visited Feb. 18, 2005)(describing Representive Tancredo's pro-restrictionist stance in Congress).

32. *See* H.R. 3722, 108th Cong. (2004) (the Undocumented Alien Emergency Medical Assistance Act). House lawmakers defeated the bill on May 18, 2004 by a vote of 331 to 88. *See also supra* note 31. (AILA's *Restrictionist Watch* report).

amendment would prohibit the use of the *matricula consular*,[33] which was attached to an appropriation bill. It appears that between now and the end of the 2004 session there will be many similar amendments. These may be difficult to defeat because often AILA only has twenty-four hours notice of the amendments.

Where does this leave us? First, AILA is urging its members and coalition partners to encourage everyone who can become citizens to do so and register to vote. Everyone must register to vote because politicians understand two things: money and voters. Second, AILA and others are working very hard to get AGJOBS[34] and the Dream Act passed. Third, we are going to continue to lay the groundwork for the passage of the SOLVE Act and another piece of legislation, the Civil Liberties Restoration Act.[35] This was an omnibus measure introduced like the Solve Act (to be passed in 2005) that deals with the excesses from 9/11: the secret detentions and the secret hearings. This legislation will deal with the elimination of due process in our immigration courts. Groups are also working to make sure that border security and immigration provisions that go in the 9/11 legislation work well. We desperately need to have a border that functions, is effective, and allows innocent people to enter while excluding the people who mean to do us harm. We cannot have a border that blocks the flow of people and goods necessary for economic security. Without economic stability national security will be very difficult to achieve. Every single security specialist reports that problems at the borders are a recipe for disaster. Therefore, as a country we need to create policies, methods and procedures that enable the flow of goods and people. It is also absolutely imperative that we ensure that Congress does its job right.

V. CONCLUSION

Addressing immigration issues and enacting fundamental immigration reform is a difficult process in need of many changes. The results of the 2004 elections will be very important. The continuing implementation of the 9/11 recommendations will also be crucial. The 9/11 Commission report includes recommendations to reorganize Congress. We will see how Congress is going to reorganize itself, if at all. The leadership in Congress will undoubtedly play a role in enacting legislation and immigration reform measures. Representative Jim Sensenbrenner tends to be restrictionist and probably will continue to avoid bringing up immigration issues because they split his caucus. The tragedy of 9/11 itself, the Commission recommendations, and the unstable economy have all contributed to the current uncertainty. However, there is some positive legislation being pushed through. Either way we must adjust to and be prepared for a new world that will present many obstacles and challenges. AILA would love to report certainties, but our world is so uncertain now that I thought it best to explain all the complicated variables. Ultimately, the best way to make informed decisions is to study and understand all

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33. These are identification cards issued by the Mexican government to immigrants living in the United States. Currently, many financial institutions accept *matricula consular* cards as proof of identification.

34. *See supra* note 26.

35. See information regarding this Act *at* http://www.immigrationforum.org/documents/TheDebate/DueProcessPost911/CLRAsecbysec.pdf (last visited Feb. 18, 2005)(providing detailed information about the Civil Liberties Restoration Act).

the variables and the context in which they operate. This will help determine what steps can be taken next.