

The Week Beginning March 26, 2006, May Be Decisive for Immigration Reform

March 23, 2006

Like a waking giant, immigrant communities are beginning to respond en masse to more than a year of unrelenting attacks by cable television commentators, talk show hosts, anti-immigrant groups, and politicians. In recent weeks, immigrants and their friends have shown up in startling numbers to events protesting anti-immigrant legislation that passed the U.S. House of Representatives in December and that is now being considered in the Senate. One event in Washington, DC, attracted about 30,000 people, and another in Chicago easily surpassed 100,000 participants. Though planned, these events bordered on spontaneous because they were put together so rapidly on a shoe-string budget and because their success so far outstripped the most optimistic projections of their organizers.

Additional events are coming together as this is being written, including a high visibility national day of action at the Capitol in Washington, DC, on Monday, March 27 — the day the Senate is scheduled to resume debate on the immigration bill — and actions on April 10 in numerous cities across the nation.

On Thursday, March 16, the Senate Judiciary Committee met for the fourth time in two weeks to debate how the Senate should address immigration reform this year. Hanging over the committee deliberations was a threat by Senate Majority Leader Bill Frist (R-TN) that he would invoke a rarely used parliamentary procedure to bypass the committee and bring his own punitive-only bill to the Senate floor if the committee was unable to complete its work in time for floor consideration starting on March 27, when

Congress returns from this week's Saint Patrick's Day recess.

■ Senator Specter's "Mark"

The bill being considered by the Judiciary Committee is a 305-page behemoth, drafted by the committee's chair, Arlen Specter (R-PA). This bill, referred to as the "chairman's mark" is not numbered because it has not officially been introduced. Its text and some analysis of the bill can be found on our website at www.nilc.org/immlawpolicy/CIR/index.htm#cira. Its titles include (our descriptions, not the actual titles used in the bill):

- I. Changes at the border
- II. Changes in the interior
- III. Employment verification systems
- IV. Guest worker provisions and student visas
- V. Legal immigration reform, including family unification
- VI. Indefinite nonimmigrant visas for currently undocumented immigrant workers
- VII. Restrictions on judicial review and judicial review reform

While the chairman's mark goes beyond fences, punishment, and "enforcement" alone, it also incorporates many of the more punitive and extreme provisions of HR 4437, the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005, passed by the House of Representatives in December 2005.



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By Thursday, March 16, the committee had only considered amendments to the first two titles and had not come close to completing work on these. This lack of progress can primarily be attributed to the difficulty of the task. The bill under consideration would make wholesale changes in all aspects of immigration law.

These dramatic changes would not be felt solely by the nearly 25 million immigrants who are not yet citizens (almost 1 in 5 school-age children in the U.S. now have at least one foreign-born parent). They would also have a direct impact on all Americans and profoundly alter how our society is organized and the kind of nation we will be in years to come.

Yet despite the length and reach of the bill, its contents were closely held by Senator Specter's staff until late February. As a result, the Specter bill has never been vetted, and the committee's consideration is the first and best opportunity for senators to vet it.

On Thursday, Senator Specter told the Judiciary Committee he believed that Senator Frist's determination to take an immigration bill directly to the floor on an arbitrary date without adequate committee consideration was a "colossal mistake." He nevertheless proceeded to act on the assumption that Senator Frist could not be dissuaded, setting one final committee meeting on the bill for Monday, March 27, in the hope that many of the remaining titles and issues can be worked out by staff before then.

■ Possible Compromises

Based on the comments of senators during Thursday's session and on subsequent statements by staff, the committee does appear to be close to resolving two critical issues: (1) the treatment of the 11 million undocumented individuals who now live in the U.S., and (2) the basic outlines of a large new temporary work program. Please note: it is altogether possible that the negotiations this week could break down or change substantially, so the following details should be taken with a grain of salt.

Treatment of Currently Undocumented Non-U.S. Citizens

With one change, Senator Specter suggested on Thursday that he is willing to support the McCain-Kennedy approach to resolving the status of undocumented persons, which was embodied in Title VII of the Secure America and Orderly Immigration Act (S. 1033), which Senators John McCain (R-AZ) and Ted Kennedy (D-MA) introduced earlier this year. Under McCain-Kennedy, undocumented noncitizens who were working in the U.S. on May 12, 2005, could qualify for 6 years of temporary lawful status if they pay a \$1,000 fine and application fees, have complied with tax requirements, have not committed certain crimes, and understand or are studying English, U.S. civics, and history. After the 6-year period, applicants who have worked or studied continuously and meet the other requirements of the bill would be able to adjust to lawful permanent resident (LPR) status after payment of a second \$1,000 fine and additional application fees.

The change offered by Senator Specter would clarify that these immigrants would not be able to "jump in line" ahead of persons in the current backlog of pending family- and employment-based immigrant visa applications. Specifically, under Senator Specter's concept, currently undocumented noncitizens would be unable to adjust from temporary to permanent status until all persons in the current backlog of pending family- and employment-based applications for permanent resident status have been processed. This change may not actually delay the adjustment of undocumented workers, given that the family immigration reforms in the Specter bill are estimated to reduce the family immigration backlog below six years, and that under the original McCain-Kennedy proposal undocumented workers would have to wait at least that long before adjusting from temporary to permanent status.

Guest Worker Provisions

Senators Kennedy and John Cornyn (R-TX) may be on the verge of agreeing on the outlines of a temporary worker program that would replace the one in Title IV of the chairman's mark. The details of the possible agreement are hazy, and reports have been contradic-

tory, but it likely would permit a set number of persons per year to come to the U.S. for up to 2 years as temporary workers, after which they would be required (with some exceptions) to return to their countries of origin for at least a year. Those who come back to the U.S. after the 1-year absence would be able to remain for up to two 3-year terms, and would also eventually be eligible to adjust to lawful permanent resident status.

Even if the committee members are able to come to agreement on these two issues, there remain many other important ones that are as yet either unresolved or unaddressed. For example, under the chairman's mark, unlawful immigration status would for the first time become a crime, punishable by up to 6 months in prison. Senator Richard Durbin (D-IL) has attempted several times to offer an amendment in the committee to strike this provision, but he has been prevented from calling for a vote by promises of negotiation and agreement.

Another example of an issue that remains to be addressed is the massive employment verification system expansion that the chairman's mark provides for. Under the proposal, all U.S. employers — large and small — would be required to participate in the new system within 5 years by connecting electronically with the government to confirm the employment eligibility of all new hires. Unfortunately, major flaws in the chairman's mark all but guarantee that implementation of the system would lead to a significant increase in discrimination against people who "look foreign" or "sound foreign," lapses in privacy, as well as errors, abuse, and frustration — and would move us very close to adopting a national ID. Yet the committee has not yet addressed the details of this enormous new federal program.

■ Majority Leader Frist Introduces His Own Bill

On Thursday, March 16, Senator Frist upped the ante by introducing his own bill, S. 2454, and filing a motion to proceed to debate, altogether bypassing the normal committee process. If he follows through with

this maneuver, the Senate could start debate on his punitive-only bill as early as Monday. But he could be prevented from bypassing the committee if Democrats object and Senator Frist is unable to muster at least 60 votes to overcome their objections. On Wednesday, March 22, Senate Minority Leader Harry Reid (D-NV) said he would "use every procedural means at my disposal" to prevent Senator Frist from bypassing the Judiciary Committee.

The Frist bill is composed of the first three titles of the chairman's mark (border and interior changes, and the employment eligibility verification system), plus the student visa portion of Title IV, and the limitations of judicial review contained in Title VII. The only modifications of these provisions are amendments that were offered by Republicans and adopted by the Judiciary Committee during consideration of the chairman's mark over the last two weeks. These amendments all make the bill even more punitive than originally drafted by Senator Specter. Left out of S. 2454 are any measures to resolve the situation of undocumented immigrants, to reduce family immigration backlogs, or otherwise to reform the temporary or permanent legal immigration system.

■ What's Next?

It is very difficult to predict what will happen next week, other than it could be decisive in the immigration battles in Congress this year. The Judiciary Committee may or may not complete its work on Monday, with or without a vote on the McCain-Kennedy language. Senator Frist may or may not make good on his threat to move forward apart from the committee. There could be an explosive confrontation on the Senate floor, or cooler heads could prevail.

One thing is certain: this being an election year, each and every Senator is measuring common sense and sensible policy against his or her political calculations. Anti-immigrant groups and individuals are fully active, flooding Congress with their concerns, while immigrant communities are just now waking to the threat.