



# *Immigration Law*

## IMMIGRATION REFORM

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### **Not the Reform We Wanted**

Now that the 2010 elections are over (thank goodness for no more ads), it is time to evaluate the impact on immigration reform. We wish we could give you good news but that's not the case.

With the Republicans in charge of the House of Representatives and the mood of the country turning anti-immigrant, the chances of real immigration reform are gone. Thus, there will not be a new law to allow undocumented individuals to obtain a green card permanent residence without having to leave the country for an interview and extreme hardship waiver.

Instead, expect Congress to increase funding for Immigration and Customs Enforcement (ICE) so that it may deport more individuals in 2011 and 2012. In 2010, almost 400,000 individuals were deported.

What does that mean for undocumented workers? It means for those of you with a U.S. citizen spouse or adult child, you should seriously consider filing an I-130 petition and thereafter seek a waiver. ■

**September 29, 2010**

### **DREAM Act Fails**

In an effort to have some type of immigration reform pass in 2010, Majority Leader Harry Reid (D-Nevada) attempted to attach the DREAM Act to the Department of Defense appropriations bill. This effort was blocked on a procedural vote by all of the Republicans in the Senate plus two Democratic

Senators. See the "DREAM Act" article at the end of this bulletin for more information about the DREAM Act. ■

**September 1, 2010**

### **ICE Dismisses Cases**

In a recent move to lighten its caseload, Immigration and Customs Enforcement (ICE) has been working more closely with U.S. Citizenship and Immigration Services (USCIS) to expedite cases pending in immigration court. Of these cases, there is a focus on those that would likely yield relief to respondents. Specifically, ICE will formally request an expedited adjudication of any pending USCIS case for a detained alien within 30 days, and 45 days for a non-detained alien.

Perhaps of greater interest is the possibility for case dismissal. The official ICE memorandum calls for dismissal of cases based on the following criterion:

- The alien must be the subject of an application or petition filed with USCIS to include a current priority date, if required, for adjustment of status;
- The alien appears eligible for relief as a matter of law in the exercise of discretion;
- The alien must present a completed Application to Register Permanent Residence or Adjust Status (Form I-485), if required; and
- The alien beneficiary must be statutorily eligible for adjustment of status (a waiver

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must be available for any ground of inadmissibility).

However, other reports have also indicated the possibility of additional cases being dismissed if the alien does not have a serious criminal record. While this seems to contradict the fourth bullet point listed above, it may be directly due to efforts of ICE and the Justice Department to prioritize deportations of offenders of more serious crimes, while simultaneously decreasing the number of pending cases on the Immigration Court docket.

Critics of the President's administration contend these practices are a backdoor "amnesty." Of course, this is untrue, because a respondent whose case has been dismissed still does not have any legal means of acquiring legal status in the U.S. (assuming that person could not otherwise apply for and receive the aforementioned waiver).■

## **July 28, 2010**

### **Judge Susan Bolton Grants Injunction on AZ Law**

U.S. District Judge Susan Bolton enjoined parts of the Arizona Law taking effect on July 29<sup>th</sup>, stating "Requiring Arizona law enforcement officials and agencies to determine the immigration status of every person who is arrested burdens lawfully-present aliens because their liberty will be restricted while their status is checked."

Some parts of the law that were enjoined are:

1. Sections that require police officers to check a person's immigration status while enforcing other laws.
2. A section that require immigrants to carry identification papers;
3. A section that creates a crime for undocumented immigrants to solicit, apply for, or perform work; and
4. A section that authorizes the warrantless arrest of a person where there is probable cause to believe the person has committed a public offense that makes the person removable from the U.S.

This ruling comes as last-minute efforts were being made to train law enforcement officials on enforcement of the law. Many say this law is destined for the Supreme Court.■

## **July 21, 2010**

### **Seven Lawsuits Challenging Arizona Law**

Currently, there are seven lawsuits challenging Arizona Law SB 1070. Below is a brief summary of each:

#### *Escobar v. Brewer and Salgado v. Brewer*

In both these lawsuits, Arizona police officers argue they must receive a declaration from a court that SB 1070 is legal before they can enforce it, because of the possibility of being personally sued for violating civil liberties. Opponents to the bill make similar arguments, stating that local law enforcement does not have authority to enforce federal immigration laws.

#### *Frisancho v. Brewer*

A Latino resident of Washington D.C., with plans to visit Arizona, argues he may be stopped by police based only on his ethnicity. Supporters of the bill argue the bill contains specific language prohibiting racial profiling.

#### *Friendly House v. Whiting and National Coalition of Latino Clergy*

These are two class action lawsuits by non-profit organizations and individuals, asserting SB 1070 unlawfully regulates immigration, will result in racial profiling, and will deprive people of freedom of speech.

#### *League of United Latin American Citizens v. Arizona*

Brought by non-profit organizations and individuals, this lawsuit claims SB 1070 police enforcement training materials to train Arizona law enforcement worsen conflicts between federal and Arizona state laws.

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*The United States of America v. The State of Arizona and Janice K. Brewer*

As stated, the U.S. Department of Justice has filed suit arguing SB 1070 conflicts with federal immigration policy, which preempts state law. The Justice Department also argues SB 1070 ignores humanitarian concerns, and will interfere with foreign policy and national security.

*Current Status*

U.S. District Judge Susan Bolton will preside over six of the seven cases. It is possible she will grant injunctions to keep the law from taking effect on July 29<sup>th</sup> while the lawsuits are pending, however it is also possible she could dismiss the cases. In the event of dismissal, plaintiffs can appeal to the Ninth Circuit Court of Appeals to stop the law from going into effect. If Judge Bolton upholds the law, the plaintiffs can appeal to the Ninth Circuit, and ultimately to the Supreme Court. ■

**July 13, 2010**

**U.S. Attorney General Files Lawsuit**

Tuesday, July 6<sup>th</sup>, the U.S. Justice Department filed a lawsuit against the State of Arizona for its immigration law. The suit is based, in large part, on federal preemption of state laws—arguing only the federal government can enforce immigration laws.

Despite what some argue is overwhelming public support for the Arizona law, the Justice Department contends the state law seeks to usurp federal authority. While some opponents of the law say the new law may lead to racial profiling, this is not a basis of the lawsuit. The Justice Department is seeking an injunction to keep the law from taking effect later this month.

A recent poll suggested opposition to the law is strongest in minority groups, while strong support came from the Southern and Southern-border states. Many supporters of the law accuse President Obama of pandering to Latino voters by calling for immigration reform in a recent speech, as a means to secure votes for his colleagues in the upcoming November elections.

However, while still somewhat muffled, many religious and private conservative figures have

voiced support for immigration reform, calling for the usual three-pronged approach of stronger border enforcement, employer's use of a system to prevent the hiring of illegal immigrants, and a path to legalization for those already in the United States. In an effort to dodge political scrutiny, some simply say "it's the right thing to do." ■

**July 2, 2010**

**President Obama Renews Push for Immigration Reform**

On July 1, 2010, President Obama delivered a speech at American University calling for bipartisan support on Immigration Reform. His primary talking points included points from the Schumer-Graham proposal (See "*March 8, 2010 – Proposal by Senators Charles Schumer and Lindsey Graham*" below): a focus on increased border security, sanctions for employers who knowingly hired undocumented workers, and a path to legalization for those already present in the U.S., if they meet certain conditions.

President Obama also stated, "Each new wave of immigrants has generated fear and resentments towards newcomers, particularly in times of economic upheaval...So the politics of who is and who is not allowed to enter this country, and on what terms, has always been contentious." The President also spoke to immigrants currently waiting through the process of immigrating legally, as well as to those who want to say a "border enforcement first" approach.

Many Republicans were vocally critical of the President's speech, saying he offers no new solutions, but rather repeats points of his predecessors. Senator Lamar Alexander of Tennessee said, "The President should work with Congress on a step-by-step approach that starts with securing the border." Similarly, Representative Marsha Blackburn of Tennessee said, "The President would be well-advised to follow the model that has broad bipartisan support in the House—secure the border first, deport criminal aliens, and finally, build an immigration system that works."

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Critics have been reluctant to define this “system that works” and Democrats have been reluctant to take a position—both, undoubtedly due to upcoming November elections. Few on either side of the aisle seem to be asking “What is best for America?” Rather, they seem to be asking, “What is best for my party?” ■

**June 28, 2010**

**Mayors, CEOs, Join Forces to Push for Reform**

Several big-city mayors, including Mayor Michael Bloomberg of New York City, are joining chief executives of several major corporations, to form a coalition calling for immigration reform. The group is called Partnership for a New American Economy, and it seeks to lobby for immigration reform as a means to repair the tenuous economy, including a path to legal status for undocumented immigrants currently in the United States.

The group of CEOs includes conservative media mogul Rupert Murdoch—owner of News Corp. Murdoch said, “I think we can show to the public the benefits of having migrants and the jobs that go with them.” Other CEOs underscored Murdoch’s statement by saying their companies and the nation depend on immigrants. Chairman and CEO of Walt Disney Co., Robert Iger, said, “It’s our great strength as a nation, and it’s also critical for continued economic growth.”

The group intends to educate the public through use of published studies, polls, forums, and campaigns. Bloomberg says mass deportation is unrealistic, and would place a burden on the economy. He said lawmakers who wanted to deport all illegal immigrants were “living in a fantasy world.” The primary goals of the groups are as follows:

- (1) Secure the borders;
- (2) Develop an easy system for employers to verify work eligibility;
- (3) Hold companies accountable for breaking employment laws;
- (4) Improve technological resources to prevent illegal immigration;

- (5) Make opportunities for immigrants to join the U.S. work force; and
- (6) Path to legal status for all undocumented immigrants.

While these efforts are certain to be met with resistance from different levels of the constituency, support from private corporations and key conservative figures will likely ease tensions. By recruiting business leaders and politicians alike, the effort appears to propose solutions for one of our primary concerns—the state of our economy. ■

**June 15, 2010**

**Arizona Lawmakers Increase Pressure with Second Anti-Immigrant Proposal**

In its latest challenge against existing Constitutional Law, Arizona lawmakers will most likely introduce legislation later this year that would deny birth certificates to children born to parents who are not U.S. citizens. Sponsored by State Senator Pearce, the bill seeks to block what is otherwise guaranteed by the 14<sup>th</sup> Amendment to the U.S. Constitution.

The 14<sup>th</sup> Amendment states, “all persons, born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.” Sen. Pearce contends the 14<sup>th</sup> Amendment has been “hijacked” by undocumented immigrants, and they will introduce the bill in such a way that it will not violate any existing federal laws.

Opponents say the bill will lead to further discrimination, much like SB 1070, which currently faces at least five court challenges. Expect both bills to be challenged all the way to the Supreme Court. ■

**June 10, 2010**

**SBC Leader Richard Land Supports Immigration Reform**

This week, President of the Southern Baptist Convention’s Ethics and Religious Liberty

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Commission, Richard Land, announced his support for immigration reform and a path to citizenship for undocumented immigrants. He said, “It doesn't help when you have parts of the conservative coalition that insist on mislabeling an earned pathway to citizenship as amnesty. These people need a course in remedial English themselves,” regarding the attitude some have about immigration issues.

Mr. Land conceded not all agree with his viewpoints, and many accuse him of pandering to reach out to potential future Baptist denomination members, as well as a way for the religious arm of conservatives to reach out to the Hispanic community. Still others, while hopeful about immigration reform, claim the pulpit ought to be a means to proclaim the Gospel, rather than a political position on any given issue. Regardless of any opinion on Richard Land's position, it is sure to stir up more controversy. ■

**May 25, 2010**

**Obama to Send 1,200 National Guard members to the Border**

Today, President Obama announced plans to send 1,200 National Guard soldiers to assist with security at the U.S./Mexico border. In addition, the President has asked Congress for an additional \$500 million for more law enforcement officials and other border security resources. Specifically, the troops will help fight narcotics trafficking, and provide intelligence, surveillance, and reconnaissance support.

Critics like Senator John McCain take the position the President's efforts are “too little too late,” and the President should send 6,000 soldiers, at a minimum. Others take issue with the fact the soldiers will be in more of a supportive role, rather than a proactive role which would allow them to make arrests when necessary. More vocal critics claim the President's move is one of appeasement, with the overall goal of passing immigration reform. ■

**May 24, 2010**

**TN Lawmakers Approve Resolution Honoring AZ State Lawmakers for passing Anti-Immigrant Law**

The Tennessee House of Representatives approved a resolution honoring the Arizona lawmakers for their new anti-immigrant law. The resolution has no legal effect in Tennessee. State Representative Joe Carr sponsored the resolution, possibly setting forth the framework for a similar state law to be introduced in the Tennessee legislature next year. Rep. Carr challenged Attorney General Eric Holder and Secretary Janet Napolitano to read the Arizona law, stating they are ignoring language that prohibits racial profiling. ■

**April 29, 2010**

**Reid-Schumer-Menendez Immigration Reform Proposal**

In response to Arizona's strict anti-immigrant law, Senators Reid, Schumer, and Menendez introduced legislation which calls for illegal immigrants to receive interim “Lawful Prospective Immigrant” (LPI) status, provided they have no felony convictions or less than three misdemeanor convictions, pay all applicable fees, civil penalties, and taxes. They must have been continually present in the country since the enactment of the law. LPI status would come with work authorization.

After the current backlog of permanent resident applications is cleared (currently eight years), LPIs can petition for lawful permanent residence, as long as they have met all aforementioned criterion, along with demonstrating English language skills.

The proposal also makes border security and employment eligibility top priorities, as well as a fingerprint Social Security card for citizens and immigrants authorized to work (this would replace I-9/E-Verify). Employers would be required to verify work authorization by swiping these cards. However, since the reform proposal was introduced by Democratic Senators, it faces stiff opposition along party lines. Controversial provisions include

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immigration benefits for same-sex couples, as well as prohibition of states and municipalities from enacting their own rules and penalties relating to immigration. ■

## **April 23, 2010**

### **Arizona Immigration Law**

On April 23, 2010, Arizona Governor Jan Brewer, signed SB1070, a controversial bill that supporters claim seeks to identify, prosecute, and deport illegal immigrants. Opponents of the bill take issue with the following language:

“For any lawful contact made by a law enforcement official or agency of this state or a county, city, town or other political subdivision of this state where reasonable suspicion exists that the person is an alien who is unlawfully present in the United States, a reasonable attempt shall be made, when practicable, to determine the immigration status of the person.”

Opponents argue this part of the bill potentially gives way to racial profiling. President Obama spoke out against the bill, calling it “misguided” and saying it threatens to “undermine basic notions of fairness that we cherish as Americans, as well as the trust between police and our communities that is so crucial to keeping us safe.” He also called on the U.S. Department of Justice to determine whether the provisions of the bill are legal.

One thing is certain – this new law, set to take effect on July 29, 2010, has heightened tensions in the debate about immigration reform. Although some lawsuits have been filed to try to prevent the bill from becoming law, several other states are currently drafting similar bills. This new Arizona law may in fact be the catalyst that renews the push for immigration reform at the federal level. ■

## **April 21, 2010**

### **DREAM Act Update**

On April 21, 2010, Senators Richard Durbin and Richard Lugar asked Department of Homeland Security (DHS) Secretary Janet Napolitano to defer deportation of students who would qualify for the DREAM Act (see below for more information about the DREAM Act). While deferred deportation is only offered on a case by case basis, proponents argue it is analogous to the deferral of deportations under previous changes in law. Examples of deferred action were seen prior to the granting of Temporary Protected Status (TPS) for Haitian citizens, as well as to prior relief for widows and orphans of U.S. citizens. ■

## **March 8, 2010**

### **Proposal by Senators Charles Schumer and Lindsey Graham**

On March 8, 2010, President Obama met with Senators Charles Schumer and Lindsey Graham about their immigration reform proposal. Like Gutierrez’ bill, it also allows for a path to permanent residence, and ultimately citizenship. On one hand, it calls for increased border security, monitoring of periods of stay (I-94), and a fingerprint Social Security card for citizens and immigrants authorized to work. Employers would be required to swipe these cards to confirm a person’s identity and immigration status. The proposal also calls for a zero-tolerance policy toward criminals that commit felonies.

On the other hand, the bill allows for those already here to have a path to permanent residence, it calls for the issuance of green cards to those who receive a PhD or masters degree in the fields of science, technology, engineering, and mathematics. The proposal also calls for a path to permanent residence for lower-skilled workers, although the details and timeframes for this are unclear. For undocumented immigrants already in the U.S., the proposal calls for a “tough but fair” path toward legalization, including fines, community services,

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back taxes, background checks and proficiency in English. ■

**February 24, 2010**

### **Immigration Reform for Entrepreneurs**

On February 24, 2010, Senators John Kerry and Richard Lugar introduced the StartUpVisa Act of 2010, a bill calling for certain entrepreneurs to qualify for permanent residence. This would establish an EB-6 category, with the primary qualification being that applicants demonstrate their ability to procure a dedicated minimum of \$250,000 in equity financing for the new business.

The financing must come from either a “Qualified Venture Capitalist” or from a “Qualified Super Angel Investor,” both of which are defined within the bill. Each investor must invest not less than \$100,000 in an equity financing of \$250,000 or more, and each of the two aforementioned categories require a track record of past investments.

As a tool to maintain legitimacy, the bill calls for the entrepreneurs to be issued a two-year conditional green card, during which the applicant must prove the new business has created at least five full-time jobs and raised a total of \$1 million in capital investment or exceed that same number in generated income.

The bill is intended to yield a positive effect on the U.S. economy by attracting new business ventures, while not requiring immigrants invest personally in these ventures. It is important to note, this bill is independent from any Comprehensive Immigration Reform proposals. ■

**February 9, 2010**

### **Secure Borders Act of 2010**

Today, Congressman Patrick Murphy introduced the Secure Borders Act of 2010, legislation that calls for stiffer penalties for federal agents that aid in the smuggling of illegal aliens. Specifically, the proposal seeks to increase the penalty to 20 years in federal prison for federal law enforcement officials and Coast Guard members.

Senator John McCain has expressed his support for such a bill. ■

**December 15, 2009**

### **Proposal by Representative Luis Gutierrez**

On December 15, 2009, Representative Luis Gutierrez introduced a Comprehensive Immigration Reform Bill that calls for undocumented immigrants to obtain legal status, initially through a six-year visa, then permanent residence, and eventually citizenship. The individual qualifications are as follows: must arrive in the U.S. before December 15, 2009; attest to making a contribution in the U.S. - through a job; school or community service; pass a criminal background check showing no felony convictions or less than 3 misdemeanor convictions; and pay application fees and a \$500 fine to the federal government.

Besides the above provisions, called Pathway to Legalization for Undocumented Workers, Congressman Luis Gutierrez’ proposal includes the following other sections:

- (1) Professional and effective border enforcement;
- (2) Smart and humane interior enforcement;
- (3) Verification systems;
- (4) Family unity;
- (5) Agricultural jobs; and
- (6) DREAM Act.

A short glance at this list shows that Guterrez’ proposal attempts to satisfy demands on both sides of the debate. ■

### **DREAM Act**

Sponsored by Senators Richard Lugar and Richard Durbin, among others, the Development, Relief and Education for Alien Minors (DREAM) Act seeks to allow certain undocumented immigrants the opportunity to pursue education beyond the high school level, provided they meet the following general requirements:

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- (1) The applicant entered the country before age 16;
  - (2) Must be between the ages of 12 and 35;
  - (3) The applicant graduates from high school, obtains a GED, or is accepted to an institution of higher education;
  - (4) The applicant has good moral character (no criminal record); and
  - (5) The applicant must have at least five years of continuous presence in the U.S.

Upon receipt of an associate's degree or a two-year equivalent within six years of the initial petition, the conditional status can be converted to that of permanent resident.

It is important to note – as with other Immigration Reform proposals – the DREAM Act is *not* currently law, but only a proposed law.

The DREAM Act also serves as a path to citizenship for those that qualify. ■



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