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REPORT
107–785

FAMILY REUNIFICATION ACT OF 2002

NOVEMBER 14, 2002.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1452]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1452) To amend the Immigration and Nationality Act to permit certain long-term permanent resident aliens to seek cancellation of removal under such Act, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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19–006

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Family Reunification Act of 2002".

SEC. 2. CANCELLATION OF REMOVAL FOR LONG-TERM PERMANENT RESIDENT ALIENS.

Section 240A(a) of the Immigration and Nationality Act (8 U.S.C. 1229b(a)) is amended to read as follows:

"(a) CANCELLATION OF REMOVAL FOR CERTAIN PERMANENT RESIDENTS.—

"(1) PERMANENT RESIDENTS NOT CONVICTED OF ANY AGGRAVATED FELONY.—The Attorney General may cancel removal in the case of an alien who is inadmissible to, or deportable from, the United States, if the alien—

"(A) has been an alien lawfully admitted for permanent residence for not less than 5 years;

"(B) resided in the United States continuously for 7 years after having been admitted in any status; and

"(C) has not been convicted of any aggravated felony.

"(2) PERMANENT RESIDENTS CONVICTED OF A NONVIOLENT AGGRAVATED FELONY.—The Attorney General may cancel removal in the case of an alien who is inadmissible to, or deportable from, the United States, if the alien—

"(A) has been an alien lawfully admitted for permanent residence for not less than 5 years;

"(B) satisfies the residence requirements of paragraph (6);

"(C) has never been convicted of—

"(i) an act of murder, rape, or sexual abuse of a minor;

"(ii) any crime of violence (as defined in section 16 of title 18, United States Code); or

"(iii) an attempt or conspiracy to commit an offense described in clause (i) or (ii);

"(D) has been convicted of—

"(i) a single aggravated felony for which the alien was sentenced to serve a term of imprisonment of 4 years or less;

"(ii) multiple aggravated felonies arising out of a single scheme of criminal misconduct for which the alien was sentenced to serve, in the aggregate, a term of imprisonment of 4 years or less; or

"(iii) 2 aggravated felonies arising out of separate schemes of criminal misconduct for which the alien was sentenced to serve, in the aggregate, a term of imprisonment of 4 years or less, but for neither of which the alien was actually incarcerated;

"(E) was not, in the commission of the aggravated felony or felonies described in subparagraph (D)—

"(i) an organizer, leader, manager, or supervisor of others; or

"(ii) engaged in a continuing criminal enterprise (as defined in section 408(c) of the Controlled Substances Act (21 U.S.C. 848(c)));

"(F) has never been incarcerated for any offense except—

"(i) the offense described in clause (i) of subparagraph (D), or another offense that was committed in the course of the same scheme of criminal misconduct; or

"(ii) an offense that was committed in the course of the scheme or schemes described in clause (ii) or (iii) of such subparagraph; and

"(G) has not been the subject of a timely certification described in paragraph (7) with respect to the aggravated felony or felonies described in subparagraph (D), unless such certification has been revoked pursuant to such paragraph.

"(3) PERMANENT RESIDENTS CONVICTED OF AN AGGRAVATED FELONY CLASSIFIED AS A CRIME OF VIOLENCE.—The Attorney General may cancel removal in the case of an alien who is inadmissible to, or deportable from, the United States, if the alien—

"(A) has been an alien lawfully admitted for permanent residence for not less than 5 years;

"(B) satisfies the residence requirements of paragraph (6);

"(C) has never been convicted of—

"(i) an act of murder, rape, or sexual abuse of a minor; or

"(ii) an attempt or conspiracy to commit an offense described in clause (i);

"(D) has never been convicted of any aggravated felony that resulted in death or serious bodily injury to any person other than the alien;

"(E) has been convicted of—

"(i) a single aggravated felony for which the alien was sentenced to serve a term of imprisonment of 2 years or less;

"(ii) multiple aggravated felonies arising out of a single scheme of criminal misconduct for which the alien was sentenced to serve, in the aggregate, a term of imprisonment of 2 years or less; or

"(iii) 2 aggravated felonies arising out of separate schemes of criminal misconduct for which the alien was sentenced to serve, in the aggregate, a term of imprisonment of 2 years or less, but for neither of which the alien was actually incarcerated;

"(F) was not, in the commission of the aggravated felony or felonies described in subparagraph (E)—

"(i) an organizer, leader, manager, or supervisor of others; or

"(ii) engaged in a continuing criminal enterprise (as defined in section 408(c) of the Controlled Substances Act (21 U.S.C. 848(c)));

"(G) has never been incarcerated for any offense except—

"(i) the offense described in clause (i) of subparagraph (E), or another offense that was committed in the course of the same scheme of criminal misconduct; or

"(ii) an offense that was committed in the course of the scheme or schemes described in clause (ii) or (iii) of such subparagraph; and

"(H) has not been the subject of a timely certification described in paragraph (7) with respect to the aggravated felony or felonies described in subparagraph (E), unless such certification has been revoked pursuant to such paragraph.

"(4) PERMANENT RESIDENTS ADMITTED BEFORE AGE 10.—The Attorney General may cancel removal in the case of an alien who is inadmissible to, or deportable from, the United States, if the alien—

"(A) has been an alien lawfully admitted for permanent residence for not less than 5 years;

"(B) resided in the United States continuously for 7 years after having been admitted in any status when the alien was under 10 years of age;

"(C) has never been convicted of—

"(i) an act of murder, rape, or sexual abuse of a minor; or

"(ii) an attempt or conspiracy to commit an offense described in clause (i); and

"(D) has never been incarcerated for a third (or succeeding) aggravated felony, except that multiple felonies arising out of a single scheme of criminal misconduct shall be considered a single felony for purposes of this subparagraph.

"(5) PERMANENT RESIDENTS ADMITTED BEFORE AGE 16.—The Attorney General may cancel removal in the case of an alien who is inadmissible to, or deportable from, the United States, if the alien—

"(A) has been an alien lawfully admitted for permanent residence for not less than 5 years;

"(B) resided in the United States continuously for 7 years—

"(i) before the alien committed any aggravated felony; and

"(ii) after having been admitted in any status when the alien was under 16 years of age;

"(C) has never been convicted of—

"(i) an act of murder, rape, or sexual abuse of a minor; or

"(ii) an attempt or conspiracy to commit an offense described in clause (i); and

"(D) has never been incarcerated for a third (or succeeding) aggravated felony, except that multiple felonies arising out of a single scheme of criminal misconduct shall be considered a single felony for purposes of this subparagraph.

"(6) RESIDENCE REQUIREMENTS FOR CERTAIN ALIENS.—In the case of an alien seeking relief under paragraph (2) or (3), the residence requirements described in this paragraph are as follows:

"(A) If the alien has been convicted of any aggravated felony committed after the date of the enactment of the Family Reunification Act of 2002, the alien is required to have resided in the United States—

"(i) continuously for 7 years after having been admitted in any status and prior to the commission of such aggravated felony; or

"(ii) continuously for 10 years after having been admitted in any status, except that, if the alien is incarcerated with respect to such aggravated felony, the period beginning on the date on which such aggravated felony was committed and ending on the last day of such term

of incarceration shall be excluded in determining continuous residence under this clause.

"(B) If the alien has not been convicted of an aggravated felony committed after the date of the enactment of the Family Reunification Act of 2002, but has otherwise been incarcerated for any aggravated felony, the alien is required to have resided in the United States—

"(i) continuously for 7 years after having been admitted in any status and prior to the commencement of such term of incarceration; or

"(ii) continuously for 10 years after having been admitted in any status, except that any term of incarceration for any aggravated felony shall be excluded in determining continuous residence under this clause.

"(C) If the alien is not described in subparagraph (A) or (B), the alien is required to have resided in the United States continuously for 7 years after having been admitted in any status.

"(7) CERTIFICATIONS.—

"(A) IN GENERAL.—In the case of an alien seeking relief under paragraph (2) or (3), not later than 2 weeks after the alien files an application for such relief, the Attorney General may notify each agency that prosecuted an aggravated felony referred to in paragraph (2)(D) or (3)(E), as the case may be.

"(B) CONTENTS.—The notification shall inform the agency that it has an opportunity—

"(i) to certify to the Attorney General, not later than 60 days after the date on which the notification is mailed, that the alien has not truthfully provided to the agency all information and evidence the alien has concerning such felony or felonies, and any other offense or offenses that were part of the same scheme of criminal misconduct as such felony or felonies; and

"(ii) on those grounds, to object to cancellation of removal.

"(C) PROVISION TO ALIEN.—The Attorney General shall mail any certification timely made pursuant to subparagraph (B) with respect to an alien to such alien. The alien shall have an opportunity, during the 21-day period beginning on the date on which the certification is mailed, to truthfully provide to the agency all information and evidence which the agency certifies has not been provided.

"(D) REVOCATION OF CERTIFICATION.—

"(i) IN GENERAL.—The agency may, during the 21-day period beginning after the end of the period described in subparagraph (C), revoke any certification made pursuant to subparagraph (B). Any revocation of a certification shall void such certification.

"(ii) UNTIMELY REVOCATIONS.—A revocation under this subparagraph that is not timely made may be considered by the Attorney General in the Attorney General's discretion if it is made prior to the issuance of a final order of removal, but the absence of a timely revocation shall not be the basis for any continuance or delay of proceedings. Any determination to deny relief based in whole or in part on a revocation that is not made, or not timely made, shall not be subject to administrative or judicial review in any forum.

"(E) FORMS REQUIREMENT.—The Attorney General shall ensure that the consequences under this paragraph of failing to provide information or evidence with respect to aggravated felonies are clearly explained in any form promulgated by the Attorney General that may be used to apply for relief under paragraph (2) or (3).

"(F) CONSTRUCTION.—This paragraph, and paragraphs (2) and (3), shall not be construed to require the Attorney General to notify any agency under subparagraph (A). If the Attorney General fails to send, or fails timely to send, the notification described in such subparagraph, the alien shall be deemed not to be the subject of a certification.

"(8) CLARIFICATION WITH RESPECT TO CERTAIN REFERENCES.—Any reference in this subsection to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law, regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part. However, a period of probation is not a term of imprisonment or a sentence for purposes of this subsection.

"(9) LIMITATION ON DELEGATION.—Cancellation of removal under paragraph (2), (3), (4), or (5) may be granted only by the Attorney General or Deputy Attor-

ney General. No delegation of such authority to any other official may be made.".

SEC. 3. CHANGE IN CONDITIONS FOR TERMINATION OF PERIOD OF CONTINUOUS RESIDENCE OR CONTINUOUS PHYSICAL PRESENCE.

Section 240A(d)(1) of the Immigration and Nationality Act (8 U.S.C. 1229b(d)(1)) is amended to read as follows:

"(1) TERMINATION OF CONTINUOUS PERIOD.—For purposes of this section, any period of continuous residence or continuous physical presence in the United States shall be deemed to end, except in the case of an alien who applies for cancellation of removal under subsection (b)(2), when the alien is served a notice to appear under section 239(a).".

SEC. 4. PERMITTING CERTAIN PERMANENT RESIDENT ALIENS TO RETURN WITHOUT SEEKING ADMISSION.

Section 101(a)(13)(C) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(13)(C)) is amended—

(1) by striking the comma at the end of each of clauses (i), (ii), (iii), and (iv) and inserting a semicolon at the end of each such clause;

(2) by amending clause (v) to read as follows:

"(v) has committed outside the United States an offense identified in section 212(a)(2), unless, since such offense, the alien has been granted relief under section 212(h) or 240A(a), or under section 212(c) (before its repeal by section 304(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (110 Stat. 3009–597));";

(3) by redesignating clause (vi) as clause (vii); and

(4) by inserting after clause (v) the following:

"(vi) has committed in the United States an offense identified in section 212(a)(2), and has been absent from the United States for a continuous period in excess of 30 days since committing such offense (or, if the absence after the 30th day was beyond the alien's control, for a continuous period in excess of 60 days), unless, since such offense, the alien has been granted relief under section 212(h) or 240A(a), or under section 212(c) (before its repeal by section 304(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (110 Stat. 3009–597)); or".

SEC. 5. RELEASE OF NONDANGEROUS ALIENS.

(a) IN GENERAL.—Section 236(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1226(c)(2)) is amended to read as follows:

"(2) RELEASE.—

"(A) IN GENERAL.—The Attorney General may release an alien described in paragraph (1) only in accordance with subparagraph (B) or (C). A decision relating to release under this paragraph shall take place in accordance with a procedure that considers the severity of any offense committed by the alien.

"(B) PROTECTION FOR WITNESSES, POTENTIAL WITNESSES, AND PERSONS COOPERATING WITH CRIMINAL INVESTIGATIONS.—The Attorney General may release an alien described in paragraph (1) if—

"(i) the Attorney General decides pursuant to section 3521 of title 18, United States Code, that release of the alien from custody is necessary to provide protection to a witness, a potential witness, a person cooperating with an investigation into major criminal activity, or an immediate family member or close associate of a witness, potential witness, or person cooperating with such an investigation; and

"(ii) the alien satisfies the Attorney General that the alien will not pose a danger to the national security of the United States or the safety of persons or property and is likely to appear for any scheduled proceeding.

"(C) PERMANENT RESIDENT ALIENS ELIGIBLE FOR CANCELLATION OF REMOVAL.—The Attorney General may release an alien described in paragraph (1) if the alien demonstrates, by a preponderance of the evidence, that the alien—

"(i) has prima facie evidence sufficient to establish that the alien is eligible for cancellation of removal under section 240A(a); and

"(ii) will not pose a danger to the national security of the United States or the safety of persons or property and is likely to appear for any scheduled proceeding.".

(b) APPLICATION TO ALIENS DETAINED ON EFFECTIVE DATE.—In the case of an alien detained under section 241(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1231(a)(2)) on the date of the enactment of this Act, if the alien has prima

facie evidence sufficient to establish that the alien is eligible for cancellation of removal under section 240A(a) of such Act (8 U.S.C. 1229b(a)), as amended by section 2 of this Act (and subject to the other amendments made by this Act), the alien may seek release from detention under section 236(c)(2)(C) of such Act (8 U.S.C. 1226(c)(2)(C)), as added by this section.

SEC. 6. CLARIFICATION OF EFFECT OF VACATION OF CONVICTION.

Section 101(a)(48) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(48)) is amended by adding at the end the following:

"(C) Any conviction entered by a court that otherwise would be considered a conviction under this paragraph shall continue to be so considered notwithstanding a vacation of that conviction, unless the conviction is vacated—

"(i) on the merits; or

"(ii) on grounds relating to a violation of a statutory or constitutional right in the underlying criminal proceeding.".

SEC. 7. EFFECTIVE DATE; SPECIAL APPLICABILITY RULE.

(a) IN GENERAL.—The amendments made by this Act shall take effect on the date of the enactment of this Act and shall apply to aliens who—

(1) are in removal proceedings under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) on or after such date;

(2) were in such proceedings before such date, were ineligible for cancellation of removal under section 240A(a) of such Act (8 U.S.C. 1229b(a)) before such date, but would have been eligible for cancellation of removal under such section if the amendments made by this Act had been in effect during the entire pendency of such proceedings; or

(3) were in exclusion or deportation proceedings under such Act before such date, and were ineligible for relief under section 212(c) of such Act (as in effect on March 31, 1997, before its repeal by section 304(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (110 Stat. 3009–597)) by reason of the amendments made by section 440(d) of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132; 110 Stat. 1277).

(b) SPECIAL APPLICABILITY RULE.—

(1) IN GENERAL.—Notwithstanding any other provision of law, aliens described in subsection (a)(3) shall be considered to be, or to have been, in removal proceedings under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) to the extent necessary to permit them to apply, and be considered eligible, for cancellation of removal under section 240A(a) of such Act (8 U.S.C. 1229b(a)), as amended by this Act.

(2) RELIEF.—If the Attorney General determines that an alien described in subsection (a)(3) should be provided relief pursuant to this Act, the Attorney General shall take such steps as may be necessary to terminate any proceedings to exclude or deport the alien that may be pending, and shall grant or restore to the alien the status of an alien lawfully admitted to the United States for permanent residence.

SEC. 8. MOTIONS TO REOPEN.

(a) IN GENERAL.—Not later than 1 year after the effective date of the final regulations issued under section 9(b) of this Act, and in accordance with such regulations, an alien described in subsection (b) may file a motion to reopen removal, deportation, or exclusion proceedings in order to apply for cancellation of removal under section 240A(a) of the Immigration and Nationality Act (8 U.S.C. 1229b(a)) pursuant to the amendments made by this Act.

(b) ALIENS DESCRIBED.—An alien is described in this subsection if the alien—

(1) is described in subsection (a) of section 7; and

(2) is otherwise unable to apply, or reapply, for cancellation of removal under section 240A(a) of the Immigration and Nationality Act (8 U.S.C. 1229b(a)) by reason of the procedural posture of the exclusion, deportation, or removal proceedings that are, or were, pending against the alien (including the fact that such proceedings are finally concluded).

(c) EVIDENCE.—A motion filed under subsection (a) shall describe or set forth prima facie evidence sufficient to establish that the alien is eligible for cancellation of removal under section 240A(a) of the Immigration and Nationality Act (8 U.S.C. 1229b(a)), as amended by this Act.

(d) NO REENTRY OR READMISSION TO FILE OR PROSECUTE MOTION.—No alien may be admitted or otherwise authorized to enter the United States solely to file or prosecute a motion to reopen under this section or otherwise to apply for relief under this Act or the amendments made by this Act, except as the Attorney General may provide pursuant to the sole and unreviewable discretion of the Attorney General. Hearings held pursuant to this Act and the amendments made by this Act may

be held in the United States or abroad, with the alien appearing in person or by video phone or similar device.

(e) DISCRETION.—The grant or denial of any motion to reopen filed under this section shall be in the sole and unreviewable discretion of the Attorney General.

(f) NO JUDICIAL REVIEW.—No court shall have jurisdiction to review any decision of the Attorney General denying a motion to reopen under this section.

SEC. 9. RULES.

(a) ISSUANCE OF ADVANCE NOTICE OF PROPOSED RULEMAKING.—The Attorney General shall issue an advance notice of proposed rulemaking pertaining to this Act, and the amendments made by this Act, not later than 60 days after the date of the enactment of this Act.

(b) ISSUANCE OF FINAL REGULATIONS.—The Attorney General shall issue the final regulations to carry out this Act not later than 90 days after the date of the enactment of this Act, specifying an effective date that is not more than 15 days after the date of publication of such final regulations.

SEC. 10. SUNSET.

This Act, and the amendments made by this Act, shall cease to have effect on December 31, 2005, or 3 years after the date on which final regulations to carry out this Act are issued, whichever occurs later.

SEC. 11. ANNUAL REPORT.

The Attorney General annually shall submit to the Committee on the Judiciary of the United States House of Representatives and the Committee on the Judiciary of the Senate a report with respect to this Act and the amendments made by this Act. The report shall contain information on—

(1) the number of aliens who applied for cancellation of removal, release from detention, or any other immigration benefit, based on this Act or the amendments made by this Act;

(2) the crimes committed by the aliens described in paragraph (1);

(3) the number of applications described in paragraph (1) that were granted; and

(4) any other subject the Attorney General considers relevant.

PURPOSE AND SUMMARY

H.R. 1452, the "Family Reunification Act of 2002," will allow certain permanent resident aliens who have committed crimes to seek discretionary relief from removal from the Attorney General.

BACKGROUND AND NEED FOR THE LEGISLATION

Prior to enactment of the Antiterrorism and Effective Death Penalty Act of 1996 (hereinafter cited as "AEDPA")[1] and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (hereinafter cited as "IIRIRA")[2], permanent resident aliens who were domiciled in the United States for seven continuous years and were subject to deportation could seek discretionary "212(c)" relief from deportation unless they had been convicted of one or more aggravated felonies and had served for such felonies terms of imprisonment of at least 5 years.[3] While the granting of relief was a discretionary action by an immigration judge or the Board of Immigration Appeals, aliens could appeal denial of relief to Federal court. During the 1990's, the percentage of applications granted began to surpass 50 percent.[4] This Committee believed the situation was intolerable:

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[1] Pub. L. No. 104–132.

[2] Division C of Title III of Pub. L. No. 104–208.

[3] Section 212(c) of the Immigration and Nationality Act (amended by section 440(d) of AEDPA and then repealed by section 304(b) of IIRIRA).

[4] In fiscal year 1995, 53.5 percent of applications for 212(c) relief were granted by immigration courts (data provided by the U.S. Department of Justice, Executive Office for Immigration Review).

> The increasing public attention paid to our Nation's immigration policies has brought to light the high number of aliens, both legal and illegal, who commit crimes while enjoying the benefits of this country. . . . In the past, many aliens who committed serious crimes were released into American society after they were released from incarceration, where they then continue to pose a threat to those around them. The Government's attempts to deport those aliens committing the most serious crimes has proved to be ineffective.
>
> . . .
>
> In the view of the Committee, those who choose not to abide by this nation's laws, and particularly those whose criminal activity physically harms others, have no legitimate claim to remain in the United States.[5]

In AEDPA, Congress took a number of steps to address these concerns, including rescinding judicial review of final orders of deportation based on the commission of certain crimes (including aggravated felonies),[6] requiring the detention of any alien convicted of an aggravated felony upon release from incarceration,[7] making aliens who have been convicted of certain crimes (including any aggravated felonies) ineligible for 212(c) relief,[8] and expanding the number of crimes considered aggravated felonies under the Immigration and Nationality Act.[9]

Congress refined this scheme in IIRIRA. "212(c)" relief was repealed.[10] In its place, deportable permanent residents could seek "cancellation of removal"—discretionary relief from removal by an immigration judge—if the alien: (1) has been an alien lawfully admitted for permanent residence for not less than 5 years; (2) has resided in the United States continuously for 7 years after having been admitted in any status; and (3) has not been convicted of any aggravated felony.[11]

IIRIRA defined term of imprisonment as including a period of incarceration or confinement regardless of any suspension of the imposition or execution of the imprisonment.[12] Judges often suspend sentences for reasons having nothing to do with the gravity of the offense, such as to relieve prison overcrowding. Congress did not believe that such a suspension should have a bearing on the immigration consequences of a criminal conviction. IIRIRA also defined continuous residence to end when the alien was served a notice to appear at a removal proceeding or when the alien has committed certain crimes making them inadmissible or removable (including aggravated felonies).[13] The basis for relief is the equities that build

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[5] H.R. Rep. No. 104–22, at 6, 8 (1995). The Committee later learned through information gained by a subpoena duces tecum issued to the Justice Department that 37 percent of criminal aliens released by the INS are later convicted of another crime. H.R. Rep. No. 106–1048, at 256–57 (2001). This report includes legal and illegal aliens, permanent residents, students, and temporary visitors. There has been no report examining exclusively the recidivism rate of legal permanent residents, the people who would benefit from this legislation.

[6] Section 440(a) of AEDPA.

[7] Section 440(c) of AEDPA.

[8] Section 440(d) of AEDPA.

[9] Section 440(e) of AEDPA.

[10] Section 304(b) of IIRIRA.

[11] Section 304(a) of IIRIRA. *See* section 240A(a) of the INA.

[12] Section 322(a) of IIRIRA. *See* section 101(a)(48)(B) of the INA.

[13] Section 304(a) of IIRIRA. *See* section 240A(d) of the INA.

up for an alien who lives in the United States peaceably and in compliance with the law over many years. Congress did not believe that equities accrue after an alien has committed a crime or been told to appear at a removal proceeding. In addition, Congress wanted to end the abusive tactic whereby aliens and their attorneys attempt to stretch out removal proceedings in order to accrue the time of residence necessary to qualify for relief from deportation. The definition of aggravated felony was again expanded.[14]

Congress's actions in the 104th Congress have succeeded in almost doubling the number of criminal aliens deported annually from 38,015 in fiscal 1996 to 71,028 in fiscal 2000.[15] However, a disturbing number of cases have arisen in which the deportation of legal permanent resident aliens' have seemed exceedingly harsh responses. The first category of such hardship cases involves permanent residents who were brought legally to the U.S. when still young children and now face deportation to countries that they no longer even remember, let alone to which they have any ties or speak the language. The second category involves permanent residents who committed crimes well before 1996 that were reclassified as aggravated felonies in that year. Many of these aliens have fully reformed, raised families and become productive members of their communities in the ensuing years. The third category involves aliens who have committed relatively minor crimes. Since an aggravated felony is now defined to include any crime of theft or violence for which an alien is sentenced to 1 year or more of prison[16], or any drug trafficking offense (regardless of whether any jail sentence is imposed)[17], crimes such as shoplifting, drunk driving and very low level drug trafficking can carry with them mandatory deportation for permanent residents.

In 1999, a number of members of this Committee, including Republicans F. James Sensenbrenner, Jr., Henry Hyde, Lamar Smith, Bill McCollum, and Charles Canady and Democrats Barney Frank, Sheila Jackson Lee, Howard Berman and Martin Meehan, were among 28 members who sent a letter to then Attorney General Janet Reno stating that:

> [C]ases of apparent extreme hardship have caused concern. Some cases may involve removal proceedings against legal permanent residents who came to the United States when they were very young, and many years ago committed a single crime at the lower end of the "aggravated felony" spectrum, but have been law-abiding ever since, obtained and held jobs and remained self-sufficient, and started families in the United States. Although they did not become citizens, immediate family members are citizens.
>
> There has been widespread agreement that some deportations were unfair and resulted in unjustifiable hardship.[18]

That letter requested that the Attorney General issue guidelines on prosecutorial discretion so that INS prosecutors would be en-

[14] Section 321 of IIRIRA. *See* section 101(a)(43) of the INA.
[15] INS data.
[16] *See* section 101(a)(43)(F) & (G) of the INA.
[17] *See* section 101(a)(43)(B) of the INA.
[18] Letter to Janet Reno, U.S. Attorney General, and Doris Meissner, Commissioner, Immigration Naturalization Service (Nov. 4, 1999).

couraged to utilize their inherent power to not pursue removal in appropriate cases. The guidelines have been issued,[19] but reports of egregious deportation actions continue. The law currently allows only very limited relief for permanent residents who have committed crimes properly classified as aggravated felonies.

Members of Congress also took issue with the retroactive application of the amendments to section 212(c) in AEDPA and IIRIRA. The Supreme Court recognized in *INS* v. *St. Cyr*, 533 U.S. 289 (2001) that "within constitutional limits, Congress has the power to enact laws with retrospective effect." The Court reaffirmed, however, the strong presumption in American jurisprudence against retroactive legislation in this context:

> The presumption against retroactive legislation is deeply rooted in our jurisprudence, and embodies a legal doctrine centuries older than our Republic. Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted. For that reason, the principle that the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place has timeless and universal human appeal.

St. Cyr, 533 U.S. at 316 (quoting *Landgraf* v. *USI Film Prods.*, 511 U.S. 244, 266 (1994) (internal citations omitted). Applying this presumption, the Court in *St. Cyr* found "nothing in IIRIRA unmistakably indicating that Congress considered the question whether to apply its repeal of section 212(c) retroactively to . . . aliens . . . whose convictions were obtained through plea agreements and who, notwithstanding those convictions, would have been eligible for section 212(c) relief at the time of their plea under the law then in effect," holding that section 212(c) relief remains available for such aliens.

H.R. 1452, as approved by the Judiciary Committee, strikes an appropriate and fair balance on the issue of relief from deportation for legal permanent resident aliens. It will provide the Justice Department the ability to spare aliens from deportation in the most sympathetic cases. The compromise reaches a middle ground between pre-1996 law and current law. It retains the beneficial reforms from 1996 while letting a select group of legal permanent residents request discretionary relief from deportation. It does not, however, narrow in any way the holding of the Supreme Court in *St. Cyr*.

Because of concerns about the willingness of some immigration judges to grant relief from deportation profligately if given the ability, the bill provides that only the Attorney General or Deputy Attorney General may grant the relief provided. This will prevent any such abuses of discretion from occurring and ensure that only truly deserving applicants who do not pose a danger to the public and who will not engage in future criminal behavior will receive relief. The oversight of the Congress will give the Attorney General and the Deputy Attorney General ample incentive to ensure that the re-

[19] *See* memorandum from Doris Meissner, Commissioner, INS, to Regional Directors, District Directors, Chief Patrol Agents, and Regional and District Counsel (Nov. 17, 2000).

lief is granted only in exceptional circumstances and meritorious and compelling cases.

The bill sets forth four avenues of relief from removal for permanent residents who have been convicted of a crime, with eligibility for relief based in part on provisions limiting the mandatory minimum penalties in sentencing guidelines (18 U.S.C. § 3553). None of those four forms of relief are available to aliens who have engaged in or are likely to engage in terrorist activity (pursuant to section 240A(c)(4) of the INA) or have been convicted of murder, rape, or sexual abuse of a minor:

First, a non-violent aggravated felon can seek relief if he: (1) has been a permanent resident for at least 5 years; (2) has resided in the U.S. continuously for at least 7 to 10 years; (3) was convicted in connection with a single scheme of misconduct for which the alien received a sentence of 4 years or less, or two schemes of misconduct for which the alien received a sentence of 4 years or less, but was never actually imprisoned; and (4) was not an organizer or leader of the aggravated felony or felonies. If the alien has served jail time in connection with any other offense, he is ineligible for this relief. In addition, the criminal prosecutor may block such relief if the alien failed to provide the prosecutor with all information he possesses about the offense.

Second, an alien convicted of a violent aggravated felony may seek relief under the same standards, except that the requirement of not having been sentenced to more than 4 years is reduced to more than 2 years, and the crime could not have resulted in serious bodily injury or death. It should be pointed out that in 1995 and 1996, this Committee and then the House passed the Immigration in the National Interest Act (which eventually led to IIRIRA) providing that a permanent resident could not seek relief from deportation if he had been convicted of an aggravated felony for which he was sentenced to at least 5 years in prison.[20] The relief provided by H.R. 1452 is more restrictive than what the Committee prepared to accept in the 104th Congress.

The third form of relief in H.R. 1452 provides that an alien who legally arrived in the U.S. before age 10 can seek relief if the alien has: (1) been a permanent resident for at least 5 years; (2) has resided in the U.S. continuously for at least 7 after having arrived in the U.S.; and (3) has not been imprisoned for aggravated felonies arising out of more than two patterns of criminal misconduct.

Fourth, an alien who legally entered the U.S. before age 16 can apply for relief in the same manner as those aliens who arrived before the age of 10, except that such aliens are barred from relief if they commit any aggravated felony within their first 7 years in the U.S.

The bill provides that an alien who was made ineligible for relief by the 1996 immigration legislation, but who would be eligible for one of these four forms of relief, can move to reopen his case within 1 year of the Attorney General's issuance of regulations. While aliens who have already been deported may move to reopen to apply for relief, those aliens must apply from abroad and can only reenter the United States if they are actually granted relief.

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[20] *See* H.R. Rep. No. 104–469, pt. 1, at 23 (1996). (This document is the report of the House Judiciary Committee on H.R. 2202, 104th Congress).

The bill also provides that an immigration judge may release a permanent resident from detention if the alien can demonstrate that he or she is prima facie eligible for one of the four forms of relief, would not pose a danger to persons, property, or national security, and would likely appear at all future proceedings.

The Attorney General must prepare an annual report to Congress on the utilization of the provisions of the bill. The bill will then cease to have effect as of the later of 3 years after the date on which a final rule implementing the bill is promulgated or December 31, 2005. At such time, Congress can review the effects of the bill and decide whether it merits extension.

HEARINGS

No hearings were held on H.R. 1452.

COMMITTEE CONSIDERATION

On July 23, 2002, the Committee met in open session and ordered favorably reported the bill H.R. 1452 with amendment by a recorded vote of 18–15, a quorum being present.

VOTE OF THE COMMITTEE

There was one recorded vote on final passage. The bill was adopted 18–15, a quorum being present.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Hyde	X		
Mr. Gekas		X	
Mr. Coble		X	
Mr. Smith (Texas)		X	
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Barr		X	
Mr. Jenkins		X	
Mr. Cannon	X		
Mr. Graham		X	
Mr. Bachus			
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa	X		
Ms. Hart	X		
Mr. Flake		X	
Mr. Pence		X	
Mr. Forbes		X	
Mr. Conyers	X		
Mr. Frank	X		
Mr. Berman	X		
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Meehan	X		
Mr. Delahunt			
Mr. Wexler			
Ms. Baldwin	X		

ROLLCALL NO. 1—Continued

	Ayes	Nays	Present
Mr. Weiner	X		
Mr. Schiff	X		
Mr. Sensenbrenner, Chairman	X		
Total	18	15	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

H.R. 1452 does not authorize funding. Therefore, clause 3(c) of rule XIII of the Rules of the House of Representatives is inapplicable.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1452, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 11, 2002.

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1452, the Family Reunification Act of 2002.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226–2860.

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 1452—Family Reunification Act of 2002.

CBO estimates that enacting H.R. 1452 would result in no significant net cost to the Federal Government. The bill would affect direct spending, so pay-as-you-go procedures would apply, but we estimate that the net effects would be insignificant. H.R. 1452 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no significant costs on State, local, or tribal governments.

H.R. 1452 would permit the Immigration and Naturalization Service (INS) to cancel the removal (deportation) of certain permanent resident aliens convicted of specified aggravated felonies. Under current law, such felons generally are deported. The bill's provisions would terminate 3 years after the issuance of final regulations to implement the legislation, or on December 31, 2005, whichever is later. H.R. 1452 also would apply retroactively to persons removed before enactment if such individuals apply to reopen removal proceedings within 1 year of the bill's implementation.

Enacting H.R. 1452 would increase the number of applications for cancellation of removal over the next 3 years. Based on information from the INS about the number of permanent aliens convicted of aggravated felonies who were deported in recent years, the number of applications for removal could increase by several thousand each year. The number of cancellations, however, is limited to 4,000 annually, and roughly 3,000 cancellations annually have been granted in recent years. The INS would collect a fee of $155 to adjudicate applications for cancellation of removal, so the agency could collect an additional $500,000 or so annually in offsetting receipts (a credit against direct spending) over the next 3 years, assuming about 3,000 more people apply for cancellations under the bill each year. The agency is authorized to spend such fees without further appropriation, so the net impact on INS would be negligible.

The bill would increase costs for Federal public benefits, assuming the annual limit on cancellations of removal will not be met under current law and that additional individuals would be granted cancellation of removal under the legislation. Based on the number of cancellations of removal granted over the last several years, CBO expects that the cost of additional Federal public benefits would not be significant.

The CBO staff contacts for this estimate are Mark Grabowicz, who can be reached at 226–2860, and Valerie Baxter Womer, who can be reached at 226–2820. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article 1, section 8, clause 4 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Section 1. Short Title

The short title of H.R. 1452 is the "Family Reunification Act of 2002."

Section 2. Cancellation of Removal

As currently written, aliens who have been convicted of aggravated felonies as defined in section 101(a)(43) of the Immigration and Nationality Act (INA) are ineligible for cancellation of removal under section 240A(a) of the INA. Section 2 redesignates current section 240A(a) of the INA, which allows lawful permanent resident aliens who have not been convicted of an aggravated felony to apply for cancellation of removal, as section 240A(a)(1). Section 2 creates four new avenues of relief for certain lawful permanent resident aliens who have been convicted of aggravated felonies, with eligibility for relief based in part on provisions limiting the mandatory minimum penalties in sentencing guidelines (18 U.S.C. § 3553). None of those four forms of relief are available to aliens who have been convicted of murder, rape, or sexual abuse of a minor.

These four new forms of cancellation of removal can only be granted by the Attorney General or Deputy Attorney General, without delegation to any other official. It is anticipated that the Attorney General and/or Deputy Attorney General will appoint a staff to review applications for cancellation of removal under these provisions, and draft proposed decisions under the direction of either or both of those officials. The Attorney General or Deputy Attorney General will then either approve the decision, or send the draft back for necessary changes. The decision will be purely in the discretion of the Attorney General or Deputy Attorney General, and is not appealable.

Proposed section 240A(a)(2) of the INA would allow an alien who has been convicted of an aggravated felony that is not a crime of violence as defined in 18 U.S.C. § 16 to apply for cancellation of removal. In order to qualify for cancellation, the alien must have been a lawful permanent resident for at least 5 years and satisfy the residence requirements in proposed section 240A(a)(6) of the INA. The alien would be eligible for cancellation under this provision if the alien: (1) was convicted of a single non-violent aggravated felony (or multiple aggravated felonies arising out of a single scheme) for which the alien received a sentence of 4 years or less, or was convicted of two non-violent aggravated felonies for which the alien received a sentence of 4 years or less, but was never actually imprisoned; (2) was not an organizer or leader of those aggravated felony or felonies; (3) has, in the circumstances set forth in proposed section 240A(a)(7) of the INA, been certified to have provided all information regarding the aggravated felony or felonies to the agency that criminally prosecuted the alien; and (4) has never been imprisoned for any other offense.

Proposed section 240A(a)(3) of the INA would allow an alien who has been convicted of an aggravated felony that is a crime of violence as defined in 18 U.S.C. § 16 to apply for cancellation of removal. In order to qualify for cancellation under this provision, the alien must have been a lawful permanent resident for at least 5 years, and satisfy the residence requirements in proposed section 240A(a)(6) of the INA. The alien may seek cancellation under this provision if the alien: (1) was convicted of a single violent aggravated felony (or multiple aggravated felonies arising out of a single scheme) for which the alien received a sentence of 2 years or less, or was convicted of two violent aggravated felonies for which the

alien received a sentence of 2 years or less, but was never actually imprisoned; (2) was not an organizer or leader of those aggravated felony or felonies; (3) has in the circumstances set forth in proposed section 240A(a)(7) of the INA, been certified to have provided all information regarding the aggravated felony or felonies to the agency that criminally prosecuted the alien; (4) has not been convicted of an aggravated felony that resulted in death or serious bodily injury to another person; and (5) has never been imprisoned for any other offense.

The language in sections 240A(a)(2)(E) and 240A(a)(3)(F) tracks 18 U.S.C. § 3553(f)(4), and it is expected that precedent in this body of law applicable to sentencing guidelines would also be used to determine whether an alien fits the definitions under this bill. Similarly, section 240A(a)(3)(D) tracks 18 U.S.C. § 3553(f)(3), with "serious bodily injury" also being defined in 18 U.S.C. § 1365(g)(3), and case law interpreting that section would be instructive also in determining what constitutes "serious bodily injury." The certifications described in 240A(a)(7) also track the limitation on mandatory minimum penalties in 18 U.S.C. § 3553(f)(5), and precedent from this law would also be instructive. For example, 18 U.S.C. § 3553(f)(5) provides: "[T]he fact that the defendant has no relevant or useful other information to provide or that the Government is already aware of the information shall not preclude a determination by the court that the defendant has complied with this requirement." It is expected that this same standard would apply under the bill and that an agency would not certify to the Attorney General an alien's non-compliance under 240A(a)(7)(B)(i) in circumstances where an alien "has no relevant or useful other information to provide" or on the grounds that the agency "is already aware of the information" the alien provided.

Proposed sections 240A(a)(4) and (5) of the INA would allow certain permanent resident aliens who were originally admitted to the United States as minors to seek cancellation of removal.

Under section 240A(a)(4) of the INA, an alien who was admitted to the United States when under 10 years of age, who resided continuously for 7 years after that admission, and who has been a lawful permanent resident for 5 years would be able to apply for cancellation of removal, provided that the alien has not been incarcerated for more than two aggravated felonies. For purposes of this subparagraph, multiple felonies arising out of a single scheme of criminal misconduct are considered a single felony.

Similarly, proposed section 240A(a)(5) of the INA would allow an alien who was originally admitted to the United States before the age of 16 to apply for cancellation of removal. In order to qualify for cancellation under this provision, the alien must be a lawful permanent resident for at least 5 years, have resided in the United States continuously for 7 years after having been admitted while under the age of 16 and before committing an aggravated felony, and not have been incarcerated for a third aggravated felony. Again, for purposes of assessing eligibility for cancellation under this provision, multiple felonies arising out of a single scheme of criminal misconduct are considered to be a single felony.

Proposed section 240A(a)(6) of the INA contains additional residence requirements that an alien must meet to qualify for cancellation of removal under proposed sections 240A(a)(2) and (3). If the

alien seeking cancellation under those provisions commits an aggravated felony after the date of enactment of the Family Reunification Act, the alien must have resided in the United States continuously for 7 years after a lawful admission and prior to the commission of the aggravated felony, or if the alien is incarcerated for the aggravated felony, for 10 years after a lawful admission excluding the time between the commencement of the commission of the offense and the date that the alien is released from incarceration for the offense, to be eligible for cancellation. If the alien seeking cancellation under those provisions was incarcerated for an aggravated felony before the enactment of the Family Reunification Act, but has not been convicted of an aggravated felony committed after the enactment date, the alien must show that he or she has resided in the United States continuously after a lawful admission for 7 years before incarceration, or continuously after a lawful admission for 10 years, excluding the period of incarceration for the aggravated felony, to be eligible for cancellation. If the alien seeking cancellation of removal under proposed sections 240A(a)(2) and (3) of the INA has not been incarcerated for any aggravated felony, the alien must show that he or she has resided in the United States continuously for 7 years after a lawful admission.

Proposed section 240A(a)(7) of the INA contains a mechanism by which the prosecutor of an aggravated felony committed by an alien seeking relief under proposed sections 240(a)(2) and (3) of the INA may block the alien from seeking relief, where the alien has failed to truthfully provide the prosecutor all information and evidence that the alien has about the aggravated felony and any other offenses that were part of the same scheme of criminal misconduct. Under that provision, the Attorney General may notify the prosecutor within 14 days after the alien applies for cancellation that the prosecutor has the opportunity to object, within 60 days, to cancellation on the ground that the alien has failed to provide the prosecutor with such information. The Attorney General is not required to send that notice, and if the Attorney General fails to send the notice in a timely manner, cancellation of removal may not be pretermitted on the ground that the alien has failed to provide such information. If the prosecutor certifies within 60 days that the alien has failed to provide such information, the alien has 21 days to provide such information to the prosecutor. Within 21 days of receiving that information from the alien, the prosecutor may revoke the certification blocking the alien from receiving cancellation. The Attorney General may consider a revocation that is received after that final 21-day period up to the issuance of a final order of removal, but the alien may not seek a continuance for receipt of the revocation. A decision by the Attorney General to deny an application for cancellation of removal because a prosecutor's certification was not revoked, or not revoked in a timely manner, cannot be reviewed by any court, however. The consequences of an applicant's failure to provide information to a prosecutor truthfully must be explained on the application form for cancellation of removal under proposed sections 240A(a)(2) and (3).

Proposed section 240A(a)(8) clarifies terms used in proposed section 240A(a). In accordance with that provision, references to a term of imprisonment or a sentence in section 240A(a) of the INA include a period of incarceration or confinement ordered by a court,

regardless of any suspension in the imposition or execution of that imprisonment or sentence in whole or in part, but does not include a separate period of probation. Thus, an alien who has received a sentence of 2 years imprisonment, execution of which is suspended, and 2 years probation for an aggravated felony is deemed to have received a 2-year sentence for that offense, not a 4-year sentence.

Section 3. Change in Conditions for Terminating a Period of Continuous Residence or Continuous Physical Presence

Section 3 amends section 240A(d)(1) of the INA to limit the date at which a period of continuous residence or physical presence is deemed to end for purposes of the cancellation of removal provisions. Currently, a period of continuous residence or physical presence is deemed to end when the alien receives a notice to appear for removal proceedings or when the alien commits an offense that renders the alien removable under sections 212(a)(2) or 237(a)(2) or (4) of the INA. Under this amendment, continuous residence or physical presence will end only when the alien is served the notice to appear.

Section 4. Amending the Conditions of Admission for Lawful Permanent Residents

Under current law, a lawful permanent resident who commits a criminal offense identified in section 212(a)(2) of the INA and who subsequently attempts to reenter the United States is deemed to be an alien seeking admission to the United States, rendering the alien subject to removal as an arriving alien, unless the alien received a waiver under section 212(h) of the INA or cancellation of removal prior to seeking reentry. Section 4 amends section 101(a)(13)(C) of the INA, which defines the instances in which a returning lawful permanent resident alien is deemed to be seeking admission. As amended, a permanent resident alien who has committed a criminal offense outside of the United States and who subsequently seeks to reenter the United States would be deemed to be seeking admission, unless the alien has received a waiver or cancellation of removal prior to seeking reentry. An alien who commits a criminal offense within the United States and who subsequently departs and attempts to reenter the United States would not be deemed to be an arriving alien unless absent from the United States for more than 30 days, or for more than 60 days if the alien was unable to return within 30 days for reasons beyond the alien's control. If an alien who has committed a criminal offense within the United States receives a waiver for that offense or cancellation of removal before attempting to reenter the United States, the alien would not be deemed to be an arriving alien.

Section 5. Release of Nondangerous Aliens

Currently, most aliens who are removable on criminal grounds may not be released from INS custody pending a decision in their cases. Section 5(a) would allow the Attorney General to release a criminal alien who proves that he is prima facie eligible for cancellation of removal under section 240A(a) of the INA, and would not pose a danger to the national security or the safety of persons or property or be flight risk if released. Section 5(b) would allow

the Attorney General to release an alien detained pending removal on the date of enactment who makes such a showing.

Section 6. Clarification of the Effect of the Vacation of a Conviction

Section 6 clarifies the effect of a vacation of a criminal conviction for immigration purposes. Aliens have been successfully seeking relief from the criminal courts that entered convictions against them in order to avoid the immigration consequences of their crimes. Section 6 would amend section 101(a)(48) of the INA to end this abusive practice by clarifying that a criminal conviction remains a conviction for immigration purposes even if vacated, unless the conviction is vacated on the merits or on grounds relating to the violation of a statutory or constitutional right in the underlying proceedings. The vacation of a conviction for immigration purposes alone would not allow an alien to avoid the criminal consequences of that conviction. This provision will require the Attorney General to limit the decision of the Board of Immigration Appeals in *Matter of Rodriguez-Ruiz*, 22 I&N Dec. 1378 (BIA 2000) to the extent that the decision may prevent an Immigration Judge or the Board of Immigration Appeals from reviewing the vacation of a conviction to assess the reasons for the vacation.

Section 7. Effective Date and Special Applicability Rule

Section 7 specifies that the amendments to the INA in the Family Reunification Act of 2002 take effect on enactment and apply to aliens in removal proceedings on the date of enactment, as well as to aliens in proceedings before the effective date who would have been eligible for cancellation of removal under section 240A(a) of the INA as amended, but who were ineligible for cancellation of removal under section 240A(a) before amendment. In addition, the amendments would also apply to cases involving aliens who were in exclusion or deportation proceedings before the date of enactment, but who were ineligible for relief under former section 212(c) of the INA as a result of the amendments in section 440(d) of the Antiterrorism and Effective Death Penalty Act of 1996 (Pub. L. 104–132, 110 Stat. 1277). For the limited purpose of eligibility for relief under section 240A(a) of the INA, as amended by this Act, aliens who were in placed into deportation or exclusion proceedings are considered to be in removal proceedings.

Section 8. Motions to Reopen

An alien eligible for cancellation of removal under section 240A(a) of the Family Reunification Act of 2002 who is not eligible for cancellation under that section of the INA as it is currently appears will be able to file a motion to reopen to apply for cancellation within 1 year of the Attorney General's issuance of regulations implementing the Act. An alien may not, however, be admitted or allowed to enter the United States to file a motion to reopen or to apply for cancellation of removal, except at the Attorney General's discretion. An alien filing a motion to reopen to apply for cancellation of removal under section 240A(a) of the INA, as amended by this Act, will be required to describe or submit prima facie evidence sufficient to establish eligibility for cancellation under that section, as amended.

Any hearings on eligibility for cancellation of removal under section 240A(a) of the INA, as amended, may be held in the United States or abroad. If the hearing is held abroad, the alien may appear before the Attorney General, Deputy Attorney General, or an official that either of those individuals may designate to receive evidence by video phone or similar device, but this provision does not preclude evidence being taken by any of those individuals abroad with the alien appearing in person. The Attorney General has discretion to grant or deny a motion to reopen to apply for cancellation, and that decision may not be reviewed by any court.

Section 9. Timeframe for Issuing Implementing Regulations

The Attorney General will be required to issue an advanced notice of proposed rulemaking implementing the Family Reunification Act of 2002 within 60 days of the enactment of the Act, and to issue final implementing regulations within 90 days of enactment. Those final regulations must take effect within 15 days of the issuance of the final implementing regulations.

Section 10. Sunset

The Family Reunification Act of 2002 and its amendments sunset on December 31, 2005, or 3 years after the date on which final implementing regulations are issued, whichever is later.

Section 11. Annual Report

The Attorney General is required to submit to the House and Senate Judiciary Committees an annual report on the amendments made by the Family Reunification Act of 2002. That report must include the number of aliens who applied for cancellation of removal, release from detention, or any other benefit based on the Act, and the number of those applications that were approved. That report must also contain a list of the crimes committed by the aliens who applied for cancellation of removal, release from detention, or other benefit under the act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

IMMIGRATION AND NATIONALITY ACT

* * * * * * *

TITLE I—GENERAL

DEFINITIONS

SECTION 101. (a) As used in this Act—
(1) * * *

* * * * * * *

(13)(A) * * *

* * * * * * *

(C) An alien lawfully admitted for permanent residence in the United States shall not be regarded as seeking an admission into the United States for purposes of the immigration laws unless the alien—

(i) has abandoned or relinquished that status**[**,**]***;*

(ii) has been absent from the United States for a continuous period in excess of 180 days**[**,**]***;*

(iii) has engaged in illegal activity after having departed the United States**[**,**]***;*

(iv) has departed from the United States while under legal process seeking removal of the alien from the United States, including removal proceedings under this Act and extradition proceedings**[**,**]***;*

[(v) has committed an offense identified in section 212(a)(2), unless since such offense the alien has been granted relief under section 212(h) or 240A(a), or**]**

(v) has committed outside the United States an offense identified in section 212(a)(2), unless, since such offense, the alien has been granted relief under section 212(h) or 240A(a), or under section 212(c) (before its repeal by section 304(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (110 Stat. 3009–597));

(vi) has committed in the United States an offense identified in section 212(a)(2), and has been absent from the United States for a continuous period in excess of 30 days since committing such offense (or, if the absence after the 30th day was beyond the alien's control, for a continuous period in excess of 60 days), unless, since such offense, the alien has been granted relief under section 212(h) or 240A(a), or under section 212(c) (before its repeal by section 304(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (110 Stat. 3009–597)); or

[(vi)**]** *(vii)* is attempting to enter at a time or place other than as designated by immigration officers or has not been admitted to the United States after inspection and authorization by an immigration officer.

* * * * * * *

(48)(A) * * *

* * * * * * *

(C) Any conviction entered by a court that otherwise would be considered a conviction under this paragraph shall continue to be so considered notwithstanding a vacation of that conviction, unless the conviction is vacated—

(i) on the merits; or

(ii) on grounds relating to a violation of a statutory or constitutional right in the underlying criminal proceeding.

* * * * * * *

TITLE II—IMMIGRATION

* * * * * * *

CHAPTER 4—INSPECTION, APPREHENSION, EXAMINATION, EXCLUSION, AND REMOVAL

* * * * * * *

APPREHENSION AND DETENTION OF ALIENS

SEC. 236. (a) * * *

* * * * * * *

(c) DETENTION OF CRIMINAL ALIENS.—

(1) * * *

[(2) RELEASE.—The Attorney General may release an alien described in paragraph (1) only if the Attorney General decides pursuant to section 3521 of title 18, United States Code, that release of the alien from custody is necessary to provide protection to a witness, a potential witness, a person cooperating with an investigation into major criminal activity, or an immediate family member or close associate of a witness, potential witness, or person cooperating with such an investigation, and the alien satisfies the Attorney General that the alien will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding. A decision relating to such release shall take place in accordance with a procedure that considers the severity of the offense committed by the alien.]

(2) RELEASE.—

(A) IN GENERAL.—The Attorney General may release an alien described in paragraph (1) only in accordance with subparagraph (B) or (C). A decision relating to release under this paragraph shall take place in accordance with a procedure that considers the severity of any offense committed by the alien.

(B) PROTECTION FOR WITNESSES, POTENTIAL WITNESSES, AND PERSONS COOPERATING WITH CRIMINAL INVESTIGATIONS.—The Attorney General may release an alien described in paragraph (1) if—

(i) the Attorney General decides pursuant to section 3521 of title 18, United States Code, that release of the alien from custody is necessary to provide protection to a witness, a potential witness, a person cooperating with an investigation into major criminal activity, or an immediate family member or close associate of a witness, potential witness, or person cooperating with such an investigation; and

(ii) the alien satisfies the Attorney General that the alien will not pose a danger to the national security of the United States or the safety of persons or property and is likely to appear for any scheduled proceeding.

(C) PERMANENT RESIDENT ALIENS ELIGIBLE FOR CANCELLATION OF REMOVAL.—The Attorney General may release an alien described in paragraph (1) if the alien demonstrates, by a preponderance of the evidence, that the alien—

(i) has prima facie evidence sufficient to establish that the alien is eligible for cancellation of removal under section 240A(a); and

(ii) will not pose a danger to the national security of the United States or the safety of persons or property and is likely to appear for any scheduled proceeding.

* * * * * * *

CANCELLATION OF REMOVAL; ADJUSTMENT OF STATUS

SEC. 240A. [(a) CANCELLATION OF REMOVAL FOR CERTAIN PERMANENT RESIDENTS.—The Attorney General may cancel removal in the case of an alien who is inadmissible or deportable from the United States if the alien—

[(1) has been an alien lawfully admitted for permanent residence for not less than 5 years,

[(2) has resided in the United States continuously for 7 years after having been admitted in any status, and

[(3) has not been convicted of any aggravated felony.]

(a) CANCELLATION OF REMOVAL FOR CERTAIN PERMANENT RESIDENTS.—

(1) PERMANENT RESIDENTS NOT CONVICTED OF ANY AGGRAVATED FELONY.—The Attorney General may cancel removal in the case of an alien who is inadmissible to, or deportable from, the United States, if the alien—

(A) has been an alien lawfully admitted for permanent residence for not less than 5 years;

(B) resided in the United States continuously for 7 years after having been admitted in any status; and

(C) has not been convicted of any aggravated felony.

(2) PERMANENT RESIDENTS CONVICTED OF A NONVIOLENT AGGRAVATED FELONY.—The Attorney General may cancel removal in the case of an alien who is inadmissible to, or deportable from, the United States, if the alien—

(A) has been an alien lawfully admitted for permanent residence for not less than 5 years;

(B) satisfies the residence requirements of paragraph (6);

(C) has never been convicted of—

(i) an act of murder, rape, or sexual abuse of a minor;

(ii) any crime of violence (as defined in section 16 of title 18, United States Code); or

(iii) an attempt or conspiracy to commit an offense described in clause (i) or (ii);

(D) has been convicted of—

(i) a single aggravated felony for which the alien was sentenced to serve a term of imprisonment of 4 years or less;

(ii) multiple aggravated felonies arising out of a single scheme of criminal misconduct for which the alien was sentenced to serve, in the aggregate, a term of imprisonment of 4 years or less; or

(iii) 2 aggravated felonies arising out of separate schemes of criminal misconduct for which the alien was sentenced to serve, in the aggregate, a term of imprisonment of 4 years or less, but for neither of which the alien was actually incarcerated;

(E) was not, in the commission of the aggravated felony or felonies described in subparagraph (D)—

(i) an organizer, leader, manager, or supervisor of others; or

(ii) engaged in a continuing criminal enterprise (as defined in section 408(c) of the Controlled Substances Act (21 U.S.C. 848(c)));

(F) has never been incarcerated for any offense except—

(i) the offense described in clause (i) of subparagraph (D), or another offense that was committed in the course of the same scheme of criminal misconduct; or

(ii) an offense that was committed in the course of the scheme or schemes described in clause (ii) or (iii) of such subparagraph; and

(G) has not been the subject of a timely certification described in paragraph (7) with respect to the aggravated felony or felonies described in subparagraph (D), unless such certification has been revoked pursuant to such paragraph.

(3) PERMANENT RESIDENTS CONVICTED OF AN AGGRAVATED FELONY CLASSIFIED AS A CRIME OF VIOLENCE.—The Attorney General may cancel removal in the case of an alien who is inadmissible to, or deportable from, the United States, if the alien—

(A) has been an alien lawfully admitted for permanent residence for not less than 5 years;

(B) satisfies the residence requirements of paragraph (6);

(C) has never been convicted of—

(i) an act of murder, rape, or sexual abuse of a minor; or

(ii) an attempt or conspiracy to commit an offense described in clause (i);

(D) has never been convicted of any aggravated felony that resulted in death or serious bodily injury to any person other than the alien;

(E) has been convicted of—

(i) a single aggravated felony for which the alien was sentenced to serve a term of imprisonment of 2 years or less;

(ii) multiple aggravated felonies arising out of a single scheme of criminal misconduct for which the alien was sentenced to serve, in the aggregate, a term of imprisonment of 2 years or less; or

(iii) 2 aggravated felonies arising out of separate schemes of criminal misconduct for which the alien was sentenced to serve, in the aggregate, a term of imprisonment of 2 years or less, but for neither of which the alien was actually incarcerated;

(F) was not, in the commission of the aggravated felony or felonies described in subparagraph (E)—

(i) an organizer, leader, manager, or supervisor of others; or

(ii) engaged in a continuing criminal enterprise (as defined in section 408(c) of the Controlled Substances Act (21 U.S.C. 848(c)));

(G) has never been incarcerated for any offense except—

(i) the offense described in clause (i) of subparagraph (E), or another offense that was committed in the course of the same scheme of criminal misconduct; or

(ii) an offense that was committed in the course of the scheme or schemes described in clause (ii) or (iii) of such subparagraph; and

(H) has not been the subject of a timely certification described in paragraph (7) with respect to the aggravated felony or felonies described in subparagraph (E), unless such certification has been revoked pursuant to such paragraph.

(4) PERMANENT RESIDENTS ADMITTED BEFORE AGE 10.—The Attorney General may cancel removal in the case of an alien who is inadmissible to, or deportable from, the United States, if the alien—

(A) has been an alien lawfully admitted for permanent residence for not less than 5 years;

(B) resided in the United States continuously for 7 years after having been admitted in any status when the alien was under 10 years of age;

(C) has never been convicted of—

(i) an act of murder, rape, or sexual abuse of a minor; or

(ii) an attempt or conspiracy to commit an offense described in clause (i); and

(D) has never been incarcerated for a third (or succeeding) aggravated felony, except that multiple felonies arising out of a single scheme of criminal misconduct shall be considered a single felony for purposes of this subparagraph.

(5) PERMANENT RESIDENTS ADMITTED BEFORE AGE 16.—The Attorney General may cancel removal in the case of an alien who is inadmissible to, or deportable from, the United States, if the alien—

(A) has been an alien lawfully admitted for permanent residence for not less than 5 years;

(B) resided in the United States continuously for 7 years—

(i) before the alien committed any aggravated felony; and

(ii) after having been admitted in any status when the alien was under 16 years of age;

(C) has never been convicted of—

(i) an act of murder, rape, or sexual abuse of a minor; or

(ii) an attempt or conspiracy to commit an offense described in clause (i); and

(D) has never been incarcerated for a third (or succeeding) aggravated felony, except that multiple felonies arising out of a single scheme of criminal misconduct shall be considered a single felony for purposes of this subparagraph.

(6) RESIDENCE REQUIREMENTS FOR CERTAIN ALIENS.—In the case of an alien seeking relief under paragraph (2) or (3),

the residence requirements described in this paragraph are as follows:

(A) If the alien has been convicted of any aggravated felony committed after the date of the enactment of the Family Reunification Act of 2002, the alien is required to have resided in the United States—

(i) continuously for 7 years after having been admitted in any status and prior to the commission of such aggravated felony; or

(ii) continuously for 10 years after having been admitted in any status, except that, if the alien is incarcerated with respect to such aggravated felony, the period beginning on the date on which such aggravated felony was committed and ending on the last day of such term of incarceration shall be excluded in determining continuous residence under this clause.

(B) If the alien has not been convicted of an aggravated felony committed after the date of the enactment of the Family Reunification Act of 2002, but has otherwise been incarcerated for any aggravated felony, the alien is required to have resided in the United States—

(i) continuously for 7 years after having been admitted in any status and prior to the commencement of such term of incarceration; or

(ii) continuously for 10 years after having been admitted in any status, except that any term of incarceration for any aggravated felony shall be excluded in determining continuous residence under this clause.

(C) If the alien is not described in subparagraph (A) or (B), the alien is required to have resided in the United States continuously for 7 years after having been admitted in any status.

(7) CERTIFICATIONS.—

(A) IN GENERAL.—In the case of an alien seeking relief under paragraph (2) or (3), not later than 2 weeks after the alien files an application for such relief, the Attorney General may notify each agency that prosecuted an aggravated felony referred to in paragraph (2)(D) or (3)(E), as the case may be.

(B) CONTENTS.—The notification shall inform the agency that it has an opportunity—

(i) to certify to the Attorney General, not later than 60 days after the date on which the notification is mailed, that the alien has not truthfully provided to the agency all information and evidence the alien has concerning such felony or felonies, and any other offense or offenses that were part of the same scheme of criminal misconduct as such felony or felonies; and

(ii) on those grounds, to object to cancellation of removal.

(C) PROVISION TO ALIEN.—The Attorney General shall mail any certification timely made pursuant to subparagraph (B) with respect to an alien to such alien. The alien shall have an opportunity, during the 21-day period beginning on the date on which the certification is mailed, to

truthfully provide to the agency all information and evidence which the agency certifies has not been provided.

(D) REVOCATION OF CERTIFICATION.—

(i) IN GENERAL.—The agency may, during the 21-day period beginning after the end of the period described in subparagraph (C), revoke any certification made pursuant to subparagraph (B). Any revocation of a certification shall void such certification.

(ii) UNTIMELY REVOCATIONS.—A revocation under this subparagraph that is not timely made may be considered by the Attorney General in the Attorney General's discretion if it is made prior to the issuance of a final order of removal, but the absence of a timely revocation shall not be the basis for any continuance or delay of proceedings. Any determination to deny relief based in whole or in part on a revocation that is not made, or not timely made, shall not be subject to administrative or judicial review in any forum.

(E) FORMS REQUIREMENT.—The Attorney General shall ensure that the consequences under this paragraph of failing to provide information or evidence with respect to aggravated felonies are clearly explained in any form promulgated by the Attorney General that may be used to apply for relief under paragraph (2) or (3).

(F) CONSTRUCTION.—This paragraph, and paragraphs (2) and (3), shall not be construed to require the Attorney General to notify any agency under subparagraph (A). If the Attorney General fails to send, or fails timely to send, the notification described in such subparagraph, the alien shall be deemed not to be the subject of a certification.

(8) CLARIFICATION WITH RESPECT TO CERTAIN REFERENCES.—Any reference in this subsection to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law, regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part. However, a period of probation is not a term of imprisonment or a sentence for purposes of this subsection.

(9) LIMITATION ON DELEGATION.—Cancellation of removal under paragraph (2), (3), (4), or (5) may be granted only by the Attorney General or Deputy Attorney General. No delegation of such authority to any other official may be made.

* * * * * * *

(d) SPECIAL RULES RELATING TO CONTINUOUS RESIDENCE OR PHYSICAL PRESENCE.—

[(1) TERMINATION OF CONTINUOUS PERIOD.—For purposes of this section, any period of continuous residence or continuous physical presence in the United States shall be deemed to end (A) except in the case of an alien who applies for cancellation of removal under subsection (b)(2), when the alien is served a notice to appear under section 239(a), or (B) when the alien has committed an offense referred to in section 212(a)(2) that renders the alien inadmissible to the United States under section 212(a)(2) or removable from the United States under section 237(a)(2) or 237(a)(4), whichever is earliest.]

(1) TERMINATION OF CONTINUOUS PERIOD.—For purposes of this section, any period of continuous residence or continuous physical presence in the United States shall be deemed to end, except in the case of an alien who applies for cancellation of removal under subsection (b)(2), when the alien is served a notice to appear under section 239(a).

* * * * * * *

MARKUP TRANSCRIPT

BUSINESS MEETING

TUESDAY, JULY 23, 2002

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:00 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. [Chairman of the Committee] presiding.

Chairman SENSENBRENNER. The Committee will be in order. A working quorum is present. Pursuant to notice, I now call up the bill H.R. 1452, the "Family Reunification Act of 2001," for purposes of markup and move its favorable recommendation to the House. Without objection, the bill will be considered as read and open for amendment at any point.

[The bill, H.R. 1452, follows:]

I

107TH CONGRESS
1ST SESSION

H. R. 1452

To amend the Immigration and Nationality Act to permit certain long-term permanent resident aliens to seek cancellation of removal under such Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 4, 2001

Mr. FRANK (for himself, Mr. FROST, Mr. DIAZ-BALART, Mr. MCGOVERN, Mr. KENNEDY of Rhode Island, Ms. JACKSON-LEE of Texas, Mr. BALDACCI, Mr. CAPUANO, Mr. DELAHUNT, Mr. FILNER, Mr. MCDERMOTT, Mrs. MINK of Hawaii, Mr. RANGEL, Mr. RODRIGUEZ, Ms. SCHAKOWSKY, Mr. GEORGE MILLER of California, and Mr. LANGEVIN) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To amend the Immigration and Nationality Act to permit certain long-term permanent resident aliens to seek cancellation of removal under such Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Family Reunification Act of 2001''.

SEC. 2. RESTORING ATTORNEY GENERAL'S DISCRETION TO GRANT CANCELLATION OF REMOVAL TO LONG-TERM PERMANENT RESIDENT ALIENS WHEN APPROPRIATE.

(a) CANCELLATION OF REMOVAL FOR CERTAIN PERMANENT RESIDENTS.—Section 240A(a) of the Immigration and Nationality Act (8 U.S.C. 1229b(a)) is amended to read as follows:

"(a) CANCELLATION OF REMOVAL FOR CERTAIN PERMANENT RESIDENTS.—

"(1) IN GENERAL.—The Attorney General may cancel removal in the case of an alien who is inadmissible or deportable from the United States, if the alien—

"(A) has been an alien lawfully admitted for permanent residence for not less than 5 years;

"(B) has resided in the United States continuously for 7 years after having been admitted in any status; and

"(C) has not been convicted of—

"(i) an aggravated felony or felonies for which the alien has been sentenced, in the aggregate, to a term of imprisonment of 5 years or more; or

"(ii) in the case of sentencing imposed under a system of indeterminate sentencing (as defined in section 20101 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13701)), an aggravated felony or felonies for which—

"(I) the midpoint of the statutory range of sentence applicable to the felony or felonies is, in the aggregate, 5 years or more; or

"(II) the alien has served, in the aggregate, a term of imprisonment of 5 years or more.

"(2) NO DANGER TO PERSONS OR PROPERTY.—In the case of an alien convicted of an aggravated felony involving violence, the Attorney General may exercise the discretion described in paragraph (1) only after making a written determination that the action poses no danger to the safety of persons or property.

"(3) DEFINITION OF TERM OF IMPRISONMENT.—For purposes of this subsection (and any other determination under this Act made solely with respect to an alien whose removal is canceled under this subsection), section 101(a)(48)(B) shall be ap-

plied so as to exclude from the time periods defined in the section any period of suspension of the imposition or execution of a term of imprisonment or a sentence in whole or in part.

"(4) RELEASE FROM DETENTION PENDING DECISION.—Notwithstanding section 236(c)(2), the Attorney General may release an alien applying for cancellation of removal under this subsection, pending a decision on whether the alien is to be removed from the United States, if the alien demonstrates to the satisfaction of the Attorney General that the alien is not a threat to the community and is likely to appear for any scheduled proceeding. A decision relating to such release shall be made in accordance with a procedure that considers the severity of the offense committed by the alien.".

(b) CANCELLATION OF REMOVAL FOR CERTAIN OTHER PERMANENT RESIDENTS FOR URGENT HUMANITARIAN REASONS OR SIGNIFICANT PUBLIC BENEFIT.—Section 240A of the Immigration and Nationality Act (8 U.S.C. 1229b) is amended by adding at the end the following:

"(f) CANCELLATION OF REMOVAL FOR CERTAIN PERMANENT RESIDENTS FOR URGENT HUMANITARIAN REASONS OR SIGNIFICANT PUBLIC BENEFIT.—

"(1) IN GENERAL.—In the case of an alien otherwise eligible for cancellation of removal under subsection (a), except that the alien has been convicted of an aggravated felony that renders the alien unable to satisfy the requirement in subsection (a)(1)(C), the Attorney General may cancel removal of the alien under such conditions as the Attorney General may prescribe, but only—

"(A) on a case-by-case basis for urgent humanitarian reasons, significant public benefit (including assuring family unity), or any other sufficiently compelling reason; and

"(B) after making a written determination that the cancellation of removal poses no danger to the safety of persons or property.

"(2) RELEASE FROM DETENTION PENDING DECISION.—Subsection (a)(4) shall apply to release of an alien applying for cancellation of removal under this subsection in the same manner as such subsection applies to an alien applying under subsection (a).".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect as if included in the enactment of section 304 of the Illegal Immigration

Reform and Immigrant Responsibility Act of 1996 (Public Law 104–208; 110 Stat. 3009–587).

SEC. 3. CHANGE IN CONDITIONS FOR TERMINATION OF PERIOD OF CONTINUOUS RESIDENCE OR CONTINUOUS PHYSICAL PRESENCE.

(a) IN GENERAL.—Section 240A(d)(1) of the Immigration and Nationality Act (8 U.S.C. 1229b(d)(1)) is amended to read as follows:

"(1) TERMINATION OF CONTINUOUS PERIOD.—

"(A) IN GENERAL.—For purposes of this section, any period of continuous residence or continuous physical presence in the United States of an alien shall be deemed to end upon the alien's failure to attend a proceeding under section 240, unless—

"(i) the Attorney General determines not to seek a removal order in absentia under section 240(b)(5)(A) based on such failure;

"(ii) any removal order entered in absentia under such section based on such failure is rescinded under section 240(b)(5)(C); or

"(iii) the alien demonstrates that—

"(I) the failure to appear was inadvertent or due to reasonable cause; and

"(II) within a relatively brief period subsequent to such failure, the alien presented himself or herself in person to an immigration officer and made known the reasons for such failure.

"(B) CONSTRUCTION.—In a case described in clause (i), (ii), or (iii) of subparagraph (A), the alien's failure to attend the proceeding under section 240 shall not be construed to cause a break in the continuity of residence or physical presence.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the enactment of section 304 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104–208; 110 Stat. 3009–587).

SEC. 4. RELIEF FOR CERTAIN PERMANENT RESIDENT ALIENS IN EXCLUSION, DEPORTATION, OR REMOVAL PROCEEDINGS.

(a) IN GENERAL.—Notwithstanding any other provision of law, including section 240A of the Immigration

and Nationality Act (8 U.S.C. 1229b), an alien, whether physically present in the United States or not, who was lawfully admitted for permanent residence on April 1, 1997, and who is or was in exclusion, deportation, or removal proceedings on or after such date by reason of having committed a criminal offense before such date may—

(1) request discretionary administrative relief from exclusion, deportation, or removal based on such offense under the provisions of the Immigration and Nationality Act in effect on the date of the commission of such offense and without regard to the provisions of paragraphs (5) and (7) of section 309(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1101 note); and

(2) appeal for administrative review of a denial (rendered before, on, or after the date of the enactment of this Act) of discretionary relief from exclusion, deportation, or removal based on such offense under the provisions of the Immigration and Nationality Act in effect on the date of the commission of such offense and without regard to the provisions of paragraphs (5) and (7) of section 309(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1101 note).

(b) NO DANGER TO PERSONS OR PROPERTY.—In the case of an alien convicted of an aggravated felony involving violence, the Attorney General may reverse under subsection (a) a denial of discretionary relief rendered before the date of the enactment of this Act only after making a written determination that the action poses no danger to the safety of persons or property.

SEC. 5. APPLICATIONS FOR RELIEF.

(a) ESTABLISHMENT OF APPLICATION PROCESS.—Notwithstanding section 240(c)(6) of the Immigration and Nationality Act (8 U.S.C. 1229a(c)(6)) or any other limitation imposed by law on motions to reopen exclusion, deportation, or removal proceedings, the Attorney General shall establish a process (whether through permitting the reopening of such a proceeding or otherwise) under which an alien, whether physically present in the United States or not, who is or was in such a proceedings before the date of the enactment of this Act (whether or not the alien has been excluded, deported, or removed as of such date)—

(1) may apply (or reapply) for cancellation of removal and release from detention under section 240A of the Immigration and Nationality Act, as amended by sections 2 and 3 of this Act, if the alien has become eligible for cancellation of removal as a

result of one or more of the amendments made by such sections; or

(2) may apply (or reapply) for discretionary relief under section 4 of this Act, if the alien is eligible for such relief.

(b) PAROLE.—The Attorney General should exercise the parole authority under section 212(d)(5)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)(A)) for the purpose of permitting aliens who are not physically present in the United States to participate in the process established under subsection (a). An alien so paroled shall not be treated as paroled into the United States for purposes of section 201(c)(4) of the Immigration and Nationality Act (8 U.S.C. 1151(c)(4)).

SEC. 6. PERMITTING CERTAIN PERMANENT RESIDENT ALIENS TO RETURN WITHOUT SEEKING ADMISSION.

Section 101(a)(13)(C) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(13)(C)) is amended—

(1) in clause (iv), by adding ''or'' at the end;

(2) by striking clause (v); and

(3) by redesignating clause (vi) as clause (v).

○

Chairman SENSENBRENNER. The Chair recognizes himself for 5 minutes to explain the bill.

Immigration law prior to 1996 allowed too large a number of criminal aliens to seek relief from deportation. While relief was discretionary on behalf of an immigration judge, aliens could appeal denial of relief to Federal Court. During the early 1990's, applications for relief grew by the thousands and the percentage granted began to pass 50 percent. The public safety clearly could not allow immigration judges the unfettered level of discretion they possessed. Congress felt that reform was in order.

In 1995 and 1996, this Committee and then the House passed the Immigration in the National Interest Act, providing that a permanent resident could not seek relief from deportation if he had been convicted of an aggravated felony for which he was sentenced to at least 5 years in prison.

Some thought that the House had not gone far enough. *The Washington Times* published an editorial stating that, "For some reason, the House conference staff is trying to strip the criminal alien deportation amendments won by Senator Spencer Abraham." Conference committee resulted in enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. This legislation provided that permanent residents who had committed any aggravated felonies could not seek relief from deportation.

IIRIRA has been a great success. Since 1996, the number of criminal aliens deported annually has almost doubled from about 36,000 in fiscal 1996 to about 69,000 in fiscal 2000.

However, a disturbing number of cases have arisen where permanent resident aliens have been deported for offenses for which many do not feel merit such a penalty. The first category involves aliens who committed crimes well before the 1996 enactment of the law, that the act reclassified as aggravated felonies. Many of these aliens have fully reformed, raised families, and become productive members of their communities in the ensuing years.

The second category involves aliens who have committed relatively minor crimes. Since an aggravated felony is now defined as any crime of theft or violence for which an alien is sentenced to a year or more in prison, or any drug trafficking offense however small, you can see that crimes as minor as a bar fight that resulted in a battery conviction with no jail time, in certain instances, now carry with them mandatory deportation for permanent residents.

Another category involves aliens who were brought legally to the U.S. when young children and who now face deportation to countries that they no longer even remember, let alone speak the language. Remember, we're not talking here about illegal aliens who are tourists but permanent residents.

Last Congress, the House agreed by a voice vote to a bill that provided that aliens who had committed criminal offenses prior to 1996 that were retrospectively classified as aggravated felonies in 1996 could still seek relief from deportation. This retroactivity fix passed the House under suspension of the rules but was killed in the Senate.

In the 107th Congress, Mr. Frank introduced the bill we're marking up now. I couldn't support H.R. 1452 as originally introduced. It was more expansive than the legislation we passed last Con-

gress. In fact, it provided criminal aliens with relief from deportation broader than available even before 1996.

However, I am pleased to say that Mr. Frank and I have worked out a compromise that strikes an appropriate and fair balance on the issue of relief from deportation for permanent resident aliens. It will give immigration judges the ability to spare these aliens from deportation in cases most of us would view as sympathetic. It would not give immigration judges the unfettered discretion they misused in the past.

We will be offering this compromise as an amendment in the nature of a substitute.

I now yield to the gentleman from Massachusetts, Mr. Frank.

Mr. FRANK. Mr. Chairman, I want to thank you both in the pro forma way that Members thank the Chair for recognition, and in a more profound way for your commitment of time and energy and thought to this legislation.

I want to begin by being very clear that this is not, obviously, as the Chairman said, the bill I introduced. It is not the bill that I thought most called for.

On the other hand, I want to say that as we have worked on it, and as I believe it will be later amended, in an amendment offered by the gentleman from California, it preserves the essence of what I think fairness requires. And it does it in a way that does not jeopardize public safety.

What I believe we will have, at the end of this process, if it goes as I hope it will, is an authorization to the Attorney General—and it will be John Ashcroft, because we are dealing with a fixed period of time here—to decide on a case-by-case basis through his designees that, in particular situations, the law of 1996 worked a hardship, and here is the particular hardship.

I must say, I am less concerned about this going forward. I think it is important to change the law somewhat going forward, but the major difficulties I have seen with this law affected people who were covered by it retroactively. Now, we have in our Constitution, of course, a strict prohibition against ex post facto laws. But it has been held that with regard to immigration matters and the right of noncitizens to remain in this country, that is not as fully enforced as it would be in a purely criminal proceeding against someone. That is, you can go back retroactively and change the immigration status.

In some cases, that's perfectly appropriate. In others, it was not. And here's what we have, and I have many cases of this, and other Members have cases. Indeed, the impulse to begin changing this came in the previous Congress, when our former colleague from Florida, Bill McCollum, who had been a supporter of the 1996 law, encountered a case in his own District which he felt, and I agreed, worked an injustice.

And here is the typical case that I hope would go to the Attorney General if we passed this law and which cannot now be dealt with. Someone, usually a man, but not entirely, at the age of 18, 19, 20, 22 years old, does something wrong, violates the law. It might have been for possession of a small amount of a narcotic, even marijuana. It might have been a bar fight, as the Chairman said. It might have been shoplifting. It might have been a domestic argu-

ment with a girlfriend that escalated. It might have been when someone had drunk too much and got into some difficulty.

The individual was appropriately sentenced, served the sentence, then was able to change his life. Obviously, not every offender does, but a lot of people who commit first offenses that are not serious, in the sense of maiming someone or requiring a lot of planning to do wrong, they turn their lives around. Some of these people have entered drug rehab treatment programs. We put a lot of money out there, and encourage people, and provide legal mandates for people to get into drug rehab. They don't work as much as we'd like, but sometimes they work. And you have a situation, and I have had some of these in my District, and others have had them, and have called and talked to me, on both sides. Doug Ose from California, Lincoln Diaz-Balart from Florida have been involved in this effort.

Someone gets in trouble at 19 to 20. Eight, 9, 10 years later, having straightened out his life, having started a family, has a couple of kids, he's working, all of a sudden, he's deported. And I'm talking now about people in that category who were deported who cannot now come back to this country unless we pass this bill.

And if we pass the bill, by the way, everybody who is now subject to deportation will still be deportable. This does not make anybody undeportable. It simply gives discretion to the Attorney General, without, by the time we get through, judicial intervention, to decide that he can allow someone to return home. And I believe that the major class of beneficiaries retroactively will be people who have already been deported and could come back.

Now, the question, by the way, is, none of these are illegal aliens. We're not talking about people who came here illegally. If they were, they would have been deportable for being illegal and none of this would have arisen. We're talking about legal permanent residents. We're talking, in many cases, about people who were brought here when they were quite young.

And the question is asked, why didn't they become citizens? The answer is, nobody knows, including them. They should have been. In fact, one of the things that has happened is, and one of the reasons this is less important going forward is, more people now become citizens. They weren't aware of this vulnerability.

I ask for 30 seconds, Mr. Chairman.

Chairman SENSENBRENNER. Without objection.

Mr. SMITH. Mr. Chairman, I'd like to move to strike the last word.

Mr. FRANK. I just asked for 30 seconds.

Mr. SMITH. I'm sorry. I didn't hear that.

Mr. FRANK. Thank you.

These are people who could have become citizens. They were legal permanent residents. The class of people involved in the future I think will become citizens.

But this is what this does. No one is undeportable, because of this. People who were sentenced to 2 years or 4 years if there was violence, 2 years if not, remain automatically deportable. And under the bill, it is the Attorney General, without judicial intervention—and that's particularly relevant, by the way, for the people who are already deported, because they're not here, they've got no access to courts.

There is a separate class of cases, I should note, where the Supreme Court has held that if people pled guilty at a time when they would not be automatically deportable for that plea, they cannot be automatically deportable. This bill leaves that alone. That was the Supreme Court's decision.

Chairman SENSENBRENNER. The gentleman's time has again expired.

Mr. FRANK. In every other case, we simply give discretion to the Attorney General.

[The prepared statement of Ms. Baldwin follows:]

PREPARED STATEMENT OF THE HONORABLE TAMMY BALDWIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN

Thank you Mr. Chairman. I would like to express my support for this bill because I believe it would give the rigid 1996 immigration law a dose of common sense. One of my constituents is just one example of why these laws need to be re-examined. At the age of 3, he and his family moved to Madison, Wisconsin from Afghanistan to escape violence during the Soviet invasion. Now 22 years old, he has never visited his native country and has never learned its language or customs—he loves the United States and is not a citizen only because a parental misunderstanding about the law. His father mistakenly thought that his son automatically became and American citizen when his mother became a citizen in 1981. This past May, a federal immigration judge ordered my constituent to be deported back to Afghanistan because he was caught with about 12 grams of marijuana. While my constituent needs to face the consequences of his actions, immediate deportation seems to be a bit harsh in this instance. One can only imagine the kind of life he may face going back to a country where he has no friends and doesn't speak the language. A country which is in the front line our war against terrorism. This is just one example of hundreds that supports the need to improve upon the 1996 law. I ask my colleagues to support this bill.

Chairman SENSENBRENNER. Are there amendments?

The Chair offers an amendment in the nature of a substitute——

Ms. JACKSON LEE. Mr. Chairman?

Chairman SENSENBRENNER.—which the clerk will report.

The CLERK. Amendment in the nature of a substitute to H.R. 1452, offered by Mr. Sensenbrenner and Mr. Frank.

Chairman SENSENBRENNER. Without objection, the amendment in the nature of a substitute is considered as read and open for amendment at any point.

[The amendment follows:]

AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 1452 OFFERED BY MR. SENSENBRENNER AND MR. FRANK

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Family Reunification Act of 2002''.

SEC. 2. CANCELLATION OF REMOVAL FOR LONG-TERM PERMANENT RESIDENT ALIENS.

Section 240A(a) of the Immigration and Nationality Act (8 U.S.C. 1229b(a)) is amended to read as follows:

''(a) CANCELLATION OF REMOVAL FOR CERTAIN PERMANENT RESIDENTS.—

''(1) PERMANENT RESIDENTS NOT CONVICTED OF ANY AGGRAVATED FELONY.—The Attorney General may cancel removal in the case of an alien who is inadmissible to, or deportable from, the United States, if the alien—

''(A) has been an alien lawfully admitted for permanent residence for not less than 5 years;

"(B) resided in the United States continuously for 7 years after having been admitted in any status; and

"(C) has not been convicted of any aggravated felony.

"(2) PERMANENT RESIDENTS CONVICTED OF A NONVIOLENT AGGRAVATED FELONY.—The Attorney General may cancel removal in the case of an alien who is inadmissible to, or deportable from, the United States, if the alien—

"(A) has been an alien lawfully admitted for permanent residence for not less than 5 years;

"(B) satisfies the residence requirements of paragraph (6);

"(C) has never been convicted of—

"(i) an act of murder, rape, or sexual abuse of a minor;

"(ii) any crime of violence (as defined in section 16 of title 18, United States Code); or

"(iii) an attempt or conspiracy to commit an offense described in clause (i) or (ii);

"(D) has been convicted of—

"(i) a single aggravated felony for which the alien was sentenced to serve a term of imprisonment of 4 years or less;

"(ii) multiple aggravated felonies arising out of a single scheme of criminal misconduct for which the alien was sentenced to serve, in the aggregate, a term of imprisonment of 4 years or less; or

"(iii) 2 aggravated felonies arising out of separate schemes of criminal misconduct for which the alien was sentenced to serve, in the aggregate, a term of imprisonment of 4 years or less, but for neither of which the alien was actually incarcerated;

"(E) was not, in the commission of the aggravated felony or felonies described in subparagraph (D)—

"(i) an organizer, leader, manager, or supervisor of others; or

"(ii) engaged in a continuing criminal enterprise (as defined in section 408(c) of the Controlled Substances Act (21 U.S.C. 848(c));

"(F) has never been incarcerated for any offense except—

"(i) the offense described in clause (i) of subparagraph (D), or another offense that was committed in the course of the same scheme of criminal misconduct; or

"(ii) an offense that was committed in the course of the scheme or schemes described in clause (ii) or (iii) of such subparagraph; and

"(G) has not been the subject of a timely certification described in paragraph (7) with respect to the aggravated felony or felonies described in subparagraph (D), unless such certification has been revoked pursuant to such paragraph.

"(3) PERMANENT RESIDENTS CONVICTED OF AN AGGRAVATED FELONY CLASSIFIED AS A CRIME OF VIOLENCE.—The Attorney General may cancel removal in the case of an alien who is inadmissible to, or deportable from, the United States, if the alien—

"(A) has been an alien lawfully admitted for permanent residence for not less than 5 years;

"(B) satisfies the residence requirements of paragraph (6);

"(C) has never been convicted of—

"(i) an act of murder, rape, or sexual abuse of a minor; or

"(ii) an attempt or conspiracy to commit an offense described in clause (i);

"(D) has never been convicted of any aggravated felony that resulted in death or serious bodily injury to any person other than the alien;

"(E) has been convicted of—

"(i) a single aggravated felony for which the alien was sentenced to serve a term of imprisonment of 2 years or less;

"(ii) multiple aggravated felonies arising out of a single scheme of criminal misconduct for which the alien was sentenced to serve, in the aggregate, a term of imprisonment of 2 years or less; or

"(iii) 2 aggravated felonies arising out of separate schemes of criminal misconduct for which the alien was sentenced to serve, in the aggregate, a term of imprisonment of 2 years or less, but for neither of which the alien was actually incarcerated;

"(F) was not, in the commission of the aggravated felony or felonies described in subparagraph (E)—

"(i) an organizer, leader, manager, or supervisor of others; or

"(ii) engaged in a continuing criminal enterprise (as defined in section 408(c) of the Controlled Substances Act (21 U.S.C. 848(c));

"(G) has never been incarcerated for any offense except—

"(i) the offense described in clause (i) of subparagraph (E), or another offense that was committed in the course of the same scheme of criminal misconduct; or

"(ii) an offense that was committed in the course of the scheme or schemes described in clause (ii) or (iii) of such subparagraph; and

"(H) has not been the subject of a timely certification described in paragraph (7) with respect to the aggravated felony or felonies described in subparagraph (E), unless such certification has been revoked pursuant to such paragraph.

"(4) PERMANENT RESIDENTS ADMITTED BEFORE AGE 10.—The Attorney General may cancel removal in the case of an alien who is inadmissible to, or deportable from, the United States, if the alien—

"(A) has been an alien lawfully admitted for permanent residence for not less than 5 years;

"(B) resided in the United States continuously for 7 years after having been admitted in any status when the alien was under 10 years of age;

"(C) has never been convicted of—

"(i) an act of murder, rape, or sexual abuse of a minor; or

"(ii) an attempt or conspiracy to commit an offense described in clause (i); and

"(D) has never been incarcerated for a third (or succeeding) aggravated felony, except that multiple felonies arising out of a single scheme of criminal misconduct shall be considered a single felony for purposes of this subparagraph.

"(5) PERMANENT RESIDENTS ADMITTED BEFORE AGE 16.—The Attorney General may cancel re-

moval in the case of an alien who is inadmissible to, or deportable from, the United States, if the alien—

"(A) has been an alien lawfully admitted for permanent residence for not less than 5 years;

"(B) resided in the United States continuously for 7 years—

"(i) before the alien committed any aggravated felony; and

"(ii) after having been admitted in any status when the alien was under 16 years of age;

"(C) has never been convicted of—

"(i) an act of murder, rape, or sexual abuse of a minor; or

"(ii) an attempt or conspiracy to commit an offense described in clause (i); and

"(D) has never been incarcerated for a third (or succeeding) aggravated felony, except that multiple felonies arising out of a single scheme of criminal misconduct shall be considered a single felony for purposes of this subparagraph.

"(6) RESIDENCE REQUIREMENTS FOR CERTAIN ALIENS.—In the case of an alien seeking relief under

paragraph (2) or (3), the residence requirements described in this paragraph are as follows:

"(A) If the alien has been convicted of any aggravated felony committed after the date of the enactment of the Family Reunification Act of 2002, the alien is required to have resided in the United States—

"(i) continuously for 7 years after having been admitted in any status and prior to the commission of such aggravated felony; or

"(ii) continuously for 10 years after having been admitted in any status, except that, if the alien is incarcerated with respect to such aggravated felony, the period beginning on the date on which such aggravated felony was committed and ending on the last day of such term of incarceration shall be excluded in determining continuous residence under this clause.

"(B) If the alien has not been convicted of an aggravated felony committed after the date of the enactment of the Family Reunification Act of 2002, but has otherwise been incarcer-

ated for any aggravated felony, the alien is required to have resided in the United States—

"(i) continuously for 7 years after having been admitted in any status and prior to the commencement of such term of incarceration; or

"(ii) continuously for 10 years after having been admitted in any status, except that any term of incarceration for any aggravated felony shall be excluded in determining continuous residence under this clause.

"(C) If the alien is not described in subparagraph (A) or (B), the alien is required to have resided in the United States continuously for 7 years after having been admitted in any status.

"(7) CERTIFICATIONS.—

"(A) IN GENERAL.—In the case of an alien seeking relief under paragraph (2) or (3), not later than 2 weeks after the alien files an application for such relief, the Attorney General may notify each agency that prosecuted an aggravated felony referred to in paragraph (2)(D) or (3)(E), as the case may be.

"(B) CONTENTS.—The notification shall inform the agency that it has an opportunity—

"(i) to certify to the Attorney General, not later than 60 days after the date on which the notification is mailed, that the alien has not truthfully provided to the agency all information and evidence the alien has concerning such felony or felonies, and any other offense or offenses that were part of the same scheme of criminal misconduct as such felony or felonies; and

"(ii) on those grounds, to object to cancellation of removal.

"(C) PROVISION TO ALIEN.—The Attorney General shall mail any certification timely made under subparagraph (A) with respect to an alien to such alien. The alien shall have an opportunity, during the 21-day period beginning on the date on which the certification is mailed, to truthfully provide to the agency all information and evidence which the agency certifies has not been provided.

"(D) REVOCATION OF CERTIFICATION.—

"(i) IN GENERAL.—The agency may, during the 21-day period beginning after

the end of the period described in subparagraph (C), revoke any certification made under subparagraph (A). Any revocation of a certification shall void such certification.

"(ii) UNTIMELY REVOCATIONS.—A revocation under this subparagraph that is not timely made may be considered by the Attorney General in the Attorney General's discretion if it is made prior to the issuance of a final order of removal, but the absence of a timely revocation shall not be the basis for any continuance or delay of proceedings. Any determination to deny relief based in whole or in part on a revocation that is not made, or not timely made, shall not be subject to administrative or judicial review in any forum.

"(E) FORMS REQUIREMENT.—The Attorney General shall ensure that the consequences under this paragraph of failing to provide information or evidence with respect to aggravated felonies are clearly explained in any form promulgated by the Attorney General that may be used to apply for relief under paragraph (2) or (3).

"(F) CONSTRUCTION.—This paragraph, and paragraphs (2) and (3), shall not be construed to require the Attorney General to notify any agency under subparagraph (A). If the Attorney General fails to send, or fails timely to send, the notification described in such subparagraph, the alien shall be deemed not to be the subject of a certification.

"(8) CLARIFICATION WITH RESPECT TO CERTAIN REFERENCES.—Any reference in this subsection to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law, regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part. However, a period of probation is not a term of imprisonment or a sentence for purposes of this subsection.".

SEC. 3. CHANGE IN CONDITIONS FOR TERMINATION OF PERIOD OF CONTINUOUS RESIDENCE OR CONTINUOUS PHYSICAL PRESENCE.

Section 240A(d)(1) of the Immigration and Nationality Act (8 U.S.C. 1229b(d)(1)) is amended to read as follows:

"(1) TERMINATION OF CONTINUOUS PERIOD.—For purposes of this section, any period of continuous residence or continuous physical presence in the United States shall be deemed to end, except in the case of an alien who applies for cancellation of removal under subsection (b)(2), when the alien is served a notice to appear under section 239(a).".

SEC. 4. PERMITTING CERTAIN PERMANENT RESIDENT ALIENS TO RETURN WITHOUT SEEKING ADMISSION.

Section 101(a)(13)(C) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(13)(C)) is amended—

(1) by striking the comma at the end of each of clauses (i), (ii), (iii), and (iv) and inserting a semicolon at the end of each such clause;

(2) by amending clause (v) to read as follows:

"(v) has committed outside the United States an offense identified in section 212(a)(2), unless, since such offense, the alien has been granted relief under section 212(h) or 240A(a);";

(3) by redesignating clause (vi) as clause (vii); and

(4) by inserting after clause (v) the following:

"(vi) has committed in the United States an offense identified in section 212(a)(2), and has been

absent from the United States for a continuous period in excess of 30 days since committing such offense (or, if the absence after the 30th day was beyond the alien's control, for a continuous period in excess of 60 days), unless, since such offense, the alien has been granted relief under section 212(h) or 240A(a); or''.

SEC. 5. RELEASE OF NONDANGEROUS ALIENS.

(a) IN GENERAL.—Section 236(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1226(c)(2)) is amended to read as follows:

''(2) RELEASE.—

''(A) IN GENERAL.—The Attorney General may release an alien described in paragraph (1) only in accordance with subparagraph (B) or (C). A decision relating to release under this paragraph shall take place in accordance with a procedure that considers the severity of any offense committed by the alien.

''(B) PROTECTION FOR WITNESSES, POTENTIAL WITNESSES, AND PERSONS COOPERATING WITH CRIMINAL INVESTIGATIONS.—The Attorney General may release an alien described in paragraph (1) if—

"(i) the Attorney General decides pursuant to section 3521 of title 18, United States Code, that release of the alien from custody is necessary to provide protection to a witness, a potential witness, a person cooperating with an investigation into major criminal activity, or an immediate family member or close associate of a witness, potential witness, or person cooperating with such an investigation; and

"(ii) the alien satisfies the Attorney General that the alien will not pose a danger to the national security of the United States or the safety of persons or property and is likely to appear for any scheduled proceeding.

"(C) PERMANENT RESIDENT ALIENS ELIGIBLE FOR CANCELLATION OF REMOVAL.—The Attorney General may release an alien described in paragraph (1) if the alien demonstrates, by a preponderance of the evidence, that the alien—

"(i) has prima facie evidence sufficient to establish that the alien is eligible

for cancellation of removal under section 240A(a); and

"(ii) will not pose a danger to the national security of the United States or the safety of persons or property and is likely to appear for any scheduled proceeding.".

(b) APPLICATION TO ALIENS DETAINED ON EFFECTIVE DATE.—In the case of an alien detained under section 241(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1231(a)(2)) on the date of the enactment of this Act, if the alien has prima facie evidence sufficient to establish that the alien is eligible for cancellation of removal under section 240A(a) of such Act (8 U.S.C. 1229b(a)), as amended by section 2 of this Act (and subject to the other amendments made by this Act), the alien may seek release from detention under section 236(c)(2)(C) of such Act (8 U.S.C. 1226(c)(2)(C)), as added by this section.

SEC. 6. CLARIFICATION OF EFFECT OF VACATION OF CONVICTION.

Section 101(a)(48) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(48)) is amended by adding at the end the following:

"(C) Any conviction entered by a court that otherwise would be considered a conviction under this paragraph

shall continue to be so considered notwithstanding a vacation of that conviction, unless the conviction is vacated—

"(1) on the merits; or

"(2) on grounds relating to a violation of a statutory or constitutional right in the underlying criminal proceeding.".

SEC. 7. EFFECTIVE DATE; SPECIAL APPLICABILITY RULE.

(a) IN GENERAL.—The amendments made by this Act shall take effect on the date of the enactment of this Act and shall apply to aliens who—

(1) are in removal proceedings under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) on or after such date;

(2) were in such proceedings before such date, were ineligible for cancellation of removal under section 240A(a) of such Act (8 U.S.C. 1229b(a)) before such date, but would have been eligible for cancellation of removal under such section if the amendments made by this Act had been in effect during the entire pendency of such proceedings; or

(3) were in exclusion or deportation proceedings under such Act before such date, and were ineligible for relief under section 212(c) of such Act (as in effect on March 31, 1997, before its repeal by section 304(b) of the Illegal Immigration Reform and Immi-

grant Responsibility Act of 1996 (110 Stat. 3009–597)) by reason of the amendments made by section 440(d) of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132; 110 Stat. 1277).

(b) SPECIAL APPLICABILITY RULE.—

(1) IN GENERAL.—Notwithstanding any other provision of law, aliens described in subsection (a)(3) shall be considered to be, or to have been, in removal proceedings under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) to the extent necessary to permit them to apply, and be considered eligible, for cancellation of removal under section 240A(a) of such Act (8 U.S.C. 1229b(a)), as amended by this Act.

(2) RELIEF.—If the Attorney General determines that an alien described in subsection (a)(3) should be provided relief pursuant to this Act, the Attorney General shall take such steps as may be necessary to terminate any proceedings to exclude or deport the alien that may be pending, and shall grant or restore to the alien the status of an alien lawfully admitted to the United States for permanent residence.

SEC. 8. MOTIONS TO REOPEN.

(a) IN GENERAL.—Not later than 1 year after the effective date of the final regulations issued under section 9(b) of this Act, and in accordance with such regulations, an alien described in subsection (b) may file a motion to reopen removal, deportation, or exclusion proceedings in order to apply for cancellation of removal under section 240A(a) of the Immigration and Nationality Act (8 U.S.C. 1229b(a)) pursuant to the amendments made by this Act.

(b) ALIENS DESCRIBED.—An alien is described in this subsection if the alien—

(1) is described in subsection (a) of section 7; and

(2) is otherwise unable to apply, or reapply, for cancellation of removal under section 240A(a) of the Immigration and Nationality Act (8 U.S.C. 1229b(a)) by reason of the procedural posture of the exclusion, deportation, or removal proceedings that are, or were, pending against the alien (including the fact that such proceedings are finally concluded).

(c) EVIDENCE.—A motion filed under subsection (a) shall describe or set forth prima facie evidence sufficient to establish that the alien is eligible for cancellation of removal under section 240A(a) of the Immigration and Nationality Act (8 U.S.C. 1229b(a)), as amended by this Act.

(d) NO ADVERSE ACTIONS WHILE MOTION PENDING.—In no case may an alien be removed, deported, or excluded from the United States while a motion filed under this section is pending.

(e) NO REENTRY OR READMISSION TO FILE OR PROSECUTE MOTION.—No alien may be admitted or otherwise authorized to enter the United States solely to file or prosecute a motion to reopen under this section or otherwise to apply for relief under this Act or the amendments made by this Act, except as the Attorney General may provide pursuant to the sole and unreviewable discretion of the Attorney General. Hearings held pursuant to this Act and the amendments made by this Act may be held in the United States or abroad, with the alien appearing in person or by video phone or similar device.

(f) DISCRETION.—The grant or denial of any motion to reopen filed under this section shall be in the sole and unreviewable discretion of the Attorney General.

(g) NO JUDICIAL REVIEW.—No court shall have jurisdiction to review any decision of the Attorney General denying a motion to reopen under this section.

SEC. 9. RULES.

(a) ISSUANCE OF ADVANCE NOTICE OF PROPOSED RULEMAKING.—The Attorney General shall issue an advance notice of proposed rulemaking pertaining to this

Act, and the amendments made by this Act, not later than 60 days after the date of the enactment of this Act.

(b) ISSUANCE OF FINAL REGULATIONS.—The Attorney General shall issue the final regulations to carry out this Act not later than 90 days after the date of the enactment of this Act, specifying an effective date that is not more than 15 days after the date of publication of such final regulations.

Chairman SENSENBRENNER. And the Chair recognizes himself for 5 minutes.

I am pleased to offer this amendment in the nature of a substitute, along with the gentleman from Massachusetts. It reaches a delicate and fair compromise that keeps the beneficial reforms from 1996 while letting a select group of legal permanent residents request discretionary relief from an immigration judge.

Pre-1996, a deportable permanent resident alien could seek relief from deportation, unless the alien had been in prison for more than 5 years or 5 years for an aggravated felony.

As I mentioned in my opening statement, in 1995 and 1996, this Committee and the House approved reform which broadened the number of crimes considered aggravated felonies and provided that to seek relief, a permanent resident could not have been sentenced to 5 years for an aggravated felony. That's sentenced not served.

Legislation that was finally enacted in 1996 broadened the definition of aggravated felony and provided that a permanent resident could not seek relief if he or she committed any aggravated felony.

The compromise that Mr. Frank and I offer today reaches a middle ground between the pre-1996 law and the current law that is not so far removed from what the Committee approved in 1995. This compromise sets forth four avenues of relief from removal for permanent residents who have been convicted of a crime.

First, a nonviolent aggravated felon can seek relief if: one, he has been a permanent resident for at least 5 years; two, has resided in the United States continuously for at least 7 to 10 years; and, three, was convicted in connection with a single scheme of misconduct for which the alien received a sentence of less than 4 years or two schemes of misconduct for which the alien received a sentence of less than 4 years but was never actually in prison; and, four, was not an organizer or leader of the aggravated felony or felonies. If the alien has served jail time in connection with any other offense, he is ineligible for this relief. In addition, a criminal prosecutor may block such relief if the alien has failed to provide the prosecutor with all the information he possesses about the offense.

Second, an alien convicted of a violent aggravated felony may similarly seek relief, but the requirement of not having been sentenced to 4 years or more is reduced to 2 years or more, and the crime could not have resulted in serious bodily injury or death.

Third, an alien who legally arrived in the United States before age 10 can seek relief if the alien has: one, been a permanent resident for at least 5 years; two, has resided in the United States continuously for at least 7 years after having arrived in the U.S.; and, three, has not been in prison for aggravated felonies arising out of more than two patterns of criminal conduct.

Fourth, an alien who legally entered the United States before age 16 can apply for relief in the same manner as those aliens who arrived before age 10, except that such aliens are barred from relief if they commit any aggravated felony within their first 7 years in the United States.

An alien who is ineligible for relief as a result of the 1996 immigration legislation but would be eligible for one of these four forms of relief can move to reopen his or her case within 1 year of the Attorney General's issuance of regulations. While aliens who have

already been deported may move to reopen to apply for relief, those aliens must apply from abroad and can only reenter the United States if they are actually granted relief.

This compromise also provides that an immigration judge may release a permanent resident from detention if the alien can demonstrate that he or she is prime facie eligible for one of the four forms of relief described above; would not pose a danger to persons, property, or national security; and would likely appear at all future proceedings.

I urge my colleagues to support this amendment and yield back the balance of my time.

Does the gentleman from Texas wish to move to strike the last word?

Mr. SMITH. Yes, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SMITH. Thank you, Mr. Chairman.

Mr. Chairman, while this amendment in the nature of a substitute is an improvement over the underlying bill, that's like saying a flat tire is better than no tire at all. Neither is very helpful in the long run.

I know the intent is to keep low-level drug offenders and those who commit minor crimes from being deported, but this bill goes far beyond low-level drug users. The substitute amendment allows immigration judges to let drug dealers, drug traffickers, and even smugglers of aliens who may be terrorists remain in our country.

This bill also goes far beyond removing the retroactive application of the aggravated felony definition Congress overwhelmingly approved in the Immigration Reform Act of 1996. Creating a process to allow convicted and deported aggravated felons back into the country is unprecedented.

Criminal aliens released prior to being deported have a 37 percent rate of recidivism. How do we explain to the victims why we let these criminals stay in the country or be readmitted?

In many instances, we are talking about the lives of young people that are being destroyed daily by drugs. Who really believes that dealing cocaine is a nonviolent, minor crime?

A few days ago, Fox News documented Mexican smugglers who smuggled Middle Eastern radical Muslims into the country. Alien smuggling is usually considered a nonviolent crime and sentences rarely exceed 4 years. So under this amendment in the nature of a substitute, alien smugglers who serve their time in prison could go right back to bringing terrorists into the country. I thought America was at war against terrorism.

Under this amendment in the nature of a substitute, we have no idea how many alien criminals would remain in the U.S. or how many who have been deported would be readmitted.

If you invited a guest to your home, and that guest stole your jewelry, or used your child in pornography, or gave drugs to your teenager, you would ask them to leave. That is why we should continue to do so with criminal aliens who have been convicted of serious crimes.

Mr. Chairman, no one here doubts that immigration lawyers across the country have been scouring the land for so-called hardship cases, and they've been doing so since the 1996 immigration

reform bill was overwhelmingly approved 6 years ago. Yet all those attorneys in all those years can only point to several dozen examples. And actually, that's giving them a few. I've only heard of about a dozen, and I'm not sure all of them could really withstand scrutiny.

The genuine hardship cases need to be addressed, but they should be considered under regular order by the Immigration Subcommittee, and that's why we need to oppose this amendment in the nature of a substitute.

Mr. Chairman, one more point. The Members of this Committee have received a "Dear Colleague" and an e-mail citing so-called hardship cases. The first "Dear Colleague" mentioned seven hardship cases, but only one of the seven had actually been deported. The e-mail mentioned 15 hardship cases, but by their own definition, half of them were misdemeanors, so they wouldn't be deported. The others are not deportable crimes, unless the individuals involved have long criminal histories.

And, again, if there are genuine hardship cases, and I know there are a very few, it's the Immigration Committee that should take care of them, not the Attorney General.

Mr. FRANK. Would the gentleman yield?

Mr. SMITH. And I'll yield back the balance of my time.

Mr. FRANK. Would the gentleman yield?

Mr. SMITH. I'd prefer that the gentleman use his own time.

Ms. JACKSON LEE. Mr. Chairman?

Mr. FRANK. Mr. Chairman? On the substitute, Mr. Chairman.

Chairman SENSENBRENNER. Recognized for 5 minutes.

Mr. FRANK. The question I had hoped to ask the gentleman from Texas was, and I want to clarify it, when he said—he acknowledges there were some hardship cases. He said they could be dealt with through the Immigration Subcommittee. I think we should make clear, the only thing he could be referring to are private bills. And I must say, the notion of doing major immigration policy by private bills seems to me to be in error. Of course, they do take unanimous consent, and they can be very difficult.

And what this Committee began to do years ago was to say, a private bill that is unique, we will deal with it. But where there appears a class of cases, it is better to deal with it through legislation. So I do not think the existence of the private bill remedy is a real relief. In fact, the gentleman from Florida, Mr. McCollum, had tried to do that, and that's what led the then-Chairman of the Committee, the gentleman from Illinois, to say, well, let's do a bill.

Secondly, the gentleman from Texas asked a question: How many terrorists would be let in under this bill? How many people would be let in who would smuggle in terrorists? The answer is exactly as many as John Ashcroft decided, because under this bill, it will be entirely up to John Ashcroft, both in terms of the authority that's given to the Attorney General and according to the timeframe. This is a sunsetted bill.

And with regard to the people who have already been deported, this ought to be made very clear, with regard to the people who have already been deported, they will have 1 year from the date of the regulations to make their application. So this will almost certainly be done within the Attorney Generalship of John Ashcroft.

Now, obviously, I would rather there be a different Attorney General, as he would rather there would be a different Member of Congress from my District. Nothing personal. [Laughter.]

But the fact is that he is there, and the suggestion that John Ashcroft is going to make the decision to bring in these people—and if they've already been deported, by the way, there's no access to a judge. They're not in America. They can't get any rights that we don't give them. We give them the right to apply to John Ashcroft on a compassionate basis.

So, yes, the gentleman is right, these should be case-by-case. But I do think letting the Attorney General do it is a better way, since he acknowledges there are cases where it should happen, then doing it by private bill.

I yield back, Mr. Chairman.

Chairman SENSENBRENNER. We now have a journal vote. The Committee will be recessed, so Members can vote on the journal vote. Please come back promptly.

The Committee is recessed subject to the call of the Chair.

[Recess.]

Chairman SENSENBRENNER. The Committee will be in order. A working quorum is present.

Pending when the Committee recessed was an amendment in the nature of a substitute offered by the Chairman and the gentleman from Massachusetts, Mr. Frank.

Does the gentlewoman from Texas wish to move to strike the last word?

Ms. JACKSON LEE. Yes, Mr. Chairman.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman.

Let me, first of all, applaud Mr. Frank of Massachusetts and the Chairman of this Committee for a combined effort that I think all of us will view as a very reasonable response to an issue that we've been grappling with since 1996. In fact, if I might recall our history, one of our colleagues that no longer serves on this Committee or in this body, Mr. McCollum, I know worked very hard, either in the last part of his tenure here and/or since that time, to raise this concern as it relates to individuals who really do deserve a second opportunity, who happen to have been either a legal immigrant or a legal immigrant status here in this country. And I say that because we have found that cases where individuals had never even been to their home country were being deported under the 1996 law with all good intentions, but in fact, really did not have the opportunity to have their individual cases assessed.

I think it is important to note that 1452, one, has Attorney General involvement. I think Mr. Frank was eloquent; we can't choose our Attorney Generals to a certain extent. But it has the Attorney General's involvement and, therefore, we have that kind of protection.

In addition, the immigration judge has the option to decide on an individual's status.

Might I say that there were amendments that I intended to offer, because I believe that we have missed making this even more final as it relates to hardship cases. And this is what we're talking about.

But I would like to offer into the record, Mr. Chairman, as I discuss this legislation, "Case Is Closed on Immigrant," in the *Houston Chronicle* newspaper, Saturday, July 20, Metropolitan Section.

Chairman SENSENBRENNER. Without objection.

[The material referred to follows:]

Houston Chronicle
Section A, Page 35 ★★★
Saturday, July 20, 2002

METROPOLITAN

Local & State • www.houstonchronicle.com/metro

Deaths, 38A
Editorials, 40A
Viewpoints, 41A

Case is closed on immigrant:

Lazo can't withdraw guilty plea for felony, now faces deportation

By EDWARD HEGSTROM
Houston Chronicle

A nationally known spokesman for ex-Enron employees faces almost certain deportation to El Salvador after a judge declined Friday to reopen his sexual assault case from three years ago.

Jose Lazo, the co-founder of EnronX.org, will now be forced to resettle in a country where he has not lived since he was 8. His attorneys said his only hope lies in a pardon from Gov. Rick Perry, something they don't expect.

"It's a pretty sad day," Gary Polland, one of Lazo's attorneys, said after the ruling. "Justice is blind, deaf and dumb, in my opinion."

Polland complained that the case became a "hot potato" that was passed by two sitting judges to a visiting judge who does not face re-election. The case was considered Friday by Judge Bob Burdette, sitting in for the vacationing state District Judge Jeannine Barr.

The prosecutor argued that allowing a defendant to withdraw a plea agreement would set a dangerous precedent.

Jose Lazo will return to El Salvador.

In 1999, Lazo accepted an agreement in which he received deferred adjudication for sexual assault for impregnating Christina Villanueva, a 13-year-old girl who later became his wife. In exchange, prosecutors dropped charges of injury to a child that had been brought after Lazo allegedly hit Villanueva in the summer of 1999.

"He did hit me once," Villanueva confirmed after the hearing Friday. Neighbors called police. But Lazo's wife said she did not want to press charges.

The agreement allowed Lazo to avoid jail time, but his case was brought to the attention of federal immigration authorities earlier this year. The federal government has a policy of deporting all non-citizen aggravated felons, even those who have accepted special deals such as deferred adjudication.

To avoid deportation, Lazo's attorneys sought to reopen his sexual assault case by asking a judge to allow him to withdraw his guilty plea. Burdette refused to reopen the case.

Supporters portray Lazo, 21, as a hard worker and good kid who served as an inspiration for other Latinos. He arrived in Houston as an illegal immigrant and spent a time in an alternative school for juvenile offenders, where he met and impregnated Villanueva.

Lazo eventually found his way, becoming a legal resident, marrying Villanueva and graduating from George I. Sanchez Charter High School's technology program. He went to work at Enron straight out of high school, making $40,000 a year.

He became a symbol of immigrant success, returning to George I. Sanchez the year after graduating to give an inspirational speech. After Enron collapsed, he not only became a

See LAZO on Page 36A.

Lazo

Continued from Page 35A.

spokesman at EnronX, but also found a new job making $50,000 a year.

But the prosecutor who handled the case Friday gave a very different view of Lazo. Assistant District Attorney Philip Grant noted that the court had been aware that Lazo and Villanueva had spoken of getting a divorce, and the court has been asked to intervene to force Lazo to provide child support.

Before Lazo was imprisoned, the two lived separately, Grant noted. The prosecutor said he offered this information to dispute the contention that deporting Lazo will divide a family.

"This ruling in no way separates a family," Grant said.

Lazo signed a document at the time of the plea agreement in which he acknowledged being aware that by making the agreement he could be deported, Grant noted.

Legislation passed by Congress in 1996 required the Immigration and Naturalization Service to deport virtually all non-citizens convicted of serious crimes. Human rights advocates complained that the legislation is inflexible, requiring the deportation of some legal immigrants who have turned their life around.

INS officials say they don't have any discretion in a case like Lazo's.

Steve Campbell / Chronicle

Christina Villanueva, 17, is comforted by her 3-year-old son, Anthony Manuel Lazo. A judge declined to reopen the case of her husband, Jose Lazo, who now faces deportation.

"We're in a difficult position, because the statute mandates that we deport an aggravated felon," INS spokeswoman Luisa Aquino said.

Jacob Monty, Lazo's immigration attorney, says his client is not the only one who has suffered from the legislation requiring deportation of foreigners.

"This happens every day," he said.

Ms. JACKSON LEE. Let me just introduce you to Jose Lazo, who is a nationally known spokesperson for ex-Enron employees, faces almost certain deportation to El Salvador after a judge declined Friday to reopen his case.

Now, when I say the words "sexual assault," many of you will run out of the room. Let me explain it and indicate to you that the gentleman never served a day in jail. He was a juvenile and impregnated a 13-year-old, and you realize what that accounts for. The 13-year-old ultimately became his wife.

He graduated from high school, was such a bright up-and-coming student that he went straight to Enron—we'll put aside any other connotations—and began to earn $40,000 a year and supported his family and his child.

What happened, Mr. Frank, is that he pleaded to a deferred adjudication. Never served a day in jail. We all know what that means. Be on good behavior, and you're off the hook. And this gentleman continued with good behavior, maybe a little domestic scenario.

And then when he was laid off, he got another job, he was so good at what he did, and organized the ex-Enron employees. I'm not sure if that's why he got into court or not.

But he was ruled against not by an immigration judge. He was ruled against by a State district judge who had no information, and the INS said there was nothing they could do for this gentleman.

I'd be happy to yield to the gentleman.

Mr. FRANK. I thank the gentlewoman. I appreciate her not offering this, and I would hope we could move on. But I do appreciate the gentlewoman. She has been very staunch in her role as the Ranking minority Member in our getting this forward. I want to express my appreciation.

Ms. JACKSON LEE. Thank you very much.

And as I close, I simply want to leave this on the table as why we need this legislation, to help forward-thinking and positive-thinking individuals who have rehabilitated their lives and they just happen to be immigrants.

I yield back.

[The statement of Ms. Jackson Lee follows:]

SHEILA JACKSON LEE
18TH DISTRICT, TEXAS

COMMITTEES:
JUDICIARY
SUBCOMMITTEES:
CRIME
RANKING MEMBER
IMMIGRATION AND CLAIMS

SCIENCE
SUBCOMMITTEES:
SPACE AND AERONAUTICS
ENERGY

CHAIR
CONGRESSIONAL CHILDREN'S CAUCUS

REGIONAL WHIP
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STATEMENT OF
CONGRESSWOMAN SHEILA JACKSON LEE
for
Full Committee Markup
H.R. 1452, the "Family Reunification Act of 2002"

July 23, 2002

I am pleased to lend my support to H.R. 1452. I applaud the good work of my colleague, Mr. Franks, and congratulate him as this measure takes one more step toward becoming law. I also thank Mr. Sensenbrenner and Mr. Gekas for all of their efforts in moving this legislation forward.

This measure will eliminate some obstacles to applying for cancellation of removal under section 240A of the Immigration and

Nationality Act. Although many of the changes to the measure are technical in nature, it will have very real consequences in the lives of many long-time, lawful permanent residents of the United States who have been unfairly deprived of relief by the retroactive changes of the 1996 Immigration bill.

First, however, I am disappointed by some of the bill's provisions. I am disappointed that the bill does not eliminate retroactive application of the so called "stop-time rule" by which an alien's lawful permanent resident status is taken away for eligibility purposes when proceedings are instituted by the issuance of a "notice to appear." Under this provision, crimes committed before September 30, 1996, would bar an immigrant from accruing the period of residency required for cancellation of removal. I would have preferred to see this provision of Mr. Franks original bill retained.

I am also disappointed that the measure toughens current law by not allowing a court's expungement or vacation of an immigrants conviction to affect the ability of the INS to used that vacated conviction to depart the immigrant, unless the conviction was vacated on the merits or on constitutional or statutory grounds. Again, this unduly punishes immigrants by counting against the 4that may

The measure also does not address the injustice caused by declaring long-time permanent residents ineligible for relief on the basis of a retroactive change in the definition of an "aggravated felony." Prior to 1996, a theft offense was treated as an aggravated felony only if a sentence of five years or more was imposed. Mr. X entered the U.S. as a lawful permanent resident in 1970. He was convicted of shoplifting and sentenced to a one year suspended sentence in 1985. The harsh provisions of the 96 law make Mr. X statutorily ineligible for cancellation of removal despite the fact that

he did not commit a serious crime. The judge who presided over that case did not think that the offense warranted even a single day of incarceration.

The 96 Immigration law made people ineligible for cancellation of removal as aggravated felons on the basis of criminal offenses that were not aggravated felonies when they were committed. This bill does not change the definition of "aggravated felony."

There are some redeeming provisions in the bill. Under the Sensenbrenner-Frank substitute, some relief is given Mr. X based on whether or not the crime Mr. X committed was a violent or non-violent felony and Mr. X was sentenced to 4 years or less for a violent crime, or 2 years or less for a nonviolent crime. Under these conditions, Mr. X would no longer be barred from applying for cancellation of removal where the crime committed was a not an extremely violent felony, where he is living in the United States for 7 years, including 5 years as a legal permanent resident without

serving jail time for any other offense. Furthermore he must also demonstrate that his removal would pose a serious hardship on U.S. citizen family members and must prove that his relief is in the best interest of this country and would not endanger public safety.

Furthermore, like the original bill, the substitute establishes a process whereby the Attorney General may allow immigrants to reopening removal proceedings for aliens who were in removal proceedings before the enactment date of this measure and who will now be eligible for cancellation of removal because of H.R. 1452. This will allow these aliens to apply for cancellation relief. The bill specifies that the Attorney General may within his "sole and unreviewable discretion" parole such aliens into the United States to give them an opportunity to apply to regain their lawful permanent resident status.

While the bill does not go as far as I would have it go, these

changes will permit long-time lawful permanent residents who have been affected by retroactive changes to have a day in court. It will give these resident's some relief. I urge my colleagues to support this measure and I reserve the right to offer amendments to improve the good work of the members.

Thank you Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from California, Mr. Issa.

Mr. ISSA. Thank you, Mr. Chairman. I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment offered by Mr. Issa to the amendment in the nature of a substitute offered by Mr. Sensenbrenner and Mr. Frank. Page 13, line 18, strike the quotation marks and the period at the end. Page 13——

Chairman SENSENBRENNER. Without objection, the amendment is considered as read.

[The amendment follows:]

AMENDMENT OFFERED BY MR. ISSA

TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE

OFFERED BY MR. SENSENBRENNER AND MR. FRANK

Modified by Jackson Lee

Page 13, line 18, strike the quotation marks and the period at the end.

Page 13, after line 18, insert the following:

1 "(9) LIMITATION ON DELEGATION.—Cancella-
2 tion of removal under paragraph (2), (3), (4), or (5)
3 may be granted only by the Attorney General or
4 Deputy Attorney General. No delegation of such au-
5 thority to any other official may be made.".

Page 21, strike lines 1 through 4 (and redesignate provisions accordingly).

Page 22, after line 8, insert the following:

6 **SEC. 10. SUNSET.**

7 This Act, and the amendments made by this Act,
8 shall cease to have effect on December 31, 2005.

9 **SEC. 11. ANNUAL REPORT.**

10 The Attorney General annually shall submit to the
11 Committee on the Judiciary of the United States House
12 of Representatives and the Committee on the Judiciary

1 of the Senate a report with respect to this Act and the
2 amendments made by this Act. The report shall contain
3 information on—
4 (1) the number of aliens who applied for can-
5 cellation of removal, release from detention, or any
6 other immigration benefit, based on this Act or the
7 amendments made by this Act;
8 (2) the crimes committed by the aliens de-
9 scribed in paragraph (1);
10 (3) the number of applications described in
11 paragraph (1) that were granted; and
12 (4) any other subject the Attorney General con-
13 siders relevant.

Chairman SENSENBRENNER. And the gentleman from California will be recognized for 5 minutes.

Mr. ISSA. Thank you, Mr. Chairman.

My amendment is an attempt to perfect this bill by taking both sides' objections and trying to find legitimate middle ground.

Mr. Frank and the Chairman himself have done a great deal to make what is a very tough situation and one which has historically been hard for this Committee to decide and find compromise.

My amendment offers a couple more pieces of compromise. In particular, what it does is it limits to the Attorney General and the Deputy Attorney General the right, and prohibits any further delegation, to make these exceptions for humanitarian reasons. I do so because I believe that although having no exceptions is a mistake, having too many exceptions would also be a mistake.

And I believe that with proper staffing, the Deputy Attorney General could handle the load that exists on an exception basis, because I believe, as Ms. Jackson Lee and others have said, there are legitimate exceptions to deportation of those who have committed crimes in this country, just as there are good examples of people who have done things wrong in our country and have been rehabilitated and gone on to live useful lives.

Additionally, I have chosen the date of December 31st, 2005, and I believe there will be a friendly amendment offered, as the expira-

tion date, because I believe that a sunset clause for this kind of a solution is necessary, not because there doesn't have to be an out clause, but because like any piece of legislation that we are trying to correct a past ill, we have to study and review the effects of our action and then bring it back to this Committee to see if in fact what we have done is perfecting or whether there will need to be additional changes.

Mr. FRANK. Will the gentleman yield?

Mr. ISSA. I'd be glad to yield.

Mr. FRANK. I want to thank the gentleman for his help on this.

And, Mr. Chairman, let me be very explicit. I wish a lot of things. I wish I had as much energy today as I had 20 years ago. I wish I could eat more and not gain weight. And I wish I had the power to pass bills exactly as I want. But I don't.

So I rest more than I used to. I go hungry sometimes. And I accept this amendment. [Laughter.]

All of them accommodations to reality. But I don't want to be grudging. I do not think that the amendment in any way diminishes the substance of the bill. I think it preserves what we were hoping to preserve. I am very appreciative for the bipartisan support, particularly given the times.

I just would close with one plea to the Members. There are individuals out there hurting. There are innocent children who have been separated from their parents.

I do not think we have to worry that John Ashcroft and his top deputies will abuse the authority we give them. And I think some families will be better off.

And I thank the gentleman for yielding.

Ms. JACKSON LEE. Would the gentleman yield?

Mr. ISSA. Reclaiming my time, I yield to the gentlelady from Texas.

Ms. JACKSON LEE. I want to applaud him for the amendment and the acceptance of my friendly amendment. I probably asked the gentleman to yield to me so that I can ask the Chairman a question, so that we can move this along.

Do I have to wait or can I offer my friendly amendment that I believe the gentleman will accept now to his amendment? It is an amendment to his amendment.

Mr. ISSA. Mr. Chairman, this is one that says it's 3 years from enacting, the sooner of the two.

Chairman SENSENBRENNER. Without objection, the Issa amendment is so modified to state that the sunset is 3 years from the date of enactment.

Ms. JACKSON LEE. And do I need to have it passed out, Mr. Chairman?

Chairman SENSENBRENNER. Hearing none, so ordered. And the modification is made.

Mr. ISSA. Thank you, Mr. Chairman.

Chairman SENSENBRENNER. Yield back?

Mr. ISSA. I yield back.

Chairman SENSENBRENNER. The question is on the Issa——

Mr. SMITH. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from Texas seek recognition?

Mr. SMITH. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SMITH. Mr. Chairman, I know this amendment is well-intended, but I oppose it primarily because it gives a false sense of security.

First, sunsets seldom work. In fact, I don't know of a single sunset in an immigration bill that has ever been enforced. Examples of sunsets not enforced included visa programs, pilot programs, and visa waiver programs. This amendment also creates an administrative burden by requiring the Attorney General to approve any waiver. Even if the Attorney General set up a panel to review the hardship cases before they reached his desk, it is still unreasonable to expect him personally to devote the time and attention necessary.

If there are true hardship cases, and I know there are a few, they should be addressed. But they should follow the regular order, and we should have the Immigration Subcommittee review them. They should not be piled up on the AG's desk.

Further, the requirement that the Attorney General report to Congress is unenforceable. When I was Chairman of the Immigration Subcommittee, the Administration regularly ignored congressional directives for immigration reports, and there's little you can do about it, as any Subcommittee Chairman knows.

No Administration is going to issue a report detailing what crimes have been waived or what additional crimes have been committed by the criminals after they have been released. Even if this Administration issued every report we asked for, there is no guarantee that future Administrations would be responsive. Another Administration might be tempted to abuse the waiver process.

This amendment is not enforceable and would be ignored.

Unfortunately, Mr. Chairman, both sunsets and reports drop below the horizon. A false sense of security is no security. This amendment should not be approved, but if it is, we should still vote no on final passage, and the reason is this: Every Member of this Committee knows that many hardened criminals are sentenced to less than 4 years of jail for nonviolent crime or less than 2 years for a violent crime, the thresholds of the amendment in the nature of a substitute. Most first time defendants plea bargain for probation or a small fine. If convicted and sentenced, the jail time is typically less than a year. Any longer and there's a lot more to the case than meets the eye.

The reason to vote no on final is because of what this amendment in the nature of a substitute suggests, that criminals sentenced to less than the 4 or 2 year levels are somehow only guilty of minor offenses and should be considered for relief from deportation or even readmitted to the U.S. That's the wrong signal to the wrong people at the wrong time.

So, Mr. Chairman, I would say to my colleagues, regardless of how they vote on the amendment, I hope they will vote no on final, and I'll yield back the balance of my time.

Chairman SENSENBRENNER. The modification of the gentlewoman from Texas, Ms. Jackson Lee, reads as follows: "or 3 years after the date on which a final rule implementing this act is promulgated, whichever occurs later."

Without objection, the amendment is modified to reflect this language.

[The amendment follows:]

SECOND DEGREE AMENDMENT (RELATING TO A SUNSET DATE) TO THE ISSA FIRST DEGREE AMENDMENT TO THE SENSENBRENNER SUBSTITUTE AMENDMENT TO H.R. 1452 OFFERED BY MS. JACKSON LEE

Amendment Language

Page 1, line 7 insert the following before the period:

"or three years after the date on which a final rule implementing this Act is promulgated, whichever occurs later".

The question is on the Issa amendment as modified.

Those in favor will say aye.

Opposed, no.

The ayes appear to have it. The ayes have it, and the amendment as modified is agreed to.

The question now is on the amendment in the nature of a substitute as amended.

Those in favor will say aye.

Opposed, no.

The ayes appear to have it. The ayes have it, and the amendment in the nature of a substitute is agreed to. The Chair notes the presence of a reporting quorum.

Mr. SMITH. Mr. Chairman, I'd like a recorded vote on the final.

Chairman SENSENBRENNER. Just a minute.

All those in favor of reporting the bill favorably will say aye.

Opposed, no.

The ayes appear to have it. The ayes have it.

Mr. SMITH. Mr. Chairman, I'd like a recorded vote.

Chairman SENSENBRENNER. A recorded vote is ordered. Those in favor of reporting H.R. 1452 favorably as amended will, as your names are called, answer aye.

Those opposed, no.

And the clerk will call the roll.

The CLERK. Mr. Hyde?

Mr. HYDE. Aye.

The CLERK. Mr. Hyde, aye. Mr. Gekas?

[No response.]

The CLERK. Mr. Coble?

[No response.]

The CLERK. Mr. Smith?

Mr. SMITH. No.

The CLERK. Mr. Smith, no. Mr. Gallegly?

Mr. GALLEGLY. No.

The CLERK. Mr. Gallegly, no. Mr. Goodlatte?

Mr. GOODLATTE. No.

The CLERK. Mr. Goodlatte, no. Mr. Chabot?

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no. Mr. Barr?

Mr. BARR. No.

The CLERK. Mr. Barr, no. Mr. Jenkins?

Mr. JENKINS. No.
The CLERK. Mr. Jenkins, no. Mr. Cannon?
Mr. CANNON. Yes.
The CLERK. Mr. Cannon, yes. Mr. Graham?
[No response.]
The CLERK. Mr. Bachus?
[No response.]
The CLERK. Mr. Hostettler?
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no. Mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Green, no. Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no. Mr. Issa?
Mr. ISSA. Yes.
The CLERK. Mr. Issa, yes. Ms. Hart?
Ms. HART. Aye.
The CLERK. Ms. Hart, aye. Mr. Flake?
Mr. FLAKE. No.
The CLERK. Mr. Flake, no. Mr. Pence?
Mr. PENCE. No.
The CLERK. Mr. Pence, no. Mr. Forbes?
Mr. FORBES. No.
The CLERK. Mr. Forbes, no. Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye. Mr. Frank?
Mr. FRANK. Aye.
The CLERK. Mr. Frank, aye. Mr. Berman?
Mr. BERMAN. Aye.
The CLERK. Mr. Berman, aye. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?
Ms. JACKSON LEE. Aye.
The CLERK. Ms. Jackson Lee, aye. Ms. Waters?
[No response.]
The CLERK. Mr. Meehan?
Mr. MEEHAN. Aye.
The CLERK. Mr. Meehan, aye. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
[No response.]
The CLERK. Ms. Baldwin?
Ms. BALDWIN. Aye.
The CLERK. Ms. Baldwin, aye. Mr. Weiner?
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye. Mr. Schiff?
Mr. SCHIFF. Aye.

The CLERK. Mr. Schiff, aye. Mr. Chairman?

Chairman SENSENBRENNER. Aye.

The CLERK. Mr. Chairman, aye.

Chairman SENSENBRENNER. Are there Members in the chamber who wish to cast or change their votes?

The gentleman from Pennsylvania, Mr. Gekas?

Mr. GEKAS. No.

The CLERK. Mr. Gekas, no.

Chairman SENSENBRENNER. The gentleman from North Carolina, Mr. Graham.

Mr. GRAHAM. No.

The CLERK. Mr. Graham, no.

Chairman SENSENBRENNER. The gentlewoman from California, Ms. Waters.

Ms. WATERS. Aye.

The CLERK. Ms. Waters, aye.

Chairman SENSENBRENNER. The gentleman from North Carolina, Mr. Coble.

Mr. COBLE. No.

The CLERK. Mr. Coble, no.

Chairman SENSENBRENNER. Further Members who wish to cast or change their vote?

If not, the clerk will report.

The CLERK. Mr. Chairman, there are 18 ayes and 15 nays.

Chairman SENSENBRENNER. And the motion to report favorably is agreed to.

Without objection, the bill will be reported favorably to the House in the form of a single amendment in the nature of a substitute incorporating the amendments adopted here today. Without objection, the Chairman is authorized to move to go to conference pursuant to House rules. Without objection, the staff is directed to make any technical and conforming changes. And all Members will be given 2 days, as provided by House rules, in which to submit additional, dissenting, supplemental, or minority views.

DISSENTING VIEWS

The original intent of this bill was to keep low-level drug offenders and those who commit minor crimes from being deported. This bill, however, goes far beyond addressing "low-level" drug dealers and allows immigration judges to let drug dealers, drug smugglers, and even smugglers of aliens who may be terrorists remain in our country.

This bill also goes far beyond removing the retroactive application of the aggravated felony definition Congress overwhelmingly approved in the Immigration Reform Act of 1996. Creating a process to allow convicted and deported aggravated felons back into the country is unprecedented.

Criminal aliens released prior to being deported have a 37% rate of recidivism. In 2000, there were over 36,000 noncitizens incarcerated in Federal prisons—20,000 for drug crimes. We cannot justify to victims why we let these criminals stay in the country or, worse, be readmitted. In many instances, we are affecting the lives of young people that are being destroyed daily by drugs. Dealing cocaine or crack should hardly be considered a non-violent, minor crime.

For example, Mexican smugglers have been documented in recent weeks and months smuggling Middle Eastern radical Muslims into the country. Alien smuggling is usually considered a non-violent crime and sentences rarely exceed 4 years. Under this bill, alien smugglers who serve their time in prison could go right back to bringing terrorists into our country. America is supposed to be at war against terrorism, not welcoming terrorists into the country.

The most dangerous part of this bill is that there is no way to tell how many alien criminals would remain in the U.S. or how many who have already been deported would be readmitted.

If an invited houseguest stole jewelry, or used your child in pornography, or gave drugs to your teenager, the response is obvious. They would be asked to leave. That is what we should continue to do with criminal aliens who have been convicted of these or other serious crimes.

Since the 1996 Immigration Reform bill was overwhelmingly approved 6 years ago, immigration lawyers across the country have been scouring the land for so-called "hardship" cases. Yet, in all those years, they can only point to several dozen examples, few of which would be likely to withstand scrutiny.

There are several provisions that were added when the bill was marked up at full committee that give a false sense of security to this legislation. First, a provision was added to sunset the bill. However, sunsets seldom work. In fact, I don't know of a single sunset in an immigration bill that has ever been enforced. Examples include visa programs, pilot programs, and other visa waiver programs.

A provision was also added to require the Attorney General to approve every waiver. This creates an unreasonable administrative burden. Even if the Attorney General set up a panel to review the hardship cases before they reached his desk, it is still unreasonable to expect him to devote the time and attention necessary.

If there are true "hardship" cases, they should be addressed. But they should follow the regular order and be reviewed by the Immigration Subcommittee. They should not be piled up on the Attorney General.

Further, a requirement was added for the Attorney General to report to Congress. However, this will be unenforceable. The last Administration regularly ignored congressional directives for immigration reports. And as any Subcommittee Chairman knows, there's little that can be done about it. In addition, no Administration is going to issue a report detailing what crimes have been waived or what additional crimes have been committed by the criminals after they have been released. Even if this Administration issued every report we asked for, there is no guarantee that future Administrations would be responsive.

These provisions only provide a false sense of security—which is no security at all.

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