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New Immigration Bill Edges Comprehensive Immigration Reform Back on the Legislative Agenda

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After months of discussion and strategy meetings with immigrant advocates, labor unions, civil-rights groups, and others, a number of House Democrats have introduced the first immigration reform (CIR) bill in the 111th Congress.

The Comprehensive Immigration Reform for America's Security and Prosperity Act of 2009 (CIR-ASAP) bill, authored by Representative Luis Gutierrez (D-IL) and co-sponsored by nearly 90 Democrats, is termed "comprehensive" because it contains border enforcement and legalization provisions and would address visa backlogs in the current immigration system. However, many experts, including some co-sponsors of the bill, do not believe it will be the vehicle for immigration reform legislation in Congress. It is seen as a "marker" bill for House Democrats.

Although the bill is modeled after similar CIR bills debated in Congress in 2006 and 2007, CIR-ASAP contains fewer measures to tighten border security and strengthen interior immigration enforcement, and it is more generous in its legalization of unauthorized immigrants, who number approximately 11.9 million, down slightly from more than 12 million in 2008 due to the recession.

Observers see CIR-ASAP as the House's opening move in the contentious immigration reform debate. While proponents of tougher immigration measures and many business groups have criticized the bill, its supporters hope that the bill's introduction will bring pressure on Congress and the White House to move forward with immigration reform legislation.

Representative Zoe Lofgren (D-CA) and Senator Chuck Schumer (D-NY), who chair the relevant subcommittees in the House and Senate, plan to introduce their own immigration reform bills in the coming year. Both have emphasized the need to seek bipartisan support, which means that compared to CIR-ASAP, their bills may place a greater emphasis on increased enforcement measures and establish stricter requirements for a legalization program.

Specifics of CIR-ASAP

In terms of enforcement, CIR-ASAP would increase the number of Border Patrol officers by 5,000, as well as add 1,200 Customs and Border Protection agriculture specialists and 350 border security support personnel for ports of entry.

Absent from the new bill are mandates that would increase border fencing and expand the definition of certain immigration-related crimes, key enforcement elements of the 2006 and 2007 bills. However, the bill would make electronic verification of new hires mandatory within three years.

Also, CIR-ASAP would rescind the controversial 287(g) immigration enforcement program, which allows state and local law enforcement agencies to enforce certain aspects of immigration law under agreements with the federal government. The 2006 and 2007 bills generally supported an increase in state and local participation in immigration enforcement.

As to legalization, CIR-ASAP would allow most unauthorized immigrants who were physically present in the United States as of December 15, 2009, and had not committed

any serious crimes, to immediately apply for "conditional residence" from inside the United States. Applicants would have to pay a penalty (fee) of \$500 and provide proof of employment, enrollment in a US institution of higher education, or participation in the US Armed Forces or National Guard.

The 2006 and 2007 CIR bills, on the other hand, required at least some unauthorized immigrants to leave the United States and apply for legal status outside the country, a provision known as "touch-back." The previous bills also contained substantially greater penalty fines.

Backlogs would be addressed by permitting the government to "recapture" unused immigrant visas from past fiscal years, so that they could be used for family-based and employment-based visa categories.

Once the existing backlog for immigrant visas was cleared, conditional residents would be allowed to become permanent residents. Applicants for permanent residency would have to demonstrate that they had paid back taxes, pursued learning English, and could demonstrate a "contribution to the community" through employment, education, or military service.

Also, CIR-ASAP differs significantly from its 2006 and 2007 predecessors because it does not provide new mechanisms for regulating future flows of immigrants. Instead, it provides 100,000 new visas for each of three years to absorb current unauthorized flows.

Prospects for CIR-ASAP

While CIR-ASAP is the first comprehensive immigration reform bill to be introduced since President Barack Obama assumed office a year ago, the bill's provisions are generally viewed as too liberal for the bill to gain any serious bipartisan support. At the same time, Republicans and some Democrats have attacked CIR-ASAP for failing to include a temporary worker program, a provision they say is key to attracting bipartisan support and backing from the business community.

Others have criticized the bill for gutting many of the border security and interior enforcement provisions of 2006 and 2007 CIR bills. Also, some interest groups have expressed disappointment that CIR-ASAP did not include a provision that would allow same-sex partners to apply for immigration benefits.

The Obama administration has not specifically commented on CIR-ASAP, but the White House is on record with statements of commitment to comprehensive immigration reform. In mid-November, Homeland Security Secretary Janet Napolitano outlined the administration's desire to achieve immigration reform legislation. She stated that greatly expanded border security and interior enforcement initiatives over the past two years have made immigration reform more attainable now than in 2007, and closed by saying, "When Congress is ready to act, we will be ready to support them."

Generally, the prospects for quick action on CIR remain doubtful. Critics maintain that CIR amounts to granting "amnesty" to law breakers. They also emphasize that legalizing almost 12 million unauthorized immigrants could increase job competition for US citizens and lawful permanent residents — especially as the economy recovers from a severe recession.

In addition, the politically charged nature of the immigration debate and the upcoming 2010 mid-term elections could lead some Democrats and many Republicans to shy away from voting for any immigration reform bill. House Speaker Nancy Pelosi has signaled this most clearly by reportedly having informed freshman Democrats that they will not be asked to vote on a CIR bill unless the Senate passes a bill first.

At the same time, a crowded legislative agenda in the Senate, which includes health-care reform, the overhauling of current financial systems, climate change, and jobs, could take precedence over immigration reform legislation.

Still, supporters of CIR-ASAP — which include the congressional Hispanic, Black and Asian American Pacific caucuses — see its introduction as a sign that immigration reform is moving closer to center stage in Washington. They emphasize that President Obama vowed to work toward immigration reform during the 2008 presidential campaign, and that the time has come to act on his commitment.

Speaking about the need to move CIR forward, even during troubled economic times, Gutierrez stated that the immigrant community had "waited long enough," and that "just because we've been patient, doesn't mean we can wait forever."

- Read the text of **CIR-ASAP** (H.R. 4321).
- Read the **statement** issued by Representative Luis Gutierrez on CIR-ASAP.
- Read MPI's **Side-By-Side Comparison** of CIR-ASAP and previous CIR bills.
- Read more about the recent push for comprehensive immigration reform in the **April 2009 Policy Beat**.
- Read more about 2007 attempt at comprehensive immigration reform in the **July 2007 Policy Beat**.

H-1B Visa Cap Reached, Audits Expanded

The annual cap on H-1B temporary visas for highly skilled foreign workers was reached in late December, over eight months after visas for the current fiscal year became available. US Citizenship and Immigration Services (USCIS) said December 21 that it had received more than enough H-1B visa petitions to allot the 65,000 visas available for fiscal year 2010.

In past years, the cap has been met within the first days or weeks. Most agree that the recession dampened employer demand for high-skilled workers from abroad.

In related news, USCIS Director Alejandro Mayorkas announced that the agency would move forward with its 2010 plans to audit 25,000 businesses using the H-1B visa program — five times as many audits as the agency conducted on H-1B businesses in 2009.

The expanded audits are aimed at ensuring better oversight of the program, which critics maintain is especially vulnerable to fraud.

- Read the **USCIS press release** about the H-1B cap.
- Read more about the H-1B program and fraud concerns in the **March 2008 Policy Beat** and the **November 2008 Policy Beat**.

Policy Beat in Brief

Supreme Court and Aggravated Felony Case. The US Supreme Court has agreed to hear a case that revolves around whether a legal immigrant who was convicted of two misdemeanor drug possession offenses, the second for possession of the anti-anxiety medication Xanax, should be found to have committed an "aggravated felony." Under current immigration law, immigrants who have committed aggravated felonies are deemed deportable and are barred from applying for cancellation of deportation and almost all forms of immigration relief.

- Read the US Court of Appeals for the Fifth Circuit Decision in **Jose Carachuri-Rosendo v. Holder**.

New ICE Policy on Detention of Asylum Seekers. Asylum seekers found to have a "credible fear" of torture or persecution in their home countries will be released from detention under a new Immigration and Customs Enforcement (ICE) policy. The change, implemented January 4, 2010, still requires asylum seekers to be detained while officials interview them and check their information. Foreigners found to have a credible fear when interviewed at a port of entry will automatically be considered for release.

- Read **ICE's press release** on the new policy for asylum seekers.

Increase in Federal Prosecutions Due to Immigration Enforcement. Federal criminal prosecutions increased 9 percent between fiscal year (FY) 2008 and FY 2009 because of a surge in immigration prosecutions, according to a report from a Syracuse University research center. The Transactional Records Access Clearinghouse (TRAC) found that immigration prosecutions constituted 54 percent of all criminal prosecutions in FY 2009 and that the number of immigration prosecutions increased 15.7 percent between FY 2008 and FY 2009. US Customs and Border Protection (CBP) was the federal agency that referred the greatest number of cases for criminal prosecution, followed by US Immigration and Customs Enforcement (ICE).

- Read the new **TRAC report**.
- Read more about criminal prosecutions of immigrants in the **June 2008 Policy Beat**.

REAL-ID Extension for All States. The Department of Homeland Security (DHS) has again extended the deadline for state compliance with the driver's license provisions of the REAL-ID Act from December 31, 2009, to May 10, 2011. It is the second extension from the government since the REAL-ID Act became law in 2005. The act requires states to verify that all applicants for driver's licenses are in valid immigration status and that driver's licenses contain digital photos, machine readable technology, and physical security features designed to protect against fraud. Residents of states deemed noncompliant with REAL-ID Act provisions after the May deadline will no longer be allowed to use their driver's licenses to enter federal buildings or board commercial airplanes.

- Read the final REAL-ID Act **regulations**.
- Read the **DHS press release** extending the REAL-ID deadline.
- Read about previous delays in REAL-ID implementation in the **March 2007 Policy Beat**.

Immigrants in the Labor Force. One in six American workers is now foreign born, the highest proportion of foreign-born workers in the United States since the 1920s, according to the US Census Bureau. The 2007 American Community Survey (ACS) data found there were 23.9 million foreign-born workers in the United States in 2007, roughly 16 percent of the total civilian labor force.

- Read the **US Census Bureau report** on foreign-born workers. Check out the **MPI Data Hub** for data on immigrants by US state.

Post 9-11 Detention Case. A case brought on behalf of Arab and Muslim immigrants who were detained after the September 11 attacks has been dismissed. A federal appeals court found that the plaintiffs' prolonged detention did not amount to a constitutional violation because they did not demonstrate that there was "no significant likelihood that they would be removed in the reasonably foreseeable future." The court, however, left open the possibility of claims of abusive detention practices against several high-level federal officials, including former US Attorney General John Ashcroft.

- Read the Second Circuit Court's decision in **Turkmen v. Ashcroft**.

TPS Extension for Sudanese Nationals. DHS has extended Temporary Protected Status for nationals of Sudan until November 2, 2011. The United States grants TPS to nationals of designated countries who are present in the United States and unable to return home because of war or a natural disaster. TPS recipients receive protection against deportation and are eligible to apply for work authorization. Sudanese nationals first received TPS in 1997.

- Read the **USCIS press release** on the extension of TPS for Sudanese nationals.
- Read more about TPS in the **August 2009 Policy Beat**.

State and Local Policy Beat in Brief

Immigrant Tax Case in Colorado. The Colorado Supreme Court upheld the decision of a lower court to suppress evidence collected when the Weld County District Attorney's Office seized 5,000 tax records from a local tax service to find evidence of unauthorized immigrants using stolen Social Security numbers. Holding that "a taxpayer has a reasonable expectation of privacy in his tax returns," the court found that the district attorney's office should not have searched defendant Ramon Gutierrez's tax returns unless it had probable cause to believe that Gutierrez had committed a crime.

- Read the Colorado Supreme Court's decision in **People v. Gutierrez**.
- Visit the MPI Data Hub for the latest stats on immigrants in **Colorado** and for the **State Responses to Immigration** data tool.

New E-Verify Ordinances. A number of new state and local ordinances dealing with E-Verify, the federal government's online employment verification program, took effect on January 1, 2010:
Lancaster, California: All employers are now required to use E-Verify to confirm that new employees are authorized to work.

South Carolina: All public contractors must use E-Verify.

Illinois: Employers are no longer barred from participating in E-Verify, but those who do must attest that they have completed the DHS E-Verify tutorial, and that they have posted notices of unfair employment practices in their workplaces.

- Read the text of the **South Carolina** and **Illinois** E-Verify laws.
- Read more about E-Verify in **The Basics of E-Verify, the US Employment Verification System**.
- Visit the MPI Data Hub for the latest stats on immigrants in **California, South Carolina**, and **Illinois** and for the **State Responses to Immigration** data tool.

Workers Compensation Case in Nebraska. Unauthorized immigrants who have been injured on the job in Nebraska are eligible to receive workers compensation, including weekly wages and payment for medical expenses, the Nebraska Court of Appeals has found. In upholding a lower court decision, the court highlighted the fact that the Nebraska workers compensation statute protects all employees, without any specific exclusion of unauthorized workers.

- Read the Nebraska court's **decision**.
- Visit the MPI Data Hub for the latest stats on immigrants in **Nebraska** and for the **State Responses to Immigration** data tool.

First Business License Suspension under Legal Arizona Workers Act. Maricopa County plans to suspend the business license of a local water park for hiring unauthorized workers, the first suspension of a business license since the Legal Arizona Workers Act took effect in January 2008. The act requires all Arizona employers to enroll in the federal E-Verify system, and employers found to have knowingly hired unauthorized immigrants can have their business licenses suspended.

- Read the Maricopa County Attorney's **press release** on the case.
- Read more about the Legal Arizona Workers Act in the **January 2008 Policy Beat**.
- Visit the MPI Data Hub for the latest stats on immigrants in **Arizona** and for the **State Responses to Immigration** data tool.

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