

# The Changing Dynamics in Congress

## *September 11 has considerable effect*

by Rosemary Jenks

The primary immigration issue discussed in Congress during the summer of 2001 was amnesty for illegal aliens. The Bush Administration let slip early in the summer the fact that it was considering an amnesty for Mexican illegal aliens. Administration officials appeared surprised at the strong, negative public reaction to this trial balloon. Nonetheless, they continued amnesty discussions with the Mexican government, but they were careful to call their proposals anything but “amnesty” – terms like “earned legalization” and “regularization” were coined in an unsuccessful attempt to dupe the public.

A variety of different proposals was discussed, including programs to amnesty illegal agricultural workers, illegal service-industry workers, all illegal Mexicans, or all illegal aliens who had worked and paid taxes in the United States for a certain period of time. Congressional Democrats responded to these proposals with their own proposals to grant amnesty to all illegal aliens present in the United States.

By late July, it had begun to appear that, despite strong public opposition, some kind of amnesty program was inevitable. The Bush Administration seemed determined to continue its efforts to pander to Mexicans in a misguided effort to attract Hispanic voters for the next presidential election. (The effort is misguided since studies show clearly that the overwhelming majority of

Hispanics vote Democratic.) Congressional Democrats, of course, had good reason to support the broadest possible amnesty, since more Hispanic voters means more Democratic votes.

In August, however, with the downturn in the economy, public opposition became increasingly vocal. The media finally began raising questions about the economic impact of an amnesty and suggesting that the momentum might be shifting. Members of Congress began to express reservations as well. Mexican President Vicente Fox solidified much of the opposition to amnesty when he visited Washington in early September and demanded that Congress pass an amnesty by the end of the year. His demands did not sit well with most Americans, or with many members of Congress, for that matter.

Just as we were beginning to see a real chance to defeat amnesty, we learned on Friday, September 7, that House Judiciary Committee Chairman Sensenbrenner (R-WI) had reached a deal with the White House to re-enact Section 245(i) for another year and that the House was scheduled to bring up the legislation on the Suspension Calendar the following Tuesday. Section 245(i) is the provision that allows illegal aliens to become legal immigrants simply by paying a fine of \$1,000, as long as they have a relative who is a U.S. citizen or legal resident, or a U.S. employer, to sponsor them.

We were fairly sure that as opponents of amnesty we would lose the floor vote, but we didn't want the provision to pass without any opposition at all. Thus, FAIR, NumbersUSA.com, and other groups spent all of that Friday and Monday calling congressional offices. Many of the staffers with whom we spoke were not even aware that a vote on Section 245(i) was coming up. By Monday afternoon, we had lined up several Members to speak in opposition to the bill and to demand a roll call vote when it came to the floor.

Ironically, that vote, which likely would have allowed tens of thousands of additional illegal aliens to remain in

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this country for years before having to undergo any kind of background check, was canceled when the Capitol buildings were evacuated Tuesday morning following the terrorist attack on the Pentagon.

### **The Aftermath of September 11**

Within hours of the attacks, the media were reporting that they had been carried out by foreign nationals. We knew at that point that the attacks would have a major impact on the direction of the immigration debate in Congress, but we had no idea how much of an impact or where it would take us.

The President and his administration, including Attorney General Ashcroft, immediately began looking at ways to improve intelligence-sharing among law enforcement agencies and to broaden federal wiretap and surveillance authority. The President asked Congress for \$40 billion in emergency funding to respond to the attacks and beef up national security. He announced the creation of the cabinet-level Office of Homeland Defense to coordinate the domestic activities of the FBI, the CIA, Customs, and so on, but immigration enforcement was not mentioned as a priority for this new office.

We got word about a week after the attack that the Department of Justice (DOJ) was in the process of preparing a comprehensive legislative package to address terrorism. It had been agreed among the leaders of both houses and the White House that this would be the major vehicle for a legislative response to the attacks. We assumed, of course, that the package would include at least some serious immigration reforms. For the most part, we were wrong.

As proposed by DOJ, the bill focused on undercover surveillance, seizing terrorist assets, and information sharing among federal law enforcement agencies. It included only minor changes to immigration law, such as an expanded definition of terrorists for purposes of removal and broader authority for the Attorney General to detain removable aliens suspected of terrorist activities.

As the bill worked its way through the House Judiciary Committee, matters got even worse. Instead of strengthening the immigration provisions, backroom negotiations between Republican and Democratic committee members led to an agreement to add provisions to grant legal residence to the family members of aliens who were killed in the attack. Republican

members were asked by the Chairman not to propose immigration reform amendments during the Committee markup in order to maintain the appearance of bipartisan cooperation. It became clear at that point that the counter-terrorism bill would not be the vehicle for needed immigration reforms.

The media, unlike the Administration, have not stopped talking about how the lax enforcement of our immigration laws allowed the terrorists into our country. We in the immigration reform movement certainly are used to the media leading Congress – to amnesty, to extending 245(i), to removing the teeth from immigration law. This is the first time since 1990, when I started working on immigration reform, that the media appear to be leading Congress toward real immigration reform.

Encouraged by the damning press coverage of the failures of our immigration laws and those who are charged with enforcing them, the resulting public clamor for reform, and the lack of meaningful reform in the counter-terrorism bill, individual members of Congress began to come forward with their own reform proposals. Amazingly enough, the Senate has been leading the way toward immigration reform. Even pro-mass immigration Senators Edward Kennedy (D-MA) and Sam Brownback (R-KS) feel the pressure to address immigration, although it appears that their goal is to pass weak reforms so as to avoid having to address the more serious reforms that are needed to secure our borders.

A flurry of bills has been introduced to address the various immigration-related lapses that allowed the terrorists to carry out their plan. They include several bills to strengthen airport security by, among other things, requiring airport security personnel to be U.S. citizens and requiring background checks on all pilots, crew and security personnel, and service and maintenance workers with access to aircraft. Other bills require data sharing among federal law-enforcement agencies.

The most notable of the post-September 11 reform proposals are those that would require some form of visa-tracking system. Some of these proposals are limited to foreign students, others would track all non-immigrants; and a few would track all non-citizens in the United States. In late September, Senator Dianne Feinstein (D-CA) announced that she would seek a six-month moratorium on student visas so that the student tracking system enacted in the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA)

could be implemented fully. Pressure from universities led her to withdraw the proposal for the moratorium, but she has expanded her proposed tracking system so that it would cover all non-citizens. She also has co-sponsored legislation to require all visa applicants to be fingerprinted.

In the House of Representatives, the Immigration Reform Caucus, under the active leadership of Representative Tom Tancredo (R-CO), has been leading the charge on immigration reform. The caucus began developing its reform proposals within two days of the attacks. Rep. Tancredo presented these proposals to the Speaker of the House a couple of weeks ago. At this point, though, it is unclear how the caucus will proceed with its package, since any immigration-reform legislation must pass through the House Judiciary Committee,

chaired by Representative Jim Sensenbrenner (R-WI). Rep. Sensenbrenner has stated publicly that he will not move any immigration legislation until the Immigration and Naturalization Service has been reorganized.

Finally, I want to note that, even though there clearly is movement in Congress on immigration reform, it is absolutely critical that we keep in mind the lessons of the 1996 reform effort: No matter how good our chances look for real immigration reform, we cannot afford to assume that Congress will act in the absence of strong and persistent pressure from reform groups and from the public. I believe we have a window of opportunity here, but it will take constant work and vigilance to make sure the window stays open long enough for Congress to act at its normal snail's pace. •