

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The joint meeting with the House Judiciary Committee was called to order by Chairman John Vratil at 3:30 p.m. on Tuesday, January 20, 2004, in Room 313-S of the Capitol.

All members were present.

Committee staff present:

Mike Heim, Kansas Legislative Research Department
Lisa Montgomery, Office of Revisor of Statutes
Dee Woodson, Committee Secretary

Conferees appearing before the committee:

Ann Morse, Program Director, Immigrant Policy Project, National Conference of State Legislatures (NCSL)

Others attending:

See Attached List.

Chairman Vratil introduced Ann Morse to give a presentation covering five issues: the new federal immigration reform proposals, the DREAM Act, drivers' licenses, language access, and an introduction to NCSL's refugee integration project. (Attachment 1)

Ms. Morse gave a brief review of foreign-born persons nationally and in Kansas. She provided the state-federal perspective on immigration and immigrants. She said there are 31 million foreign-born living in the United States, or 11% of the total population. According to Census 2000, the traditional high immigration states were, and remain, California, New York, Florida, Texas, New Jersey and Illinois. She stated the percent change in the foreign-born population, from 1990 to 2000, in Kansas was 115%. The population increased from 62,840 to 134,735, or from 2.5% of the state's population to 5%. Ms. Morse said that Kansas ranks 14th in the country for percent change in foreign-born population. More than 70 countries are represented in Kansas' foreign-born population. Her written testimony included statistics regarding immigrant children and findings from a study on immigrant workers by the Business Roundtable in Washington D.C.

Ms. Morse reviewed the NCSL's Immigrant Policy Project created in 1992 to share with the Committee the state and local role in immigration, what is known as "immigrant" policy, and the programs and policies that assist the integration of refugees and immigrants into the nation's civic, social, and economic life. She explained that the federal government maintains jurisdiction over immigration policy, i.e. who and how many may enter the U.S., the conditions of their stay, and eligibility for benefits. She said there was no more Immigration and Naturalization Service, having moved most of it from the Department of Justice to the new Department of Homeland Security effective March 1, 2003.

In regard to immigration reform, Ms. Morse stated that on January 7, 2004, President Bush revived a long-dormant proposal to reform U.S. immigration law. The President proposed a temporary worker program "to match willing foreign workers with willing U.S. employers when no Americans can be found to fill the jobs." The program would be open to unauthorized immigrants currently working in the U.S. and to new foreign workers. Ms. Morse added the program would include all sectors of employment. She outlined what the President's proposal includes and several other proposed congressional bills that have been introduced in the U.S. House and Senate to address undocumented workers.

Ms. Morse explained legislation introduced in Congress which would require states to enforce federal civil immigration law. At present, states and localities can arrest and detain illegal immigrants who violate criminal provisions of the Immigration and Naturalization Act, and who commit civil violations in limited circumstances. She said currently states may enter into voluntary partnerships with the U.S. Departments of Justice and Homeland Security, and the Clear Law Enforcement for criminal Alien Removal Act (a.k.a. as the CLEAR act). She clarified that the Homeland Security Enhancement Act, S. 1906, requires states to enact law granting police officers the authority to enforce federal immigration law, and withholds federal funds for noncompliance. She said that in December, 2003, NCSL adopted new

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE at 3:30 p.m. on January 20, 2004 in Room 313-S of the Capitol.

policy opposing any federal legislation that shifts federal enforcement costs to states, imposes sanctions, provides inadequate training, preempts state statutes, or jeopardizes state and local law enforcement crime investigations.

Ms. Morse summarized some of the benefits currently pending for immigrants, including food stamps as a part of the 2002 farm bill, Medicaid and SCHIP Option, and education proposals. She briefly spoke about state driver's licenses, and related that most of the state debates on providing or restricting drivers' license to unauthorized immigrants have centered around three arguments: public safety, public security, and public perception. She said that Secretary Ridge in December stated that to keep the country safe, we must bring undocumented immigrants out of the shadows by offering them a path to legal status; which goes back to immigration reform. She stated the federal government needed to get its house in order, reducing backlogs in green card, citizenship, and other visa applications, improving processing times, and enacting legislation to legalize those with long-term connections to the U.S., and deporting those who have criminal violations.

Ms. Morse provided an overview of legislation across states relating to immigrants and drivers licenses. More than 100 bills were introduced in state legislatures in 2003. Seventeen (17) became law. Four (4) states required driver's license applicants to register with selective service; 26 states have lawful presence requirements in the law and 11 states do not; 14 states reconsidered lawful presence in 2003; and 10 states considered accepting a consular ID as proof of identity. Ms. Morse stated that the big challenge for state Motor Vehicle Departments is that the federal government issues more than 60 valid immigration documents to prove legal resident status; and the federal government still maintains multiple data bases for verifying immigration status, criminal background terrorist watch lists, etc.

Ms. Morse spoke briefly on language access and explained Title IV of the Civil Rights Act of 1964 which states that no person shall be denied benefits of any program receiving federal financial assistance on the grounds of race, color or national origin. She gave examples of language problems with immigrants which caused very serious health consequences.

In conclusion, Ms. Morse gave an overview of NCSL's refugee integration project, "Building the New American Community", as well as highlighting a forthcoming documentary called "The New Americans". She showed a brief preview of the documentary to be broadcast nationally by PBS on March 29, 30, and 31. She explained the Building the New American Community Project is an effort to foster and identify the elements of successful integration - to understand what it means, what works, what doesn't work, and why. It is a three year initiative in response to the increasing diversity of refugees and immigrants in the U.S., recent settlement patterns to "nontraditional" receiving communities, and the devolution of responsibilities for refugee and immigrant support services from federal to state government.

Elaine Shen and Kanwarpal Dhaliwal from Active Voice, a Division of American Documentary, Inc., assisted Ms. Morse in showing the brief preview of the documentary. Handouts included: Common Immigration Terms, Immigration Reform, In-state Tuition and Unauthorized Immigrant Students, Language access: State Health Notes article, and Building the New Americans Community - Project Summary. (Attachment 2)

Following Ms. Morse's presentation, the members of both Judiciary Committees asked questions and had general discussion regarding the various issues and problems relating to immigration.

Chairman Vratil adjourned the meeting at 4:35 p.m. The next scheduled meeting is January 21, 2004.

Federal Immigration Update

Presentation for the House and Senate Judiciary Committees
Topeka, Kansas

January 20, 2004

Ann Morse
Program Director, Immigrant Policy Project
National Conference of State Legislatures

This presentation will include a brief summary of what's happening in Washington, DC related to federal immigration policies and legislation as well as issues under active consideration in many states. I will briefly cover 5 issues: the new federal immigration reform proposals, the DREAM Act, drivers' licenses, language access and an introduction to NCSL's refugee integration project. To provide some context to these issues, I'll first provide a brief review on the foreign born nationally and in Kansas, and the state-federal perspective on immigration and immigrants.

I. Census 2000 and the Foreign-born

Nationally, there are now 31 million foreign-born, or 11% of the total population. We are now at historically high numbers of immigrants, comparable to that of the turn of the last century. However, in percentage terms, the peak was slightly higher then, when immigrants comprised 13% of the U.S. population.

According to the census, the traditional high immigration states were, and remain, California, New York, Florida, Texas, New Jersey and Illinois. More than 2/3 of all foreign born live in these 6 states. California is far and away the state with the most foreign-born, with 8.9 million, or 1 in 4 of the state's population. However, the surprise of the 1990s was the significant increase in the settlement of immigrants and refugees in the "New Immigrant States" in the south, Midwest, and Rocky Mountain states.

In Kansas, the percent change in the foreign born population from 1990 to 2000 was 114%, increasing from 62,840 to 134,735, or 2.5% of the state's population to 5%. Kansas ranks 14th in the states for percent change in the foreign born population. (The top five states in numbers of new immigrants are North Carolina, Georgia, Nevada, Arkansas, and Utah.) Most foreign born in Kansas come from Mexico (47%); 6.8% are from Vietnam, and 3.7 percent from India. More than 70 countries are represented in Kansas' foreign-born population.

English proficiency: 85% of the foreign born reported in the Census that they speak a language other than English at home. 36% reported speaking English very well; and 13% speak English not

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Attachment 1

at all (about the national average). 1 in 3 foreign born are citizens.

Labor force. The Business Roundtable in Washington DC commissioned a study on immigrant workers: using the 2000 census, the report found that new immigrants accounted for 50% of the growth in the nation's civilian labor force between 1990-2001, compared to 10% in the 1970s and 27% in the 1980s. (See also the study on "The Multicultural Economy 2002: Minority Buying Power in the New Century" published by the Selig Center for Economic Growth at the Univ. of Georgia - <http://www.selig.uga.edu/>.)

Some statistics on immigrant children:

- 1 in 5 children in the US is an immigrant or has immigrant parents
- 75% of the children in immigrant families are U.S. citizens
- Since 1990, the number of children in immigrant families rose seven times faster than in U.S.-born families.
- 1 in 4 poor children is the child of an immigrant
- 1 in 3 children without health insurance is in an immigrant family
- Most of these children are in families with working parents; in 90% of the families, at least one parent worked. Many are in jobs that don't provide health insurance: only 50% compared to 80% of U.S.-born families are in jobs with health insurance.

II. The State-Federal Perspective – U.S. Immigration

NCSL's Immigrant Policy Project was created in 1992 to understand the state and local role in immigration; what is known as "immigrant" policy, the programs and policies that assist refugees and immigrants integrate into the nation's civic, social, and economic life. The federal government maintains jurisdiction over immigration policy, that is, who and how many may enter the U.S., the conditions for their stay, and eligibility for benefits.

Many believe we don't have control over the immigration system, or even that we don't have enough laws. But Congress is continually amending the Immigration and Nationality Act, now believed to be the 2nd longest in the US code, after tax law.

Immigrants generally gain **legal** resident status in the U.S. through 2 paths: **family** and **work**. The federal ceiling for permanent residence visas is 675,000 per year: 71% for family reunification; 140,000 or 21% for workers with special skills; and 55,000 or 8% for diversity visas. The U.S. also accepts humanitarian admissions (refugees and asylees). There are also "nonimmigrants" or temporary residents – tourists, students, business visitors and temporary workers such as high tech workers. The law is complicated to administer – the federal government issues 20+ different kinds of visas, for specialized categories, from nurses, to religious workers, to victims of trafficking; and some 28 million "nonimmigrant" visas annually. Almost 90% were for tourist and business visas. Most visas are issued for 29 days or less; employees generally up to 3 years; and some are indefinite, such as students, who may stay for the duration of their course of study, or employees of NATO, for their tour of duty, or foreign information media, for the duration of employment. The State Department now issues visas with a maximum duration of 10 years.

Federal laws and Supreme Court rulings have established mandated responsibilities for states to provide services for immigrants. The 1980 Refugee Resettlement Act created an intergovernmental partnership to help refugees resettle and become economically self-sufficient in their adopted community. Within 2 years of enactment, the government began cutting the guaranteed 36 months of assistance; currently states are reimbursed for 8 months of cash and medical assistance for newly-arriving refugees.

The 1986 Immigration Reform and Control Act, created to provide amnesty to long-term undocumented immigrant residents, was intended to "close the back door" to illegal immigration and open the front door by improving the legal immigration process. However, the law also created a five-year bar on the amnesty immigrants' access to federal benefits, while setting up a clunky reimbursement scheme to cover states' expenses in education and social services.

In 1996, the federal welfare law included a range of new restrictions on immigrants' eligibility for federal benefits; this created a first time bar on access to benefits for legal immigrants. Immigrants entering the U.S. after 8/22/96 are barred from 5 federal programs for 5 years: TANF, Medicaid, SCHIP, SSI, and food stamps. State legislators argued this was a cost-shift to states and were successful in restoring about \$12 billion of the \$24 billion in cuts.

III. Federal News & Legislation

There is no more Immigration and Naturalization Service. Effective March 1, the federal government reorganized the immigration system, moving most of it from the Department of Justice to the new Department of Homeland Security. The former INS functions are now handled by two new offices: "USCIS", the U.S. Citizenship and Immigration Services, and "ICE", U.S. Immigration and Customs Enforcement. The Attorney General maintains control over the issuance of some regulations, and the executive office of immigration review. Meanwhile, the new DHS gained control over establishing visa policy from the Department of State, while leaving the implementation of visa issuance at consular offices around the world.

Immigration Reform.

On January 7, 2004, President Bush revived a long-dormant proposal to reform US immigration law. He has proposed a temporary worker program "to match willing foreign workers with willing U.S. employers when no Americans can be found to fill the jobs." The program would be open to unauthorized immigrants currently working in the United States and to new foreign workers. The program would be open to all sectors of employment. As proposed, visas would be available for a 3-year period and be renewable, but workers would be required to return to their country of origin once their period of work has concluded. The proposal includes incentives for workers to return home, such as "totalization" agreements for immigrant workers to gain social security credit in their home country. Temporary workers would be eligible to apply for permanent status if they qualify under the current system. Approximately 8 million unauthorized immigrants currently reside in the United States and could be affected by this proposal.

Bills had already been introduced in the House and Senate to address undocumented workers.

The Border Security and Immigration Improvement Act, **H.R. 2899** (sponsored by Congressman Kolbe with 7 cosponsors) and **S.1461** (sponsored by Senator McCain with 1 cosponsor) would establish new visa programs for unauthorized immigrants residing in the United States and for those seeking to enter the United States as temporary workers (new nonimmigrant visas H-4A and H-4B). These visas would be valid for 3 years, and renewable once. Nonimmigrants may adjust to lawful permanent resident status after 3 years. Employers must pay a fee and must take good faith steps to recruit U.S. workers, including advertising at least 14 days on an electronic job registry to be established by the Department of Labor.

The Border Security and Immigration Reform Act, **S.1387** (introduced by Senator Cornyn) would establish a guest worker program for seasonal and nonseasonal work (a new nonimmigrant W-1 and W-2 visa, respectively.) Temporary workers with 3 years in the program could adjust to permanent resident status.

The "AgJobs" bills: Agricultural Job Opportunity, Benefits, and Security Act of 2003, **H.R. 3142** (introduced by Congressman Cannon with 80 cosponsors) and **S.1645** (introduced by Senator Craig with 49 cosponsors). These bills would allow certain unauthorized agricultural workers to adjust to lawfully admitted temporary nonimmigrant, if the worker meets a minimum number of work hours or days. The temporary workers can adjust to permanent resident status after meeting additional work requirements. The application period for the temporary visas is 18 months. The legislation also reforms the H-2A temporary agricultural worker visa.

Some challenges: there is uncertainty whether this class of immigrants (nonimmigrants) would be eligible for any federal or state funded benefit programs (nonimmigrants are considered temporary residents, ineligible for federal benefits). It is also uncertain whether work quarters before legalization will count towards programs such as Social Security Disability Insurance (SSDI) or unemployment. There are also significant backlogs already in federal processing of green cards and citizenship, up to 33 months, despite a longstanding goal of 6-month processing. A January 2004 General Accounting Office report states that there are insufficient funds for processing green cards, citizenship, and other immigration benefits (which are funded mainly by application fees). Backlogs increased 59% even with new Congressional appropriations 2002-2003. Costs exceeded fees by \$460 million 2001-2003. The administrative implementation process of any immigration reform legislation will be critical: for example, a court case from the 1986 legalization program has only just been resolved. In December 2003, USCIS announced a proposed settlement in the League of United Latin American Citizens (LULAC) lawsuit, filed in 1988 after INS had rejected 250,000 applications for those who had maintained permanent residency in the US but left the country for brief periods after 1982. The proposed settlement opens a one-year period to apply for amnesty, beginning in March 2004.

Most immigration watchers believe legislation is unlikely this year – the last immigration reform in 1986 took a bipartisan commission and 5 years of Congressional debate.

NOTE: NEW BILL INTRODUCED. On January 21, Senators Hagel and Daschle introduced "The

Immigration Reform Act of 2004: Strengthening America's National Security, Economy, and Families." According to the press releases, the bill proposes funding for increased border security and criminal and background checks on visa applications; increases visas for family reunification and addresses processing backlogs; tracks foreign workers in the US; and penalizes those who continue to break immigration laws. Undocumented workers and their families in the U.S. can apply if they pass national security and background checks; have 5 years residence in the U.S., have worked 4 years in the U.S.; have paid federal taxes; demonstrate knowledge of English and civics; and pay a \$1000 fine. The bill is not yet available online.

State and Local Enforcement of Immigration Law. Congress has introduced legislation that would require states to enforce federal civil immigration law. Currently, states and localities can arrest and detain illegal immigrants who violate criminal provisions of the Immigration and Naturalization Act, and civil violations in limited circumstances. Currently, states may also enter into voluntary partnerships with the U.S. Department of Justice and the U.S. Department of Homeland Security (Florida and Alabama have each agreed to a "memorandum of understanding" with the INS.) The Clear Law Enforcement for criminal Alien Removal Act (H.R. 2671, known as the "CLEAR" act), was introduced by Representative Norwood, Georgia, and has 112 cosponsors. The Homeland Security Enhancement Act, S.1906 was introduced by Senator Sessions and Senator Miller. The legislation requires states to enact law granting police officers the authority to enforce federal immigration law, and withholds federal funds for noncompliance. In December, 2003, NCSL adopted new policy opposing any federal legislation that shifts federal enforcement costs to state, imposes sanctions, provides inadequate training, preempts state statutes, or jeopardizes state and local law enforcement crime investigations. The policy is under the jurisdiction of NCSL's Law and Criminal Justice Committee.

Food Stamps: passed as part of the 2002 farm bill, food stamp eligibility is now consistent with TANF and Medicaid/SCHIP eligibility (a 5-year bar for new arrivals). Legal immigrants with 5 years residence in the U.S. became eligible for food stamps effective April 1, 2003. This provision restored benefits to an estimated 363,000 legal immigrants and refugees. Effective October 1, 2003, legal immigrant children became eligible for food stamps without the 5 year residency requirement and will be exempt from deeming requirements.

Medicaid and SCHIP Option. The Immigrant Children's Health Improvement Act (ICHIA) would allow states to provide coverage for immigrant children and pregnant women who arrived in the United States after August 22, 1996, and gain federal matching funds. This would lift the current five-year bar on Medicaid and the State Children's Health Insurance Program, or SCHIP. The provision, originally included in the Senate Medicare bill, S.1, was, however, dropped from the conference agreement with the House before final passage. Pending legislation on this restoration includes S.845, introduced by Senator Bob Graham, with 23 cosponsors; and H.R. 1689, by Representative Lincoln Diaz-Balart, with 49 cosponsors.

Education: the DREAM act.

Why is this issue important now? A Supreme Court decision; a 1996 illegal immigration law imposed a restriction on state residency requirements; and the lack of legal immigration reform to

provide a path to legal status for undocumented children brought into the U.S. illegally.

In 1982, the Supreme Court decision, *Plyler v. Doe*, established that immigrant students, regardless of status, should be eligible for public elementary and secondary education. The rationale was that the children had no control over the action of their parents when they were brought into the U.S. illegally, and that without access to education, the nation might be creating a permanent underclass of illegal immigrants who probably would remain in the U.S. the rest of their lives. However, there is no public policy consensus on how to treat these children once they graduate from high school. They face significant hurdles in gaining legal status, since there has been no comprehensive immigration reform since 1986, and those that are eligible report significant delays in obtaining green cards and citizenship.

When students without legal residency apply for college they are asked for a social security number and citizenship status. While they may still be allowed to attend, they are not eligible for federally-funded higher education grants or loans until they gain legal immigration status. These youth often face barriers to legalization.

Legal status can sometimes be obtained through family or work-based petitions (e.g., citizen parents by birth or naturalization can apply for adjustment of status for their minor children; citizen spouses can apply for their fiancé(e); an employer can apply for their employee). Immediate relatives of U.S. citizens do not have to wait for a visa number; relatives in other categories must wait for visas to become available under a preference system, as do immigrants based on employment (these visas have annual caps by preference category and country. The current employment visa cap is 140,000 per year.)

In the past, federal laws have permitted longterm illegal immigrants to adjust to lawful status, for example, the Nicaraguan Adjustment and Central American Relief Act of 1997 (NACARA), which allows Nicaraguans, Cubans, Salvadorans and Guatemalans to become eligible for permanent residency.

In 1996, the federal illegal immigration reform law included a provision that sought to prohibit states from providing "a postsecondary education benefit to an alien not lawfully present unless any citizen or national is eligible for such benefit." The 1996 provision (Sec. 505) instituted a restriction on states' residency requirements and in-state tuition benefits for higher education, affecting an estimated 50,000-65,000 unauthorized immigrant students nationally. The Congressional Research Service has noted that there is disagreement about the meaning of Section 505, and there is no guidance in either Congressional report language or in federal regulation.

STATES: In 2002 and 2003, more than 20 states considered legislation to allow certain long-term unauthorized immigrant students to become eligible for in-state tuition. To date, 7 states enacted legislation: California, Texas, Utah, New York, Washington, Oklahoma and Illinois. In general, these laws permit unauthorized students to become eligible for in-state tuition if they graduated from state high schools, have two to three years residence in the state, and apply to a state college or university. The students, in some cases, are asked to sign an affidavit that they will seek legal immigration status. These requirements for unauthorized immigrant students are stricter than residency requirements for out-of-state students to gain in-state tuition.

Members of Congress are considering a repeal of the 1996 provision. the Development, Relief, and Education for Alien Minors Act (the DREAM Act, S.1545). (BROWNBACK is cosponsor) The legislation would repealing Sec. 505 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, allowing states to offer them instate tuition and financial aid, and make them eligible for federal loans and work study (not federal grants). More importantly, the bill would also allow long-term immigrant students with a path to legal status: the legislation provides conditional status for 6 years – students must have entered the US before age 16 and have 5 years residence, and must be a person of good moral character. To adjust to permanent status, students must complete two years of college or serve two years in the military. The DREAM Act was introduced with 15 Republican and 15 Democrat cosponsors; introduced by Senator Hatch, the bill currently has 41 cosponsors.

In the House, the Student adjustment act (HR1684) also repeals Section 505 and provides a path to legal immigrant status. Students are eligible if they are under 21, have good moral character, have lived in the US for 5 years, and are enrolled at or above the 7th grade or are actively pursuing admission to a college or university. The students become eligible for federal and state higher education assistance while their legal status application is pending. Introduced by Rep. Cannon with 117 cosponsors.

IV. STATE DRIVER'S LICENSES

State debates on providing or restricting drivers' license to unauthorized immigrants have centered around 3 arguments: public safety, public security, and public perception.

- 1) Public safety: proponents of providing drivers' licenses to unauthorized immigrants argue that this population is unlikely to be deported, will be driving on state roads to work and to school, and that issuing licenses to them will lead to tested, insured drivers, protecting U.S. citizens from accidents, high insurance rates, and hospitalization costs. The federal government (NTHSA) says that improperly licensed drivers (citizen and immigrant alike) cause 11% of fatal crashes, 6100 deaths, and \$25 billion in property damage.
- 2) Public security: post 9/11, when it was learned that some terrorists obtained drivers' licenses illegally, and then used them to board aircraft, states began considering legislation to make drivers' licenses more secure.
- 3) Public perception: a number of legislators believe that offering drivers' licenses equals a step toward legality for unauthorized immigrants, rewarding illegal behavior. Others argue that a driver's license still equals just a license to drive, and should not be considered proof of legal residence.

Secretary Ridge in December stated that to keep the country safe, we must bring undocumented immigrants out of the shadows by offering them a path to legal status; bringing us back to immigration reform. The federal government needs to get its house in order, reducing backlogs in green card, citizenship, and other visa applications, improving processing times, and enacting legislation to legalize those with long-term connections to the U.S., and deporting those who have

criminal violations.

State responses in 2003:

More than 100 bills were introduced in state legislatures in 2003 related to immigrants and driver's licenses – 17 became law.

4 states required driver's license applicants to register with selective service.

26 states have lawful presence requirements in the law; 11 states do not. 14 states reconsidered lawful presence in 2003; 1 state – Georgia – enacted legislation allowing applicants without SSNs to submit certification of their ineligibility from Social Security Administration, but requires lawful presence.

10 states considered accepting a consular ID as proof of identity, most states proposing to accept it;

1 state enacted legislation to accept (Nevada) and 1 state now prohibits it (Tennessee).

Louisiana passed a law allowing immigrants in agriculture to obtain a temporary license, regardless of the person's immigration status.

See NCSL's issue brief on Driver's Licenses and Identification Cards for more information at <http://www.ncsl.org/programs/esnr/2003driverID.htm>; and a chart summarizing state driver's license proposals and state driver's license requirements related to immigrants at <http://www.nilc.org/immspbs/DLs/index.htm>

Federal proposals: the national ID has been on again and off again. Currently there is an interagency task force looking at requiring some national standards for state driver's licenses; NCSL, NGA, and CSG are also working on this issue to determine what is acceptable and unacceptable to states.

One considerable challenge for state DMVs is that the federal government issues more than 60 valid immigration documents to prove legal resident status; and the federal government still maintains multiple databases for verifying immigration status, criminal background, terrorist watch lists, etc.

V. Language Access.

Title VI of the Civil Rights Act of 1964 states that no person shall be denied benefits of any program receiving federal financial assistance on the grounds of race, color or national origin. Recent federal guidance has reiterated the need for agencies to avoid discrimination against people with limited English proficiency. Up to 21 million individuals in the United States speak English "less than very well." The number of languages spoken here tops 300.

To illustrate the problems, let me give you 2 examples. In Oregon, a patient was hospitalized as a paranoid schizophrenic. Two years later, it was discovered the patient spoke only an Indian dialect, Trique. After being interviewed by a Trique interpreter, the patient was diagnosed as mentally sane and discharged. Cost to the state: \$100,000 on unnecessary care.

In the Hmong language, there is no word for cancer, or even the concept of the disease. One

inexperienced interpreter described radiation treatment as "we're going to put a fire in you"; needless to say, the patient refused treatment.

The federal guidance, issued by some 30 federal agencies, and coordinated by the Department of Justice, applies to all state agencies receiving federal funds. Within HHS, for example, the guidance applies to health and welfare agencies, hospitals and clinics, Head Start, etc.

HHS has announced that federal TANF, SCHIP and Medicaid funds may be used to support language services. To date, 9 states have obtained federal matching funds.

The Office of Civil Rights in HHS also offers technical assistance to recipients or covered entities, and collects promising practices. These include simultaneous translation using off-site technology; community language banks; community outreach workers, etc. The use of friends and family members, particularly children, is discouraged for reasons of competency, confidentiality, privacy and conflict of interest. See www.lep.gov for federal agency guidances and <http://www.ncsl.org/programs/immig/languagesvcs.pdf> for an NCSL issue brief with more detail.

VI. Refugee/Immigrant Integration Efforts

Finally, I want to take this opportunity to introduce NCSL's refugee integration project, "Building the New American Community", as well as highlight a forthcoming documentary called "The New Americans". We'll be showing you a brief preview of that documentary, to be broadcast nationally by PBS on March 29, 30, and 31.

States have an interest in assuring that new immigrants become contributors to the nation's economic, social, and civic life. We are engaging in a demonstration project with the Office of Refugee Resettlement to help coalitions in 3 sites define and implement their own local integration plans.

BNAC has

- 5 partners
- 4 organizing principles
- 3 demonstration sites

5 Partners: The research team is comprised of the Urban Institute and Migration Policy Institute; the training and technical assistance team is comprised of the Southeast Asia Resource Action Center and the National Immigration Forum. NCSL is the lead agency for the partnership.

The *Building the New American Community* Project is an effort to foster and identify the elements of successful integration - to understand what that means, what works, what doesn't work, and why. The 3-year initiative is a response to the increasing diversity of refugees and immigrants in the United States, recent settlement patterns to "nontraditional" receiving communities, and the devolution of responsibilities for refugee and immigrant support services from federal to state government.

Four principles underlie this Project's concept of successful integration:

1. Integration is a **two-way process** that benefits both newcomers and the receiving communities;
2. The local coalition should involve a **public-private partnership** that reaches across levels of government and includes a broad array of nongovernmental organizations;
3. Refugees and immigrants should be involved in decision-making; and,
4. Specific interventions should lead to systemic change that will improve refugee/immigrant integration.

The 3 sites are Lowell, Massachusetts, Nashville, Tennessee, and Portland, Oregon. Selection process: 44 nontraditional communities across the country were selected for the size and percentage of the area's recent refugee/immigrant arrivals. We invited applications from 300 agencies – city, state, nonprofit, refugee and faith-based organizations. Within a month, we had received 68 letters demonstrating an unexpectedly high interest in the integration issue. Nashville, led by the Chamber of Commerce, focused on workforce development, Lowell, led by a community foundation, sought leadership development and access to jobs, while Portland undertook a refugee mentoring model, using earlier arrivals (Latino, Asian) to help newer arrivals (Slavic, African). Surprisingly all 3 sites recognized upfront the importance of the civic component, which remained a constant theme in each site over the life of the project. The sites undertook ways to educate newcomers how to navigate political systems and processes; help refugees and immigrant leaders to gain skills to communicate directly with elected officials; and offer opportunities to educate policymakers on their foreign born constituency. These included launching a nonprofit board bank; employing a broad partnership to encourage refugees to register and vote; and working with other coalitions to improve county-funded youth services. Portland also crafted an effective small-grants program to involve newcomers with local residents through neighborhood association projects.

The project's report is due in March, 2004. Please contact me if you would like to receive a copy.

Let me now introduce the folks from ActiveVoice, who are working on the outreach for the New Americans documentary. They'll introduce the film and play a brief preview. The series highlights the journey of refugees and legal immigrants from their home country to their new home in the United States. One of the families in the documentary is a Mexican family living and working legally in Kansas.

Handouts:

1. Common Immigration Terms
2. Immigration Reform
3. In-state Tuition and Unauthorized Immigrant Students
4. Language access: State Health Notes article
5. Building the New Americans Community – Project Summary

Useful Websites & Links:

The functions of the former U.S. Immigration and Naturalization Service (INS) were transferred in

March 2003 to the Department of Homeland Security: U.S. Citizenship and Immigration Services (<http://uscis.gov>) and U.S. Immigration and Customs Enforcement (<http://www.ice.gov>)

<http://www.state.gov/> The State Department - see Visas

<http://www.labor.gov> The Labor Department – see Immigration; Migrants

<http://www.acf.hhs.gov/programs/orr/> The Office of Refugee Resettlement at HHS; funds domestic resettlement; assistance for victims of trafficking and victims of torture;

Research/State by state immigration arrivals and characteristics/2000 census:

<http://www.migrationinformation.org/> The Migration Policy Institute. See the clickable US map in the section “US in Focus.”

The New Americans documentary: www.itvs.org/newamericans and www.pbs.org/newamericans

Contact information:

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http://www.ncsl.org/programs/immig/community_orr.htm – Building the New American Community

STATE AND LOCAL COALITION ON IMMIGRATION

IMMIGRANT POLICY PROJECT



COMMON IMMIGRATION TERMS

The definitions listed below include commonly used terms for immigrants and the conditions for their admission to the United States, as well as new terms created under the 1996 welfare reform law. The definitions follow a continuum of permanent to temporary to unauthorized immigrants.

Immigrant. The term is often used generally to refer to aliens residing in the United States, but its specific legal meaning is any legal alien in the United States other than those in the specified class of nonimmigrant aliens such as temporary visitors or students. Immigrant is also used synonymously with lawful permanent resident.

Qualified Alien: The term, created in the 1996 welfare reform legislation (P.L. 104-193), refers to lawful permanent residents, refugees, Cuban and Haitian entrants, asylees, aliens paroled into the United States for a period of at least one year, aliens granted withholding of deportation by the INS, aliens granted conditional entry into the United States, and certain battered alien spouses and children. "Qualified" immigrants are generally eligible for federal public benefits on the same basis as citizens if they entered before Aug. 22, 1996, when the welfare law was enacted. Qualified immigrants entering after Aug. 22, 1996, are generally barred from federal assistance for five years. Different restrictions and limits apply to qualified immigrants' eligibility, depending on the immigration category.

Not Qualified Alien: The term means any immigrant who is not a "qualified alien," including undocumented immigrants, nonimmigrants and most PRUCOL immigrants. "Not qualified" immigrants are ineligible for federal, state and local public benefits covered by welfare reform, unless a specific exception applies.

Lawful Permanent Resident (LPR). An LPR is an immigrant who has been lawfully accorded the privilege of residing permanently in the United States. Lawful permanent residents are granted admission to the United States on the basis of family relation or job skill. Refugees and asylees may adjust to LPR status after one year of continuous residence. Lawful permanent residents may be issued immigrant visas by the Department of State overseas or adjust to LPR status with the INS after entering the United States. Generally, lawful permanent residents are those individuals who have "green cards" and are permitted to apply for naturalization after five years of U.S. residence.

Refugee. A person who flees his or her country due to persecution or a well-founded fear of persecution because of race, religion, nationality, political opinion or membership in a particular social group. Refugees are eligible for federal resettlement assistance. The 2004 ceiling for refugee arrivals is 70,000. The term "refugee" as a legal definition includes both those admitted as refugees into the United States and asylees—those who are already present in the country when asylum is requested and granted.



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Senate Judiciary
1-20-04
Attachment 2

Nonimmigrants. Nonimmigrants are those who are allowed to enter the United States for a specific purpose and for a limited period of time, such as tourists, students, business visitors, diplomats and specialty occupations such as high tech workers or seasonal agricultural workers. Approximately 28 million nonimmigrants entered the United States in FY 2002.

Unauthorized immigrant. Also known as an illegal alien or undocumented worker, this is someone who enters or lives in the United States without official authorization, either by entering illegally or by violating the terms of his or her admission (for example, entering without inspection by the INS, entry based on fraud, overstaying the authorized period of admission or working without authorization). Approximately 300,000 undocumented immigrants enter and stay in the United States each year.

Naturalization. This is the process by which a foreign-born individual becomes a citizen of the United States. To naturalize, immigrants must be at least 18 years old; have been lawful permanent residents of the United States for five years (three years if married to a U.S. citizen); demonstrate a basic knowledge of English, American government and history; and have good moral character. During FY 2002, nearly 574,000 people became naturalized citizens. At the close of FY2002, there was also a backlog of 623,000 naturalization applications.

*Prepared by Ann Morse
NCSL's Immigrant Policy Project
January 2004*

FEDERAL AND LOCAL COALITION OF IMMIGRATION IMMIGRANT POLICY PROJECT

Immigration Reform



The Bush Administration

On January 7, 2004, President Bush revived a long-dormant proposal to reform US immigration law. He has proposed a temporary worker program "to match willing foreign workers with willing U.S. employers when no Americans can be found to fill the jobs." The program would be open to unauthorized immigrants currently working in the United States, and to new foreign workers. . The program would be open to all sectors of employment. As proposed, visas would be available for a 3-year period and be renewable, but workers would be required to return to their country of origin once their period of work has concluded. Temporary workers would be eligible to apply for permanent status if they qualify under the current system. Approximately 8 million unauthorized immigrants currently reside in the United States and could be affected by this proposal.



Congressional Proposals

Border Security and Immigration Improvement Act, H.R. 2899 (sponsored by Congressmen Kolbe with 7 cosponsors) and **S.1461** (sponsored by Senator McCain with 1 cosponsor). These bills would establish new visa programs for unauthorized immigrants residing in the United States and for those seeking to enter the United States as temporary workers (new nonimmigrant visas H-4A and H-4B).



Border Security and Immigration Reform Act, S.1387 (introduced by Senator Cornyn). The bill would establish a guest worker program for seasonal and nonseasonal work (a new nonimmigrant W-1 and W-2 visa, respectively.) Temporary workers with 3 years in the program could adjust to permanent resident status.



Agricultural Job Opportunity, Benefits, and Security Act of 2003, H.R. 3142 (introduced by Congressman Cannon with 80 cosponsors) and **S.1645** (introduced by Senator Craig with 49 cosponsors). These bills would allow certain unauthorized agricultural workers to adjust to lawfully admitted temporary nonimmigrant and permanent resident nonimmigrant.



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1-20-04

Resources

The Urban Institute

Undocumented Immigrants: Facts and Figures (<http://www.urban.org/url.cfm?ID=1000587>), just released by the nonpartisan Urban Institute's Immigration Studies Program, pulls together key information for analyzing and understanding this front-page topic. (January 12, 2004). For more Urban Institute research on immigration go to <http://urban.org/r/immigration.cfm>.

Federal Government

White House

Fact Sheet: Fair and Secure Immigration Reform

<http://www.whitehouse.gov/news/releases/2004/01/20040107-1.html>

President Bush's Remarks announcing the new temporary worker program:

<http://www.whitehouse.gov/news/releases/2004/01/20040107-3.html>

Congressional bills: <http://thomas.loc.gov>

US Citizenship and Immigration Services website: <http://uscis.gov>

"Estimates of the Unauthorized Immigrant Population Residing in the United States: 1990-2000" (January 2003) provides a chart of the unauthorized immigrant population by state of residence and country of origin.

http://uscis.gov/graphics/shared/aboutus/statistics/III_Report_1211.pdf

Prepared by Ann Morse

Program Director, Immigrant Policy Project

January 15, 2004

STATE AND LOCAL COALITION OF IMMIGRANTS IMMIGRANT POLICY PROJECT

December 9, 2003



In-State Tuition and Unauthorized Immigrant Students

In 1996, the illegal immigration reform law instituted a restriction on states' residency requirements and in-state tuition benefits for higher education, affecting an estimated 50,000-65,000 unauthorized immigrant students annually. Congress is now considering bipartisan legislation to repeal this provision and help certain minor immigrant students gain legal status.



The Student Adjustment Act of 2003 (H.R. 1684) would permit States to determine state residency for higher education purposes and authorizes the Secretary of Homeland Security to cancel the removal and adjust the status of certain alien college-bound students who are long-term U.S. residents. Eligible students are those: under the age of 21, with good moral character, who have lived in the U.S. for five years, and are enrolled at or above the 7th grade or actively pursuing admission to a college or university. These students become eligible for federal and state higher education assistance while their application for cancellation of removal is pending. Representative Chris Cannon (R-Utah) introduced the bill on April 9, 2003; the bill currently has 117 cosponsors.



In the Senate, the Development, Relief, and Education for Alien Minors Act (the DREAM Act) would also repeal the federal restrictions on in-state tuition and allow children to adjust their status. The Secretary of Homeland Security may cancel the removal and adjust to conditional permanent resident status those who entered the U.S. before age 16 and have 5 years residence; is a person of good moral character; and has been admitted to a college or university or has earned a high school or equivalent. The applicant must also not be inadmissible or deportable under federal immigration law, and from the age of 16, has never been under a final order of exclusion, deportation, or removal. Educational institutions must register these students as aliens in a DHS database, the Student and Exchange Visitor Information System (SEVIS). Students are eligible only for federal loans and work study; not federal grants. Conditional status is valid for 6 years. To adjust from conditional to permanent status, students must complete two years of college or serve two years in the military. S.1545 was introduced by Senator Orrin Hatch on July 31, 2003; the bill currently has 41 cosponsors.



Proponents of these bills argue that the unauthorized immigrant children had no choice in entering the U.S. illegally, have grown up in the U.S., and can make economic and social contributions if allowed to continue their studies. Opponents believe the bills would reward lawbreakers, that only lawful resident students should qualify for resident tuition, and that it could result in added costs to taxpayers.



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1-20-04

Any child, regardless of immigration status, is eligible for free primary and secondary education under a 1982 Supreme Court decision (*Plyler v. Doe*). The Supreme Court feared that denying children an education might create a permanent underclass of illegal immigrants who probably would remain in the United States the rest of their lives. Discrimination against the children would punish them for the acts of their parents, since the children had no choice in entering the United States. The total denial of an education to these children would stamp them with an "enduring disability" that would harm both them and the State all their lives.

When students without legal residency apply for college they are asked for a social security number and citizenship status. While they may still be allowed to attend, they are not eligible for federal aid until they gain legal immigration status. Legal status can sometimes be obtained through family or work-based petitions (e.g., citizen parents by birth or naturalization can apply for adjustment of status for their minor children; citizen spouses can apply for their fiancé(e); an employer can apply for their employee).

STATE ACTIONS:

In 2002-2003, more than 20 states considered legislation to allow certain long-term unauthorized immigrant students to become eligible for in-state tuition. In 2002, **California, Texas, Utah,** and **New York** enacted legislation permitting these students to become eligible if they graduated from state high schools, have two to three years residence in the state, and apply to a state college or university. The student must sign an affidavit promising to seek legal immigration status. These requirements for unauthorized immigrant students are stricter than the residency requirements for out-of-state students to gain in-state tuition. In 2003, **Washington, Oklahoma** and **Illinois** enacted similar legislation. The Maryland legislature passed similar legislation but it was vetoed by the governor. The Virginia legislature enacted legislation to deny in-state tuition to unlawful residents; the bill was vetoed by the governor.

States that considered legislation in 2002-2003: Alaska, Arizona, California, Colorado, Delaware, Florida, Georgia, Hawaii, Illinois, Kansas, Maryland, Massachusetts, Minnesota, Nebraska, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Oregon, Rhode Island, Texas, Utah, Virginia, Washington, and Wisconsin.

References:

Illegal Immigration Reform and Immigrant Responsibility Act of 1996, P. L. 104-208: Sec. 505 prohibits states from providing a postsecondary education benefit to an alien not lawfully present unless any citizen or national is eligible for such benefit.

S.1545/HR1684 – <http://thomas.loc.gov>

Prepared by:

Ann Morse, Program Director

Immigrant Policy Project

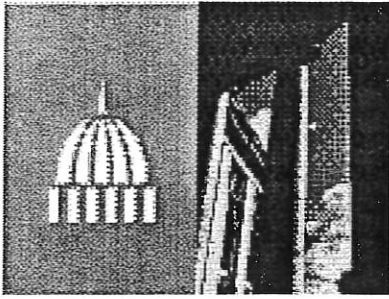
National Conference of State Legislatures

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OCTOBER 7, 2002

VOLUME 23, NUMBER 381

Language Access: Helping Newcomers Navigate Health, Social Service Systems

Elba Quiles, a former high school principal from San Juan, Puerto Rico, runs a free English language instruction program at a community college in her adopted hometown of Georgetown, Delaware. A few years back, Quiles added a Spanish class for local Anglos who work with the area's sizeable population of Hispanic migrants, most of whom have jobs in its half-dozen poultry and food processing plants. Now, she and another instructor teach six such classes to a diverse group of students, among them radiologists, therapists, nurses and social workers.

The situation in Georgetown is no longer unique. During the 1990s, the number of foreign-born U.S. residents rose to 31 million, or 11 percent of the population, and according to 2000 Census data, 21.3 million of the newcomers speak English "less than very well," up from 13.9 million in 1990. All told, the number of other languages spoken here tops 300, from the more-common (Chinese, Russian and Spanish) to the more-obscure (Croatian, Somali and Urdu).

In medical settings, the language gap can interfere with physician-patient communications, resulting in delays or denials of service or in care that's based on incomplete or inaccurate information as clinic and hospital workers turn to unqualified interpreters—including minor children—to translate a patient's symptoms. In addition, the U.S. Department of Health and Human Services (DHHS) notes, people with limited English proficiency often don't understand the basics of how to apply for programs for which they and their families may be eligible, such as Medicaid, the Title XXI State Children's Health Insurance Program and an array of social service and welfare programs.

As Quiles puts it, health care professionals in doctors' offices and hospitals that treat large numbers of non-English speakers "need to know the vocabulary" of other languages, but as important, they also need to know "the culture" in order to understand and respond to the patient as a person, not simply a case. Minnesota's experience with Hmong refugees—who've settled in the state in large numbers—illustrates the point. In the Hmong language, there is no word for cancer, or even a concept of it, and in trying to explain radiation, inexperienced interpreters have described it as "we're going to put a fire in you"—an obvious deterrent to treatment.

FEDERAL GUIDANCE: A CIVIL RIGHTS APPROACH

Now, the federal government is taking steps to address the problem *via* a "guidance" that reiterates the need for agencies to avoid discrimination against people with limited English proficiency on grounds of national origin. In the health care field, the guidance applies to all entities receiving federal funds, including state, county and local health and welfare agencies; hospitals and clinics; managed care plans; nursing homes and senior centers; mental health centers; Head Start programs; and contractors. What that means in practical terms is that providers must offer all non-English speaking patients free language assistance that assures "meaningful access" to services—a daunting task, even for facilities in big cities that have a pool of potential translators at their disposal.

To state and local governments and the provider community, cost concerns loom large. In a report issued in March, the Office of Management and Budget (OMB) put the annual cost of interpretation services to patients with limited English proficiency as high as \$267.6 million, covering 66.1 million emergency, inpatient, outpatient and dental visits. At the same time, OMB said that greater access can "substantially improve" the health and quality of life of many immigrant

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IN THIS ISSUE

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An executive order issued in 2000 seeks to avoid discrimination on the basis of national origin. For providers of health care, that means ensuring that all patients with limited English proficiency have 'meaningful access' to services. A look at the landscape.

STATE SPEAK 2

Manny Martins, who's back at the helm of TennCare after time in the private sector and academia, sheds light on recent reform of Tennessee's innovative Medicaid waiver program.

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CA rural access law... HIFA waivers in IL, ME... AMA prompt payment brochures... TX payment disclosure rules... UT \$\$ for nursing shortages ... CA stem cell research law... OR vote on tobacco tax hike ... Report on health status of US... NY rate increase for mammograms ... "Crisis" in mental health... 9-11 mental health help... Caregiver fact sheets ...OR Death with Dignity lawsuit.

TRACKING TRENDS 7

States are in a budget bind, and Medicaid is a key target for cuts. Cost sharing is getting scrutiny.

FYI 8

All 29 of Ohio's Appalachian counties and a few urban areas as well have initiated programs to eradicate head lice as a way to keep kids in school.

State Health Notes is supported in part by grants from the Robert Wood Johnson Foundation, Merck & Co. Inc. and the W.K. Kellogg Foundation.

CONFERENCE SLATE

✦ *Advancing the Agenda: Leadership in the New Health Care Environment*. Oct. 27-29, **Chicago**. Hosted by the American Association of Health Plans, the 7th Annual State Issues Retreat will explore the evolution and complexities of the health care market in the states. Issues to be addressed include: regulatory environment; "affirmative" legislation; physician antitrust exemptions; small group reform; health care costs; prompt payment of claims; provider contracting/reimbursement; mandated benefits; and the 2003 political outlook. To register, call (877) 291-AAHP or visit <http://www.aahp.org>

✦ *3rd Annual Conference of the Health Legacy Partnership (HELP)*. Oct. 29, **Washington, D.C.** Cosponsored by the Joseph H. Kanter Family Foundation and the Agency for Healthcare Research and Quality, the meeting will feature the work of a third sponsor—the eHealth Initiative, a nonprofit consortium of more than 100 organizations dedicated to improving the quality, safety and cost-effectiveness of health care through information technology. Speakers will include officials from the Bush Administration, Congress and the industry to discuss their respective roles in promoting development of a national health information infrastructure. For additional information, call Cameron Argetsinger at (202) 638-5687.

✦ *Seminars in Health Services Research Methods*. Nov. 4-6, **Washington, D.C.** Sponsored by the Academy for Health Services Research and Health Policy (recently renamed AcademyHealth), the focus of the seminars will be on "Using Federal and State Databases," with six in-depth courses on specific products. In addition, the opening day will offer workshops on data privacy, use of supplemental nonhealth databases and the National Center for Health Statistics' Trends in Health and Aging database warehouse. Register online at <http://www.academyhealth.org/seminars/fall2002>; for more on the series, go to www.academyhealth.org/seminars

SAVE THE DATE!!

NCSL's Sixth Annual Health Conference takes place Nov. 17-19 in New Orleans. For agenda and information, visit <http://www.ncsl.org/programs/health/health.htm> or call Joanne Stroud at (303) 364-7700.

Language, from p. 1

families and that language assistance may "measurably increase the effectiveness of public health and safety programs."

Help with compliance, financial and otherwise, is available. In an Aug. 31, 2000 letter to state Medicaid directors, for example, DHHS clarified that federal Medicaid and Title XXI matching funds are obtainable for expenditures on oral and written translation services, whether for staff or contract interpreters or telephone services. In addition, the department's Office of Civil Rights (OCR) is offering technical assistance to states for a variety of promising practices aimed at helping newcomers navigate health and social service systems, including community language banks; state-supported language offices; simultaneous interpretation using off-site technology; multicultural projects using community outreach workers; translated print/on-line documents; telephone information lines with frequently spoken languages on recorded messages; signage; and outreach.

GUIDANCE PARAMETERS

The move to assure language access began on Aug. 11, 2000, when President Clinton issued an executive order directing all federal agencies that fund nonfederal entities to publish written policies on how both they and the recipients of the funds can ensure "meaningful access" to people with limited English proficiency. The order, which sought to reinforce Title VI of the 1964 Civil Rights Act barring discrimination on the basis of race, color or national origin under any program that receives federal financial assistance, gave the Department of Justice (DOJ) responsibility for issuing the guidance to other agencies and ensuring cross-agency consistency as well as monitoring and enforcement.

In its final guidance, issued June 18, DOJ asked all federal agencies to use its model in creating their access plans and reiterated four factors to be considered in individualized assessments of the obligation: the number of people eligible for a program; the frequency with which they use it; the nature and importance of program services to people's lives; and the program's resources and costs.

The process slowed a bit last fall, when DOJ required federal agencies to seek additional public comment on their guidances and Congress asked OMB for its cost-benefit analysis, but it appears to be back on track. At DHHS, for example, the Office of Civil

Rights issued its policy guidance on Aug. 30, 2000, providing "additional clarification of existing responsibilities" under Title VI. On Feb. 1 of this year, it republished the guidance and is now reviewing those comments. Specifically, it sought input on cost-effective ways to provide services, suggestions for technical assistance and descriptions of the costs of translation, interpretation or other language services. A final document is expected later this year; meantime, the August 2000 guidance remains in effect.

In its document, DHHS defines "meaningful access" as language assistance that results in accurate, effective communications between provider and client, at no cost to the client. Typically, effective programs are presumed to have four elements—an evaluation of the language needs of the population being served, a written policy on language access, staff training and monitoring—though OCR will assess compliance on a case-by-case basis. If efforts at voluntary compliance fail, the office can terminate funds if the provider, after being given the opportunity for an administrative hearing or a referral to DOJ for injunctive relief, still falls short of the goal.

THE FINANCING ANGLE

In its cost-benefit analysis of the guidance as it affects the health care arena, OMB suggested a host of advantages to providing language assistance, among them better communication between patients with limited English proficiency and English-speaking providers; greater patient satisfaction; more confidentiality and truer "informed consent" in medical procedures; fewer misdiagnoses and medical errors; cost savings through fewer emergency room visits; less staff time in dealing with non-English speaking patients; and fewer eligibility and payment errors.

As the agency's multi-million dollar price tag suggests, however, those improvements come at a cost, and states are struggling to figure out how to pay for compliance. According to OMB, the federal government could do two things to help out: first, create uniformity among the dispensers and the recipients of federal funds, while still taking care to build in flexibility to address local circumstances; and second, improve the availability of telephone interpretation services and access to them. It suggested, for example, that bulk purchases of language services could improve efficiency and achieve economies of

[Language, p.6]

scale, especially for languages that are encountered with less frequency.

For their part, states have already developed a number of methods for providing language services, including salary premiums for bilingual medical staff; language classes for medical staff specific to the setting; nonprofit language banks that recruit, train and schedule interpreters; volunteer interpreter services; and remote simultaneous interpretation. Hourly rates for the services range from \$25-\$60 for staff interpreters and language banks to \$130 or more for telephone language lines.

To help offset the cost of interpreter services—either direct or under contract with providers or health plans—states can draw down the federal match under both Medicaid and Title XXI in one of two ways: They can bill for language assistance as part of another medical service, raising the base rate accordingly, or they can bill for it as an administrative expense. The administrative match rate for Medicaid is 50 percent; for Title XXI, it is capped at 10 percent.

MAKING IT WORK

Despite a lack of written federal guidelines on how to apply for the match, at least five states (Hawaii, Maine, Minnesota, Utah and Washington) are receiving the funds and putting them to work. Here are snapshots of what three of the five have done.

✦ In Minnesota, languages spoken now include Amharic, Arabic, Cambodian, Chinese, Croatian, Hmong, Korean, Lao, Liberian, Oromo, Russian, Somali, Spanish, Sudanese and Vietnamese—a reflection of the estimated 225,000 immigrants and refugees who have settled there over the past 20 years. Over the last few years, the state Department of Health has developed a wealth of information to enhance language access, including a spoken-language resource guide; professional standards for interpreters; contact information for interpreter services and payment rates; a translation protocol for written materials; and examples of new software to aid in translation.

Last year, the Legislature approved a two-year, \$4.3 million initiative (including \$1.9 million in federal matching funds) to improve access to medical services by adding interpreter services to limited English proficiency clients in the state's Medicaid program.

✦ Like many other states, Washington has been sued under Title VI, and as part of a consent degree issued more than 10 years ago to assure effective communication between patients and health providers, it established language support services and launched certification of interpreters (now available in seven languages). No civil suits have been filed since the programs began. Washington was also the first state to use the Medicaid match to help offset the expense of interpretation services.

Starting in 1992, it established two contracting structures under Medicaid. For public hospitals and health departments, it enters into "interlocal agreements," reimbursing 50 percent of the cost of hiring interpreters, offset by its 50 percent federal administrative match (\$3 million in 2000), with no state money involved. For private physicians, clinics and outpatient services at hospitals, it pays interpreter agencies directly, to the tune of \$10 million a year in federal and state Medicaid dollars. The funds support services to the estimated 160,000 Medicaid recipients with limited English-speaking skills.

To ensure better quality control, accountability and efficiency in the private contracts, the state will soon move to a "brokerage system," using intermediaries between providers and interpreter agencies to improve scheduling and payment processes. The change is expected to save up to \$2.6 million in federal and state funds between January and June of next year. According to Tom Gray, section manager for transportation and interpreter services in the Medical Assistance Administration, the move will not supplant a provider's responsibility to assure language access. If the broker is unable to make an interpreter available, it will be up to the provider to adhere to the spirit and the letter of

the law by finding another qualified person to do the job.

✦ In Maine, interest in adding sign language as a reimbursable service under Medicaid paved the way for adding foreign language interpreters. After convening public hearings and inviting public comment, the program agency revised its manual to add interpreters for sign language and foreign language as covered services and in January 2001, began reimbursing physicians for part of the cost they incur in hiring interpreters (up to \$30 an hour, or about half the going rate.) Hospitals cannot bill separately for interpreter services but the costs are allowable as part of their Medicaid reimbursement rates.

While the system isn't perfect, Meryl Troop, director of multicultural services in the Department of Behavioral and Developmental Services, said providers in general "are less reluctant" to make interpretive services available than in the past. And though some resent having to pay the difference between Medicaid and the cost of the interpreters, many acknowledge they would now be liable for the full cost and are glad for the help.

✦ Other states have stepped forward as well. In Massachusetts, for instance, an emergency room interpreter bill was enacted in April 2000; in April 2001, New Jersey decided to develop cultural and language competency courses and improved outreach; and in August 2001, Oregon created a 25-member council on health care interpreters to address testing, certification and funding issues.

While it's too soon to assess the effectiveness of any one approach or the full benefits and costs of compliance, state officials agree that access to the federal match for interpreter services is a great beginning. In tough budget times, however, many challenges remain to finding the right prescription for language access. ✦ *by Ann Morse, program director, NCSL's Immigrant Policy Project*

(For a clearinghouse of information, tools and technical assistance on limited English proficiency and language services, visit <http://www.lep.gov>)

STATE HEALTH NOTES

Published biweekly (24 issues/yr.) by the FORUM FOR STATE HEALTH POLICY LEADERSHIP, an information and research center at the National Conference of State Legislatures in Washington, DC.

For more information about Forum projects, visit our web site at: www.ncsl.org/programs/health/forum

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What is *The New Americans*?

This new PBS miniseries looks intimately at the American dream through the eyes of immigrants and refugees — from Nigeria, India, the Dominican Republic, the West Bank, Mexico and Vietnam. A diverse group, they've come with myriad hopes: to achieve athletic glory or high-tech industry riches; to escape poverty and persecution; to marry or pursue a new way of life. Planned to be broadcast in 2003, *The New Americans* captures the breadth and scope of the immigrants' and refugees' everyday lives, from before they leave their homeland through their tumultuous first years in America. The miniseries is a production of Kartemquin Films, the award-winning producers of *Hoop Dreams*.

Why are these stories important NOW?

The face of U.S. immigration has changed dramatically in recent years. The New York Times (2/07/02) reported that in 2000, the United States was home to 56 million foreign-born residents and children of immigrants, compared to 34 million just three decades earlier. Immigrants to the United States are making new lives for themselves in large cities and small towns across the country. Unfortunately, as throughout U.S. history, many Americans feel ambivalence — or worse — toward immigrants.

As our economy slows, and as suspicion of newcomers increases in the wake of 9/11, it is important to look at who is coming to the United States, why they are leaving their homelands and how we can support and encourage their integration into civic life. With diverse cultures intermingling in many U.S. communities, the need for greater understanding and bridge building becomes more urgent.

Activating the Campaign

The year-long campaign includes a range of practical materials for community stakeholders — new tools to help them focus public attention on immigrant and refugee issues in 21st century America. Developed by Active Voice/Television Race Initiative specifically for receiving communities, immigrant- and refugee-serving organizations, funders, policy makers, educators, faith-based groups and media professionals, the materials can promote a range of positive community outcomes:

BUILD BRIDGES

- Bring cultures together
- Connect newcomers, long-term residents and communities of color
- Encourage proactive, interethnic dialogue and coalition-building

TELL STORIES

- Stimulate immigrant and refugee storytelling, expression, reportage
- Create more accurate, authentic, individual and human understanding of the range of immigrant experiences

ENGAGE IN COMMUNITY

- Encourage newcomer participation in civic life
- Support emerging leadership from within immigrant communities

SENSITIZE PROVIDERS

- As a professional development tool, encourage staff to deal more effectively and sensitively with immigrants

HIGHLIGHT SUCCESSES

- Showcase successful examples of how different communities respond to rapid demographic shifts

DELIBERATE/MAKE POLICY

- Put a human face on issues such as family reunification, economic self-sufficiency, political asylum

RE-VIEWING IMMIGRATION

- Illuminate issues of changing demographics
- Consider why people migrate
- Define who is "an American"
- Ask why some people elect to integrate while others do not



What Tools will be Available?

Video modules

In partnership with service providers, advocates and practitioners, Active Voice/Television Race Initiative (AV/TRI) will create several videos of excerpts from *The New Americans* — strategically selected trigger scenes that can heighten understanding of what immigrants and receiving communities face today.

Training/technical support

The Active Voice/Television Race Initiative team of facilitators, trainers and media strategists will help communities and organizations leverage *The New Americans* series and related materials. In particular, TRI staff will customize technical assistance to practitioners, service providers, educators and partners, thereby building capacity on the grassroots and institutional level.

Kartemquin Films has a 35-year history of producing critically acclaimed social issue documentaries. Recent award winners include *Hoop Dreams*, *Golub* and *Vietnam, Long Time Coming*. Kartemquin's films have been used by educational institutions, community organizations and individual families to better understand a changing world. For more information visit www.kartemquin.com.

Outreach Extensions is conducting a parallel and complementary campaign for *The New Americans*, as part of the *Making Connections Media Outreach Initiative*. The initiative links public television stations to local stakeholders, and offers media support to local coalitions that are part of The Annie E. Casey Foundation's *Making Connections Initiative*, a multifaceted, long-term effort to transform tough neighborhoods into family-supportive environments. The 22 *Making Connections* cities include:

Community Action Kit

AV/TRI's Community Action Kit, a guide to planning and implementing community activities, will maximize the impact of the broadcast and the video modules.

The kit includes:

- Community planning guides
- Theme-based discussion guides
- Case studies of successful related projects

Who is Active Voice?

Active Voice is a multi-cultural nonprofit team that helps groups use social issue television programs and films as tools for community-building, citizen engagement and partnership development. Active Voice is an outgrowth of the **Television Race Initiative** — a media model based on creative collaborations among public television stations, community organizations, civil rights leaders, interfaith networks, independent film and series producers, and foundations. Since 1998, the team has used selected broadcasts as a framework for sustained community dialogue and problem-solving on race relations and other social issues.

Where can I get more information?

To inquire about *The New Americans* Community Campaign, contact us at:

Active Voice/Television Race Initiative
2601 Mariposa Street, 3rd Floor
San Francisco, CA 94110

415-553-2841
Fax: 415-553-2848
E-mail: nkim@pov.org

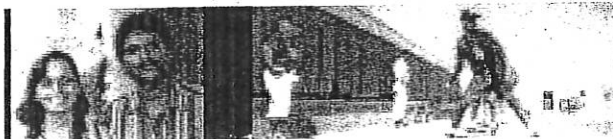
visit www.pbs.org/pov/tvraceinitiative

Atlanta, Baltimore, Boston, Camden, Denver, Des Moines, Detroit, Hartford, Indianapolis, Louisville, Miami, Milwaukee, New Orleans, Oakland, Philadelphia, Providence, San Antonio, San Diego, Savannah, Seattle, St. Louis and Washington, D.C.

The **Independent Television Service (ITVS)** is providing production and presentation funding for *The New Americans*, including a Community Connection Project (CCP) civic engagement campaign that

consists of an interactive Web site, innovative ESL curricula, and student-coordinated seminars and workshops at community colleges throughout the country. In 1996, ITVS launched CCP to maximize the use of media as a tool for community development through grassroots outreach. CCP collaborates with local field organizers, national and community-based organizations, and public television stations to foster dialogue, develop lasting partnerships and implement positive action.

Initial funding for this AV/TRI campaign comes from the John D. and Catherine T. MacArthur Foundation and the James Irvine Foundation.





THE NEW AMERICANS

Video Modules
Community-Friendly Resources

The New Americans, produced by Kartemquin Films, is a seven-hour PBS/ITVS miniseries premiering April 2004 that captures the search for the American Dream through the eyes of today's immigrants and refugees. These families come from Nigeria, India, the Dominican Republic, Mexico and the Israeli-occupied West Bank, each with different hopes for a new life in the United States. The New Americans explores the dreams of these newcomers before they leave their homelands, and follows their first years in America.

Video Modules Available

Active Voice and Kartemquin Films are producing short, themed video excerpts highlighting different issues related to immigrants and refugees. Each 20-40 minute story excerpt is accompanied by a toolkit containing a discussion guide, training curriculum, and resource lists, and these "beta test" modules are being made available to select nonprofit organizations and grantmakers in exchange for their feedback. (*The modules and kits will be finalized and available in 2004 for a nominal fee.*) The beta-test modules currently available at no cost to qualified organizations are:

"Supporting Families: Helping Teachers and Other Professionals Meet the Needs of Immigrant Families"

funded by Zellerbach Family Foundation

Designed to serve the professional development needs of schools and service organizations, this module illustrates the common hopes and particular challenges of immigrant families and their children. Beta-testing has also revealed that this module can be an important tool for encouraging immigrant parents to participate in their children's education. California Tomorrow is also testing this module for additional uses for urban teachers, and the University of Minnesota's Hubert H. Humphrey Institute is exploring its use in rural school districts.

"Finding Community: The Road Toward Immigrant Civic Participation"

funded by The James Irvine Foundation

This module has three specific purposes:

1. To train service providers on the opportunities for immigrants' civic engagement,
2. To support emerging leadership among immigrant communities,
3. To spark conversations between policymakers and the newcomers they serve about the value of and obstacles to participation in public life.

This module is being incubated by the Central Valley Partnership for Citizenship and the Northern California Citizenship Project.

"Building Bridges: Deepening Understanding Between Long-Term Residents and New Immigrants"

funded by the Charles Stewart Mott Foundation

This module follows new Americans as they join churches, adjust to cultural differences and stereotypes, and build relationships across language and cultural barriers. These stories are singled out in a module to foster dialogue, build cultural competency and inspire bridge-building between long-term residents and newcomers. This module has been adopted on a test-basis by Harmony Works, a group that facilitates intergroup dialogue in the Twin Cities.

Preview a Module

If your organization would like to participate in beta-testing a module for free or place a pre-order to purchase a module when available, contact Ibukun Olude at 415.553.2841 or at info@activevoice.net.



Active Voice is a team of strategic communication specialists who put powerful, socially relevant film to work for personal and global change in communities, workplaces, and campuses across America. Through distinguished partnerships, guides, trainings, panels, workshops and small group facilitation, Active Voice turns film into an indispensable tool for understanding and positive action. Formerly known as the Television Race Initiative (TRI), Active Voice is a division of independent media innovator American Documentary Inc. (AmDoc) a nonprofit 501(c)(3) organization.

KARTEMQUIN
FILMS



THE NEW AMERICANS

Video Modules Pre-Order Form

The New Americans, produced by Kartemquin Films, is a seven-hour PBS/ITVS miniseries premiering April 2004 that captures the search for the American Dream through the eyes of today's immigrants and refugees. These families come from Nigeria, India, the Dominican Republic, Mexico and the Israeli-occupied West Bank, each with different hopes for a new life in the United States. The New Americans explores the dreams of these newcomers before they leave their homelands, and follows their first years in America.

Video Modules Available for Purchase

Active Voice and Kartemquin Films have produced three short, themed video excerpts from the New Americans that highlight different issues related to immigrants and refugees. Each module is accompanied by a toolkit containing a discussion guide, training curriculum, and resource lists. Please refer to the Video Modules form for details about each module's content. The following modules can be pre-ordered from Active Voice and will be available in early 2004:

- "Building Bridges: Deepening Understanding Between Long-Term Residents and New Immigrants" *funded by the Charles Stewart Mott Foundation*
- "Finding Community: The Road Toward Immigrant Civic Participation" *funded by The James Irvine Foundation*
- "Supporting Families: Helping Teachers and Other Professionals Meet the Needs of Immigrant Families" *funded by Zellerbach Family Foundation*



Active Voice is a team of strategic communication specialists who put powerful, socially relevant film to work for personal and global change in communities, workplaces, and campuses across America. Through distinguished partnerships, guides, trainings, panels, workshops and small group facilitation, Active Voice turns film into an indispensable tool for understanding and positive action. Formerly known as the Television Face Initiative (TFI), Active Voice is a division of independent media innovator American Documentary Inc. (AmDoc) a nonprofit 501(c)(3) organization.

Pre-Order a Module

If you are interested in purchasing video modules with accompanying discussion guides, please fax or mail this form to Active Voice, attention: Ibukun Olude at 415.553.2848 or 2601 Mariposa Street, San Francisco, CA 94110. We will contact you about price information and your order.

Pre-Order Information

- _____ Number of "Building Bridges" modules
- _____ Number of "Finding Community" modules
- _____ Number of "Supporting Families" modules

Contact Information

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Email: _____



Active Voice • 2601 Mariposa Street • San Francisco, CA 94110
Tel: (415) 553-2841 • Fax: (415) 553-2848 • Email: info@activevoice.net



THE NEW AMERICANS — COMING SOON

⓪ BACK

Meet the "new Americans" profiled in the upcoming PBS series. Here are their stories.



Ogoni refugees from Nigeria are English-speaking and educated—yet in Chicago, they work as maids, janitors and cooking assistants. Barine Wiwa-Lawani, is the mother of four teenagers and the sister of slain activist Ken Sara-Wiwa, whose execution by the Nigerian government led to the Ogonis' refugee plight. Barine ran a thriving catering school and two restaurants in Nigeria. Israel Nwidor, trained as a chemical engineer, became an environmental activist back home. Though they did not choose to come to America, he and his wife, Ngozi, are determined to succeed and provide for their two young children despite the many obstacles they face.



Dominicans Ricardo Rodriguez and José Garcia are highly prized baseball prospects for the Los Angeles Dodgers. We follow them from the Dodger camp in Santa Domingo to spring training in Florida and through their first years in America and professional baseball in places as far-flung and overwhelmingly white as Great Falls, Montana.



Naima is a Palestinian woman who falls in love with and marries Hatem, a first-generation Palestinian American. With one brother dead and another imprisoned because of the Intifada, Naima was determined to refuse any local suitor. Following her marriage and subsequent journey to America, we witness her struggle with the distance from her family and culture and the demands of her new husband and her career as a teacher in a Chicago day care center.



Anjan Bacchu is a computer programmer from Bangalore (the Silicon Valley of India) who migrated on an H1B visa to the San Francisco Bay Area to pursue an Internet fortune and "explore the world beyond India." Through Anjan we gain access to the fast moving, multinational start-up companies and the more than 60,000 other Indian immigrants who have come to chase the most cutting edge version of the American Dream.



We follow the plight of Pedro Flores, a Mexican working as a meatpacker in rural Southeast Kansas as he tries to secure the sponsorship needed to obtain visas for the entire family to join him in the U.S. His story dramatizes the profound changes taking place in America's heartland. Working in one of the nations most dangerous industries, poor and Third World immigrants try to build a new life in communities that have mixed feelings about their presence.