

Siskind's Immigration Bulletin – May 2, 2008

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1. Openers
2. ABCs of Immigration: Electronic I-9 Systems
3. Ask Visalaw.com
4. Border and Enforcement News
5. News From The Courts
6. News Bytes
7. International Roundup
8. Legislative Update
9. Notes from the Visalaw.com Blogs
10. Campaign '08
11. Back of the Line, Back of the Bus...or Just Plain Backward?; Guest Commentary by Dan Kowalski

1. Openers

Dear Readers:

Maybe it is because I'm an optimist, but I'm starting to get a sense that we've turned a corner in the immigration debate and commonsense may be returning. We've cleared out all the most strident anti-immigrant presidential candidates. We've seen several recent elections where anti-immigrant candidates lost. State legislatures a few months ago were passing anti-immigration legislation with barely any debate and now we're starting to see some real discussion. Some of the worst bills have been modified and other states have defeated measures.

And now we're starting to see some progress in Congress. The House has recently moved several immigration measures. They're modest, but the fact that they're passing at all is a good sign. And just this week Congresswoman Zoe Lofgren, the chair of the House Immigration Subcommittee co-sponsored a bill with Republican Congressman James Sensenbrenner, a former House Judiciary Chair known for being anti-immigrant. The bill would reclaim hundreds of thousands of previously unused green cards.

These are, of course, just modest signs. But at least the atmosphere seems to be improving.

Finally, as always, if you are interested in becoming a Siskind Susser Bland client, please feel welcome to email me at gsiskind@visalaw.com or contact us at 800-748-3819 to arrange for a telephone or in person consultation with one of our lawyers.

Regards,

Greg Siskind

2. The ABC's of Immigration: Electronic I-9 Systems

By Greg Siskind

The short answer for most employers is almost always yes. For the past few years, employers have been eligible to file and store Forms I-9 electronically. As the national crackdown on employers of illegal immigration grows more intense and a number of vendors are now offering electronic I-9 products, employers are starting to weigh the benefits of ditching paper I-9s and going digital. This article first discusses the laws surrounding filing and then reviews why companies would want to make the switch.

1. Can a Form I-9 be completed electronically?

In October 2004, President Bush signed Public Law 108-390 which for the first time authorized employers to retain Employment Eligibility Verification Forms (Forms I-9) in an electronic format. In April 2005, the law took effect and employers began to manage their Forms I-9 electronically. Immigration and Customs Enforcement issued rules setting standards for using electronic I-9s in June 2006 (they are found in the Code of Federal Regulations at 8 CFR §274a.2) and the agency is actively encouraging employers to store their Forms I-9 electronically.

2. Why would companies want to switch to electronic I-9 systems?

There are numerous reasons why companies would prefer electronic I-9s over paper-based systems.

- Most of the major vendors use web-based systems. That means employers do not have to install software and only need Internet access and a web browser.
- Employees are not able to complete the Form I-9 unless the data is properly entered. Many vendors offer systems that guide workers and human resource officials through proper completion of the forms.
- Some of the systems are “intelligent” and ensure that based on answers provided in Section 1 of the Form I-9 only appropriate documents show up in Section 2.
- Some systems allow for certain sections of the form that are the same from applicant to applicant to be pre-filled to save time.
- The better electronic I-9 systems include help features that make it easier for human resource officials and employees to answer questions on the Form I-9.
- Employers with employees at multiple sites can more easily monitor I-9 compliance at remote locations.
- Reverification is automated and employers are less likely to incur liability due to an inadvertent failure to update an employee’s I-9. Many systems send email reminders.
- Employers can integrate the system with E-Verify or other electronic employment verification systems in order to minimize the chances that unauthorized workers end up employed.
- Using an electronic I-9 system reduces the risk of identity theft from the robbery of paper I-9 records (a problem that has been occurring with more frequency of late). By law, electronic I-9s must have built in security systems to protect the privacy of employees and the integrity of the data.
- Using an electronic I-9 system can make it easier to respond to ICE audits. In addition to the audit trails required by regulation, some of the systems archive communications relating to the I-9.
- Electronic I-9 systems can integrate with payroll and employee database systems.
- Data from the electronic Form I-9 can be automatically uploaded in to E-Verify, the government’s electronic employment verification system. Several electronic I-9 vendors are federally approved E-Verify Designated Agents thus allowing for them to automate the entry of an employer’s data in E-Verify.

- An electronic I-9 system allows for the automation of the purging of Forms I-9 for employees no longer with the employer and for whom Forms I-9 must no longer be retained.
- Some of the systems contain instructions in multiple languages for employees that have difficulty understanding English.
- Employers can potentially achieve cost savings by storing Forms I-9 electronically rather than using conventional filing and storage of paper copies or converting paper forms to microfilm or microfiche.
- Electronically retained I-9s are more easily searchable and, hence, often a time saver for HR personnel. The better systems produce a variety of reports that make it easier to monitor I-9 compliance.
- Some of the systems also track visa and I-94 expiration dates.

3. Are there downsides to using an electronic I-9 system?

There are some potential problems with using a digital system. They include the following:

- There are no 100% secure electronic systems (though the law requires electronic I-9 vendors and their employer customers to implement security measures).
- The electronic systems do not totally stop identity theft since a person can present doctored identification and employment authorization paperwork making it appear that the employee is another person (though employers can undertake additional background checking to reduce the likelihood of problems).
- The cost of a paper I-9 form is free (aside from indirect costs like storage, training, etc.). Electronic systems typically charge a flat monthly fee or a per employee fee (though the per employee costs are usually no more than a few dollars with any of the major vendors).
- Most I-9s are Internet dependent. When the Internet is not available, the I-9 form may not be able to be completed (though an employer may be able to use a paper I-9 in such a case).
- If an electronic I-9 vendor goes out of business, the employer could be in a bind if precautions are not in place to make it easy to retrieve the employee's data (such as having back ups on the employers own computer system).

4. What requirements must electronic I-9 systems meet?

The 2006 rules set standards for completing forms electronically and also for the scanning and storage of existing I-9 forms. Since the change in the law a number of software products have come on to the market allowing for the electronic filing of I-9s and there are advantages to using such a system including improving accuracy

in completing forms and setting up automated systems to prompt employers to re-verify I-9s for employees with temporary work authorization.

DHS regulations require I-9s generated electronically to meet the following standards:

- The forms must be legible when seen on a computer screen, microfiche, microfilm or when printed on paper.
- The name, content and order of data must not be altered from the paper version of the form.
- There are reasonable controls to ensure the accuracy and reliability of the electronic generation or storage system.
- There are backup systems to prevent the accidental creation, deletion or deterioration of stored Forms I-9.
- The software must have an indexing system allowing for searches by any field.
- There must be the ability to reproduce legible hardcopies.
- The software must not be subject to any agreement that would limit or restrict access to and use of the electronic generation system by a government agency on the premises of the employer, recruiter or referrer for a fee (including personnel, hardware, software, files, indexes and software documentation).
- Compression or formatting technologies may be used as long as the standards defined above are met.
- There is a system to be able to identify anyone who has created, accessed, viewed, updated, or corrected an electronic Form I-9 and also to see what action was taken.

Employers that know or should reasonably have known that an action or lack of action will result in loss of electronic Form I-9 records can be held liable under IRCA.

Employers may use more than one kind of electronic I-9 system as long as each system meets the standards noted above.

Employers using an electronic I-9 system must also make available upon request descriptions of the electronic generation and storage system, the indexing system and the business process that create, modify and maintain the retained Forms I-9 and establish the authenticity and integrity of the forms, such as audit trails. The I-9 software vendor should, of course, provide such documentation to the employer, though this is not a requirement in the regulations.

There are special audit requirements for electronically stored I-9s and a discussion of those requirements is set out below in the section of this chapter discussing the regulation of government inspections.

5. How is an electronic Form I-9 “signed” by an employee and employer?

DHS regulations require that electronic I-9s can be “signed” electronically through a system where the person providing the information will acknowledge that he or she has read the attestation.

The signature must be affixed to the document at the time the attestation is provided. The form must also be printed out and provided to the person providing the signature at the time the document is signed. This applies to the employee as well as the employer, recruiter or referrer for a fee.

6. What are the Form I-9 recordkeeping requirements for electronic I-9s?

Employers must keep I-9 Forms for all current employees though the forms of certain terminated employees can be destroyed. In the case of an audit from a government agency, the forms must be produced for inspection. The forms may be retained in either paper or electronic format as well as in microfilm or microfiche format.

7. Are there special storage requirements for electronic I-9s?

Yes. Forms I-9 retained in an electronic format must meet the following standards:

- There are reasonable controls to ensure the integrity of the electronic storage system.
- Controls are in place to prevent the unauthorized creation of, deletion of or alteration of the stored Form I-9.
- There are regular inspections of the electronic data to ensure the integrity of the data.
- There is a retrieval system that includes an indexing system allowing for searches on any field.
- There is the ability to produce readable hardcopies.

8. What privacy protections are accorded workers when they complete Form I-9 electronically?

Employers with electronic I-9 systems are required to implement a records security program that ensures that only authorized personnel have access to electronic records, that such records are backed up, that employees are trained to minimize the risk of records being altered and that whenever a record is created, accessed, viewed, updated or corrected, a secure and permanent record is created establishing who accessed the record.

9. How does an employer who uses an electronic I-9 system respond to an ICE audit?

Original I-9 forms must normally be provided for inspection to ICE examiners. If an employer retains Forms I-9 in an electronic format, the employer must retrieve and reproduce the specific forms requested by the inspecting officer as well as the associated audit trails showing who accessed the computer system as well as the actions performed on the system in a specified period of time. The inspecting officer must also be provided with the necessary hardware and software as well as access to personnel and documentation in order to locate, retrieve, read and reproduce the requested Form I-9 documentation and associated audit trails, reports and other related data.

Finally, an inspecting officer is permitted to request an electronic summary of all of the immigration fields on an electronically stored Form I-9.

10. Can a company using an electronic I-9 system batch load data to E-Verify?

Yes. DHS has a real-time batch method that requires a company develop an interface between its personal system or electronic Form I-9 system and the E-Verify database. Employers interested in more information on this including design specifications, should call ICE at 800-741-5023.

11. Can employers convert existing I-9s in to an electronic format?

Yes. Many employers are scanning and indexing their current I-9 Forms and storing them electronically using electronic I-9 software.

12. Where can I find out which companies offer electronic Form I-9 products and services?

Siskind Susser Bland maintains a list of vendors that provide electronic I-9 services. Please email Greg Siskind at gsiskind@visalaw.com for this information.

3. Ask Visalaw.com

If you have a question on immigration matters, write Ask-visalaw@visalaw.com. We can't answer every question, but if you ask a short question that can be answered concisely, we'll consider it for publication. Remember, these questions are only intended to provide general information. You should consult with your own attorney before acting on information you see here.

Q - A green card holder filed an I-130 in 1991 (which was approved in 1992 for his wife). All the children are included on the petition as derivative beneficiaries in F-2A family category. One son has now turned 21, but the priority date is almost current for F-2B from Mexico. The mother died in 1997 without immigrating. The son is now

in removal proceedings. Can the son possibly adjust status in front of an immigration judge based on this petition? Can the son use this old petition?

He was and is a beneficiary. The petitioner is still alive and still has a green card. Does the fact that the primary beneficiary died void the petition?

A - The State Department Foreign Affairs Manual addresses this subject:

42.53 N8 Death of Principal Beneficiary
(TL:VISA-61; 6-5-92)

In the case of the death of the principal beneficiary prior to admission to the United States, neither the petition nor the priority date would remain valid for a derivative beneficiary.

The problem in this case is that the children are derivative beneficiaries and the death of the mother, the principal beneficiary, means the children lose their place in line. If the father had filed separate I-130s for each child in 1991, then this would not have been a problem. There are provisions in the law that protect beneficiaries in the case of the death of a petitioner, but those laws don't come in to play here.

Q - I am currently on an F-1 student visa, and want to start an investment club as a partnership.
Currently, about a dozen of my fellow students want to pool together our money to invest in stocks together and to safeguard our own interests we will like to set it up as a partnership. Being foreign citizens on an F-1 student visa, will this be a violation of our status to be a partner of an investment club? If not, what other legal alternatives do we have to safeguard each person's stake?

A - Investing in the stock market has traditionally been viewed as a passive activity that does not constitute employment. While I have never seen this specific question addressed, my assumption is that this would be treated the same way as investing on your own. Setting the club up as a partnership is going a step further than simply investing personal funds, but I doubt that act itself would be the step that raised this from a passive activity to meeting the definition of "employment" under immigration law.

Q - I am a permanent legal resident. My current green card is valid until 2015. I have been married to a US citizen for 6 years. I have aged parents in Peru. If I need to visit them in case of emergency, are there any documents I need to take with me (apart from my Green Card) for when I return through US Immigration?

A - You should just need the green card and your unexpired passport to get back in to the US on each trip. If you plan on staying for extended periods abroad, you might find the article I've written at <http://www.visalaw.com/06feb1/2feb106.html> helpful.

Q - I filed an I-485 and I-140 employment-based green card case together for me and my family by virtue of an approved labor certification in July 2007. I have a son studying overseas who will turn 21 in April 08 and he was not included in the application for change of status because he is not in the US. Can she still be qualified to be added in our green card petition even after she turns 21?

A - Your son might be eligible to apply for an immigrant visa as your derivative beneficiary, but it depends on a number of factors: 1) What preference category your I-140 was filed under; 2) what your priority date is; 3) when your priority date became current under the visa bulletin; 4) How long it takes USCIS to approve your I-140; and 5) (if a visa is not currently available) When a visa again becomes available for your petition.

For there to be any chance for your son to apply as your derivative, you will need to file a Form I-824, if you have not done so already. Your immigration lawyer should be able to help evaluate whether your son will qualify after you go over the above-stated questions.

Q - I have worked in the US before on an 18 month J-1 trainee visa. Is it possible to go back on a second J-1? I was under the impression that you could only have one.

A - If you've remained outside the US for two years, you might be able to come back in. Trainees are eligible for additional training programs after a period of at least two years residency outside the United States following their initial training program. Participants who have successfully completed internship programs and no longer meet the selection criteria for internship programs may participate in a training program after a two-year period of residency outside the United States following their internship program. As long as participants meet the selection criteria and fulfill these conditions, there is no limit to the number of times they may participate in a training and internship program.

4. Border and Enforcement News

A coalition of Texas mayors, county judges and economic development commissioners is joining a federal lawsuit challenging Department of Homeland Security efforts to build 153 miles of fencing along the Texas-Mexico border, *The Washington Times* reports. The Texas Border Coalition (TBC), whose membership collectively represents more than 6 million people who live along the state's southern border, cited the lack of consultation required under the Omnibus Appropriations Act of 2007 as the principle reason for the legal challenge.

"Sadly the US Department of Homeland Security has repeatedly ignored TBC's pleas for cooperation and coordination among federal, state and local governments in order to foster smart, effective border security measures," said Eagle Pass Mayor Chad Foster, the coalition's chairman, adding that they entered into the lawsuit by Cameron County landowners "to protect the interests of communities across Texas and to minimize the impact the border wall will have on our environment, culture, commerce, and quality of life." The TBC believes that DHS is focused solely on the construction of border fencing without acknowledging concerns about the effect it would have on both the environment and the "binational way of life" on the border.

Homeland Security spokeswoman Laura Keehner has steadfastly maintained that there be "no ambiguity about the department's top priority...securing the homeland," adding that the department has "championed" a combination of traditional fencing and manpower to reach the goal.

The Secure Fence Act of 2006 initially called for the construction of 745 miles of double-layered fencing along the 2,000-mile U.S.-Mexico border. DHS scaled back this estimate down to their current plan of 370 miles of fencing and vehicle barriers.

More than 280 workers accused of being illegal immigrants were arrested this month by federal agents at five plants belonging to Pilgrim's Pride, a major chicken-processing company, *The New York Times* reports. The roundup was the largest immigration enforcement effort at a workplace this year. The arrests are part of an ever-intensifying strategy by Immigration and Customs Enforcement (ICE) officials to bring federal charges against any unauthorized immigrant workers caught purchasing or using Social Security numbers to obtain work. Justice Department officials said they would bring criminal identity theft charges against many of those arrested.

ICE officials said that over 100 workers were arrested at each of the company's two plants in Chattanooga, Tenn., and Moorefield W. Va. ICE officials do not plan to bring any charges against Pilgrim's Pride, or its management. "It wasn't a raid, in the sense that we were working with the government to help them apprehend the people," said Ray Atkinson, a spokesman for Pilgrim's Pride.

The *Washington Post* reports that this past week, the US government has ordered all domestic commercial airlines and cruise lines to prepare to collect digital fingerprints of all foreigners before they depart the country under a new security initiative. The proposal, called US-VISIT, is estimated by the government to cost the airline industry \$2.3 billion over 10 years, adding another financial burden to the troubled industry, which is currently struggling with high fuel costs.

Homeland Security Secretary Michael Chertoff linked the effort to enforcing the nation's recent changes in immigration laws, accusing airline carriers of delaying cooperation on the issue for commercial reasons. "if we don't have US-VISIT air exit by this time next year, it will only be because the airline industry killed it," Chertoff said recently. "We have to decide who is going to win this fight. Is it going to be the airline industry, or is it going to be the people who believe we should know who leaves the country by air?"

The initiative has been seen as many in the airline industry as an unreasonably costly and burdensome measure. Doug Lavin, regional vice president for the international Air Transport Association, which represents major US and international carriers, asserted that it is the government's responsibility, not the airlines', to collect fingerprints. "This is ludicrous," Lavin said. "We can't afford anything in the billions to support a program that should be a government program." Fingerprinting an estimated 33 million departing foreign passengers a year would result in "delayed departures, missed connections here and around the world."

In response to DHS' slow response to implementing US-VISIT, Congress last year set a June 2009 deadline for DHS to collect fingerprints from departing air passengers in a law to implement recommendations of the 9/11 Commission. Otherwise, the government cannot expand the Visa Waiver Program to include more nations, a move which it believes could negatively affect tourism to the US.

5. News From the Courts

Milanes v. Chertoff, 08 Civ. 2354 (S.D.N.Y. 2008)

Thousands of Latinos and other immigrants may be one step closer to becoming United States citizens and voting in the November elections after a federal judge ordered the government defendants to produce key documents in an expedited fashion in a class action challenging unlawful delays in the processing of naturalization applications. The judge's ruling is a major victory for the plaintiffs and offers hope to those who wish to become citizens in time to vote in the November elections.

The plaintiff class consists of all immigrants who have applied for naturalization but whose naturalization applications have not or will not be adjudicated within the legally required time frames. Plaintiffs are represented by attorneys from the Puerto Rican Legal Defense and Education Fund (PRLDEF), the New York Legal Assistance Group (NYLAG), a not-for-profit public interest law firm based in Manhattan, and the law firm of Weil, Gotshal & Manges LLP ("Weil Gotshal").

"Our clients will be irreparably harmed if they can not vote this fall," said Foster Maer, PRLDEF's lead attorney on the case. "The opportunity to vote is critical to what being an American citizen is all about."

On April 3, 2008, plaintiffs filed a motion for a preliminary injunction that would require Defendants USCIS, FBI and the Attorney General to adjudicate class members' applications for citizenship prior to the Presidential Election in November. The Judge's ruling expediting the production of key documents is a critical prerequisite to obtaining this relief and should allow a hearing to be held in this class action early this summer.

"The Court's ruling is an important first step in letting thousands of eligible legal immigrants enjoy one of the great benefits of citizenship: to vote in the State and Federal elections this Fall. We are pleased to be able to help them in their efforts," said attorney Richard Slack.

Federal law requires USCIS to adjudicate naturalization applications within a reasonable time. USCIS's failure to do so has resulted in thousands of immigrants waiting well over six months, and in some cases years, since the submission of their applications, with no decision and no word from USCIS.

"The government has been sitting on our clients' applications for years," said NYLAG lawyer Michael Sant'Ambrogio. "Some members of our class have already missed the opportunity to vote in two national elections. Without the Court's intervention, tens of thousands of law-abiding, would-be citizens will be denied the opportunity to vote in November."

The named plaintiffs, lawful Latino residents in the United States for at least the past five years, have submitted complete applications for naturalization that have not been adjudicated within a reasonable time. One named plaintiff, Omar Farfan, is a decorated veteran of the US Navy who applied for citizenship over three years ago, but has been unable to get a US government job because he is not a citizen.

Nationally, hundreds of thousands of Latinos and other immigrants are waiting to finish the naturalization process, many of them brought into the process by a national naturalization campaign called Ya Es Hora. In New York alone, over 90,000 legal U.S. residents have been waiting for up to three years for their naturalization applications to be processed.

6. News Bytes

Thousands of workers waved American flags, marched to mariachi music and rallied for labor and immigrant rights in downtown Los Angeles last week, as May Day gatherings drew light but peaceful crowds

The Los Angeles Times reports that in Los Angeles, where about 8,500 people took part in three separate marches that merged to rally at 1st Street and Broadway, some participants said fear of government raids and growing apathy about prospects for change had dampened turnout. About 20,000 had been expected to participate. "A lot of people feel that nothing is being done," said Xochilt Pacheco, 30, a Mexican American from Highland Park whose father is an illegal immigrant. She wore a white dress with the slogans "We are workers, not criminals" and "Legalize me" printed in red letters. "We march and nothing is done. We march and there are raids," she said.

Others said the lower turnout was a reflection of the immigrant rights movement's shift in focus from marches to voter registration and other civic activities, a decision not to push boycotts of school and work this year, and a preoccupation with contract negotiations and other issues. Unlike in past years, the Service Employees International Union Local 1877 and the We are America Alliance, a coalition of churches, labor unions and community groups, were not heavily involved in organizing this year's marches. "This year, we're focusing on civic engagement work," said march participant Angelica Salas, executive director of the Coalition for Humane Immigrant Rights in Los Angeles.

The May Day marches, which historically commemorate International Workers' Day,

have been specifically used in Los Angeles to celebrate the contributions of the immigrant workers who make up nearly half of the county's workforce. They took place amid continuing fierce debate over immigration reform proposals, which have stalled in Congress.

CBS News is facing a large amount of criticism over a segment it ran about undocumented immigrant women in the US, according to *Politico.com*. The story's central figure was a woman identified as an undocumented immigrant, who was lying in her South Texas hospital bed — her right arm wrapped around her newborn and her left hand punctured by an intravenous needle — while reporter Byron Pitts lectured her that “many Americans who struggle to take care of their own families think it is unfair that they should have to take care” of non-U.S. citizens.

Critics contend that the piece was biased, contained inaccurate information, and far below the network's journalistic standards. “Anti-Latino falsehoods deserve no time on our public airwaves,” stated a letter to CBS by the Mexican American Legal Defense and Educational Fund (MALDEF) and the National Council of La Raza. The groups and others have asked to meet with CBS “to help raise the dialogue and provide the American public an honest and accurate analysis of this nation's broken immigration system.” And in a separate letter to CBS, the Asian American Justice Center lodged a similar complaint against the entire four-part series that included the report.

In its written complaint to CBS, MALDEF cited a Texas comptroller's study noting economic benefits due to the presence of undocumented immigrants. MALDEF also maintained the CBS report exposes the woman “and implicitly leads her to believe that she is protected from deportation.” And it portrayed birthright citizenship as “an unfair benefit to immigrants rather than a core principle” of constitutional law. One gaping hole in the news story involved a hospital administrator's statement that the facility has “uncompensated care of over \$200 million a year,” which the reporter tied to emergency room care for non-citizens, a statistic that could not possibly be known if the hospital does not verify citizenship or legal vs. illegal immigration status.

CBS has not responded to the civil rights groups' request for a meeting. “We appreciate the passionate and articulate feedback on our series. We will continue to do our best to listen to the many voices engaged in immigration issues, to produce fair and accurate stories and to bring national attention to this complicated topic,” CBS said in a statement.

The Dallas Morning News reports that the Institute for Mexicans Abroad, a Mexican governmental organization, recently wrapped up a conference bringing Mexican immigrant leaders and US labor leaders together last week to carry on the commitment of defending immigrant workers – both legal and illegal – the primary theme of the conference. The conference sought also to discuss the impact the Latino immigrant vote, now stronger than ever, would have in shaping future American elections and policy, particularly immigration laws.

“In over 40 years of organizing, I've never seen this level of interest and it will be good for this democracy,” said Eliseo Medina, conference organizer, and executive vice president of the Service Employees International Union, one of the largest labor

groups in the U.S. Mr. Medina urged the advisory council of the Mexican government's Institute for Mexicans Abroad to organize, to vote and to push for an overhaul of the nation's immigration laws, as the conference moved into its second day. "We can't have two classes of workers here," Mr. Medina said in Spanish.

It began on Tuesday with an address by Mexico's President Felipe Calderón, who called himself "an ally who is indefatigably on the side of the Mexicans in the United States." Later Tuesday evening, Mr. Calderón met privately with a group that calls itself the American and Mexican Anti-Discrimination Alliance, and has received organizing assistance from the American Jewish Committee and the Anti-Defamation League – two groups that have long fought anti-Semitism.

"We have been the focus of many attacks," said organizer Gloria Inzunza-Franco, a Mexican immigrant and university administrator from the Long Beach area. "We always hear about the negative as though it were the norm."

7. International Roundup

European air travelers to Britain will be screened with automatic facial recognition technology from this summer in a bid to tighten security and ease congestion, the government said last week. *Agent France Presse* reports that all European Economic Area countries will pass through unmanned clearance gates which will scan passengers' faces and compare them to data held on their biometric passports.

"Britain's border security is now among the toughest in the world and tougher checks do take time, but we don't want long waits," junior Home Office (interior ministry) minister Liam Byrne said. "So the UK Borders Agency will soon be testing new automatic gates for British and European Economic Area citizens. We will test them this year and if they work, put them at all key ports."

According to *The Guardian* newspaper, the technology being used has been programmed to err on the side of caution to ensure that travelers on security services' watch lists are not allowed to freely pass through. Because of that, some innocent passengers may be held up and redirected if the clearance gates cannot match their faces to the records on their passports.

The newspaper said the government had not yet decided on how many airports would take part in the initial trial this year. A Home Office spokesman told AFP that the ministry would publish details of how the technology worked, as well as where and when it would be deployed 'in the near future', but did not elaborate.

Immigrant support groups have welcomed the publication of a Government strategy which aims to improve the integration of non-nationals into Irish society and avoid problems experienced by other countries, Dublin's *The Irish Times* reports. The statement - entitled Migration Nation - lists a range of policies and key principles that will guide Government policy on the issue. It is the first such statement by the Office of the Minister for Integration since it was established last year.

Among the key elements of the strategy is the streamlining the asylum process. In addition, it calls for new laws to help skilled migrants to enter the Irish workforce and increased measures to help prevent the exploitation of foreign workers. It also calls for the establishment of a formal pathway to permanent residency and citizenship for immigrants. However, citizenship will be linked to applicants' ability to speak English.

NPAR chairwoman Lucy Gaffney said the policy showed integration and diversity management issues were being treated as a priority by Government. She said community-based groups and schools have a critical role to play in the success of the strategy.

However, she accused the Department of Education of "falling short" in their commitments on providing language lessons. "This is something that needs to be addressed as a matter of urgency," Ms Gaffney said.

8. Legislative Update

A bill recently approved by the Arizona Legislature would require city and county police agencies to have their officers tackle federal immigration violations. *The Associated Press* reports that the Senate's 20-9 vote last week finalized action on the bill; It goes next to Gov. Janet Napolitano.

The bill would also prohibit county and city governments from having policies that prevent or restrict them from receiving or exchanging information about people's immigration status in certain instances. Those cases include determining the eligibility of people for public benefits that are off-limits to undocumented immigrants and confirming the identity of arrested people.

The comments in a recent open committee meeting from conservative legislators of the Texas Congress are making it clear: they'll again push for strict state laws to crack down on undocumented immigration when the state lawmakers convene in January, according to *The Associated Press*. Republican Rep. Debbie Riddle hinted at pushing legislation that would encourage local police departments to work with US officials to enforce federal immigration laws, an idea in line with what many conservative Texas lawmakers felt was missing from their 2007 Immigration Reform plan. That legislation provided funding for border security and law enforcement, but a proposed amendment of using local officers to enforce immigration laws failed to pass, largely for fear of constitutional challenge in court if passed.

Republican Rep. Leo Berman told the committee he wants to see statewide legislation by 2009 requiring voters to show a photo ID to prove citizenship, as well as penalizing employers who hire undocumented immigrants. Last session, Berman challenged the automatic citizenship provision of the US Constitution's 14th Amendment, contending that children of undocumented immigrants born on US soil aren't entitled to US citizenship; lawmakers struck down the proposal.

El Paso attorney Kathleen Walker, president of the American Immigration Lawyers Association, appeared before the committee and chastised the lawmakers' use of the term "illegals" to refer to immigrants. She warned against the practice of police

stopping motorists simply because of the color of their skin or because they are driving certain types of vehicles. "We're talking constitutional principles today and the preservation of those principles," she said. "We have to be cautious how we treat foreign nationals in this country." The undocumented-immigration-focused police efforts, which legislation approved funding of last session, has drawn numerous protests from Latino rights advocates who say the police are using racial profiling.

9. Notes from the Visalaw.com Blogs

[Greg Siskind's Blog on ILW.com](#)

- Marchers Rally for Immigration Reform
- House Considers Green Card Recapture Bill
- Arizona Governor Vetoes 287(G) Possess Law
- A Government of Big Ideas
- Immigration Humor
- Top USCIS and DOS Officials to Testify in House Hearing on Wasted Visa Numbers and Backlogs
- Protestors Complain about Dunkin' Donuts Use of E-Verify
- Tancredo Suggests Giving Part of Texas to Mexico
- Immigrant of the Day: Arno Motulsky – the Father of Pharmacogenomics
- Hispanic Congressman Complains to CNN about Dobbs
- Opt Guidance
- Immigrant of the Day: Guillermo Del Toro – Film Director
- Proposed Rule to Extend TN Visas to Three Years Coming Soon
- Wharton School Study: Skilled Worker Shortage Contributes to Offshoring
- Let Them Eat Cake
- DHS Announces Air Exit Tracking Coming in 2009
- California Lawmaker Seeks to Raise Awareness of Depression-Era Deportations
- Reminder on New Immigration Reforms
- Posner Blasts Immigration Courts

[The SSB Employer Immigration Compliance Blog](#)

- Missouri Sanctions Bill Stalls
- Number of Prosecutions against Employers Still Low
- House Committee on Social Security to Hold Hearing on E-Verify
- Rhode Island Delays Employer Sanctions Vote
- AZ Employer Sanctions Bill Gets Preliminary Approval in State Vote
- SC Lawmakers Still Locked in Dispute on Sanctions Bill
- Arizona Employers not being Hit by New Law

- Iowa House Passes Bill Mandating Use of State IDs in Seeking Employment
- South Carolina Sanctions Bill Hits a Snag

[Visalaw International Blog](#)

- Germany: FAQ on Foreigners Law
- This is the First Time in the History of Spain that Women Outnumber Men in the New Cabinet
- Recently, Marla Bojorge got Her Degree at Law in China
- China Alters Its Immigration Regulation in Response to Olympic Security Concerns
- Hong Kong's Quality Migrant Admission Scheme Alters Points Allocations to Encourage Younger Migrants
- HSMP Judicial Review – Faith in British Justice Restored
- An Employer's Guide to Switzerland
- Overseas Workers – Skill Shortages and Employer Obligations of Sponsorship
- Canada: Nova Scotia Immigration Program Failed Applicants

[Visalaw Health Blog](#)

- AHA: Study Shows Coming Shortage of Generalist Physicians
- Community Health Centers Weigh in on Proposed Rule to Dramatically Change How Shortage Areas are Determined
- Kaiser Family Foundation Releases Report on Immigrants and Health Care
- *Boston Globe* Reports on Impact of Foreign Healthcare Workers
- More Medical Students from Both US and Abroad Match for Residency Slots
- DC Program Links Immigrants to Translators Who Can Help with Health Care Needs
- Will Michigan Drivers License Law Drive Out Doctors?

[Visalaw Fashion, Sports, & Entertainment](#)

- Congress Moves Fashion, Arts, and Sports Bills Despite Deadlock in Other Areas
- Snoop to Get in to UK
- Cuban Soccer Players Make it to MLS Tryouts
- Houston Astros' Tejada Faces Immigration Woes
- House Judiciary Committee Passes P-1 Extension Bill
- *LA Times* Reports on O-1 30-Day Bill
- *New York Times* Covers O-1 Bill Passing in House
- 30-Day O-1 Processing Bill Passes in House Judiciary Committee

[The Visalaw.com Blog](#)

- Karen Weinstock's H-1B Book is Published
- SSB Headquarters Wins Architecture Award
- Greg Siskind's Slides from TBA Legal Tech 2008

[Tech Notes - The Immigration Lawyer Blog](#)

- ABA Techshow Preview

- The World of the Future: 1999
- How to Dispose of an Old Cell Phone
- Voltaic Backpack: Your Bag Becomes Your Power Source
- AMLAW Technology Marketing Slides

10. Campaign '08

Democratic National Committee chairman Howard Dean this month called on Republican presidential candidate John McCain to denounce Rep. Tom Tancredo's criticism of undocumented immigrants and the role they play in religion in the US. *The Denver Post* reports that at the National Prayer Breakfast in Washington, Dean criticized Tancredo's recent remarks during Pope Benedict XVI's US visit, as well as his long-standing opposition to immigration.

"After years of failing to address immigration reform, the Republican Party has instead used the issue to scapegoat people to win elections," Dean said. He urged McCain that if he "believes, as he has said, that 'these are God's children,' he should not stand by silently as Tancredo...continues using immigrants as scapegoats or playing politics with immigration legislation."

The appeal from Dean came after comments Tancredo made regarding a speech on US immigration by Pope Benedict XVI. In his speech, the pope encouraged Americans to "welcome the immigrants who join your ranks today, to share their joys and hopes." He claims that the pope had urged the US to embrace undocumented immigrants because it would boost the Catholic church's membership, citing a *Wall Street Journal* editorial that claims the church is losing native-born members while gaining foreign-born, mostly Latino members.

Tancredo said he was "not surprised by Dean's comment. "The far left has been siding with foreign governments, radical multiculturalists and illegal aliens in the immigration debate," warning Dean that "American citizens—not illegal aliens—are the ones going to the polls this November."

11. Back of the Line, Back of the Bus...or Just Plain Backward?; Guest Commentary by Dan Kowalski

Presidential hopeful Barack Obama posted a [short Op-Ed piece](#) in today's Charlotte Observer on immigration, advocating tough borders for us, and tough love for them - the 12 million undocumented. It's a document designed to please both "sides" of the immigration "debate" -- as if the issue can be defined simply in pro or con terms -- but it turns out to be disturbingly uninformed or cynical; I'm not sure which.

Obama breaks it down into two parts. First, seal the border (he voted for the fence) and shut down the jobs magnet by locking every employer into a "mandatory electronic system" to verify the status of all new hires. Surely Obama's team has read the reports from security and computer experts demonstrating that EEV (employment eligibility verification) is not scalable for an economy as large and dynamic as ours, and is really "[Franz Kafka's solution to illegal immigration](#)." Still, we put a man on the moon, so we should be able to take control of our hiring halls with swipe cards and RFID chips.

Second, Obama says the undeportable 12 million should be punished and sent to "the back of the line" to wait for green cards and citizenship behind those who applied legally. Again, he and his team are well aware that for most of the 12 million, there is [simply no line at all](#) in which to stand, given the antiquated quotas and categories hobbling our immigration statute. Still, it sound like the right thing to say... if it weren't coming from an African American for whom the phrase "back of the line" should sound too uncomfortably close to the "back of the bus."

[As I've argued before](#), trying to "secure the borders" first is putting things backwards, but it seems no candidate is willing to tell the American public the [facts of life](#) until after safely in office. Senator Obama has a stellar [Immigration Policy Group](#) at the ready; if only he would check with them before posting any more editorials on the subject.

Dan Kowalski, online editor of Bender's Immigration Bulletin – Daily Edition, www.bibdaily.com, has been practicing immigration law since 1985 in large firms, small firms and solo practice, and has been editing immigration publications for Matthew Bender / LexisNexis since 1996. Kowalski was an IJJ Border Justice Fellow for 2003-2004.