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Basic Pilot.

Thanks to the efforts of AMI and its member companies, the “Basic Pilot” program was extended by Congress for an additional two years. Congress passed the bill in December of 2001 and the President signed the bill on January 16, 2002.

When originally proposed in 1996, the Basic Pilot program was controversial, drawing an amendment seeking its deletion because of privacy and discrimination concerns. That amendment was defeated when proponents noted that employer participation was voluntary and that the employee safeguards were substantial.

Congressional debate on the extension legislation in 2001 was entirely different. No organization or Member of Congress opposed the legislation. While Congress was eager to promote immigration enforcement initiatives after September 11, the non-controversial nature of the debate is also a testament to the successful employer use of this program in the four years since its inception.

Congressional staff and the INS recognize that Basic Pilot is not perfect: for example, it does not detect “true identity imposters.” The overwhelming view, however, is that it is much better than the “paper” I-9 process. There were no negative affects of Basic Pilot raised by any person or entity. If the industry would like to propose legislation making Basic Pilot permanent and nation-wide, there is a good chance of congressional approval.

Immigration Law: Legislation, Enforcement and Litigation

Legislation. Congress is focusing on legislation to enhance the nation’s ability to prevent terrorist attacks by foreign nationals. No provisions of direct impact on the meatpacking industry are included. (The House bill also extends the “245(i)” cut-off date to November 30, 2001.)

Earlier this year, we worked to correct or oppose legislation (H.R. 993, Keller (R-FL)) that would have increased criminal penalties for alien smuggling crimes. In light of the targeting of certain meatpacking companies by the government, we asked numerous congressional offices to seek amendments to ensure that employers acting in the ordinary course of employment were not covered. These offices agreed, and no action has occurred on this legislation.

Criminal Enforcement. INS continues to view the meatpacking industry as a potential target for criminal alien smuggling investigations. Recent court decisions hold that the “harboring” of aliens, even if only through their employment, may constitute criminal “alien smuggling” offenses. See *U.S. v. Kim*, 193 F.3d 567 (2d Cir. 1999) (law no longer excludes employment from prohibition against harboring). While most cases require the employer to “take a step” toward concealing the alien from the INS (such as participating in use of fraudulent documents) , some of the “steps” are more ambiguous. See *United States v. Herrera*, 584 F.2d 1137 (2d Cir. 1978) (conviction for installing security systems to alert aliens to INS on-site inspections).

- *Hypothetical:* INS collects all I-9’s from a particular worksite and subsequently provides the plant manager with a list of A numbers and social security numbers that appear invalid. INS requests interviews with the employees who presented these documents. The plant manager schedules the interviews on the date INS says it will be present at the plant. On the date of the interview, a number of employees on the list call in sick. What are the employer’s obligations at this point?

Class-Action Litigation. Immigration has even been used as a basis by the class-action bar to target a member of the meatpacking industry. A recent class action filed in Illinois under a civil “RICO” theory contends that the company conspired to keep wages at unnaturally low levels through the recruitment and hiring of illegal aliens. The company has vehemently denied all of the allegations, and has noted that the plant that is the focus of the litigation is represented by the UFCW. The expense of responding to the litigation is troubling, however, as is the possibility that similar litigation against other members of the industry could ensue.