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HINDER THE ADMINISTRATION'S LEGALIZATION TEMPTATION (HALT) ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON
IMMIGRATION POLICY AND ENFORCEMENT

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

ON

H.R. 2497

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HINDER THE ADMINISTRATION'S LEGALIZATION TEMPTATION (HALT) ACT

TUESDAY, JULY 26, 2011

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON IMMIGRATION
POLICY AND ENFORCEMENT,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to call, at 2:11 p.m., in room 2141, Rayburn House Office Building, the Honorable Elton Gallegly (Chairman of the Subcommittee) presiding.

Present: Representatives Gallegly, Smith, Gohmert, Gowdy, Conyers, Lofgren, Jackson Lee, and Pierluisi.

Staff Present: (Majority) George Fishman, Subcommittee Chief Counsel; Marian White, Clerk; and (Minority) Hunter Hammill, USCIS Detailee.

Mr. GALLEGLY. I call to order the Subcommittee on Immigration Policy and Enforcement. Good afternoon.

Two weeks ago, Ranking Member Lofgren held a press conference to denounce the HALT Act. Last week, 75 Democrats sent a letter to President Obama to tell him that they would work to sustain a veto on this bill.

The HALT Act, if enacted, would prevent the Obama administration from engaging in the mass legalization of illegal immigrants. Clearly, the lines are drawn between those who support upholding the laws of the United States and those who believe they should be ignored.

Immigration advocacy groups have been working for years to convince Congress to pass mass amnesty legislation for illegal immigrants. Upon the failure of those efforts, they have been trying to convince the Administration to bypass Congress and administratively legalize millions of illegal immigrants.

These groups have apparently made headway. Last month, U.S. Immigration and Customs Enforcement issued two memos that laid the groundwork for just such a mass legalization. We will hear from witnesses today about the pressures that ICE officers are now under to refrain from enforcing immigration laws.

In reaction, Chairman Smith and Senator Vitter introduced the HALT Act, and amnesty advocacy groups have strongly condemned the bill. Congress simply cannot allow the Administration to grant parole or deferred action, except in narrow circumstances. Congress cannot allow the Administration to grant extended voluntary departure or cancellation of removal, to grant work authorization ex-

cept where authorized by law, to grant temporary protective status, or to waive the bars of admissibility for immigrants who are here illegally.

How do we handle extraordinary humanitarian situations that are bound to occur in the interim? Congress can always act by passing private bills to help non-U.S. citizens in the U.S. or outside the U.S. when we deem it wise, just, and prudent.

I look forward to hearing from the witnesses today. And at this point, we expect the Ranking Member here shortly. But until she comes, I will defer to the Chairman of the full Committee, Mr. Smith, the author of the bill.

The bill, H.R. 2497, follows:]

I

112TH CONGRESS
1ST SESSION

H. R. 2497

To suspend until January 21, 2013, certain provisions of Federal immigration law, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 12, 2011

Mr. SMITH of Texas (for himself, Mrs. BLACKBURN, Mr. ROYCE, Mr. CAMPBELL, Mr. AKIN, Mr. MARCHANT, Mr. ROHRABACHER, Mrs. MYRICK, Mr. DUNCAN of Tennessee, Mr. JONES, Mr. WOMACK, Mr. YOUNG of Florida, Mr. BUCHANAN, Mr. FORBES, Mr. FRANKS of Arizona, Mr. ROE of Tennessee, Mr. COFFMAN of Colorado, Mr. GARY G. MILLER of California, Mr. GALLEGLY, Mr. CARTER, and Mr. HUNTER) introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

To suspend until January 21, 2013, certain provisions of Federal immigration law, 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—

(1) the "Hinder the Administration's Legalization Temptation Act"; or

(2) the "HALT Act".

SEC. 2. SUSPENSION OF EFFECTIVENESS OF CERTAIN LAWS.

(a) WAIVER OF INADMISSIBILITY OF ALIENS UNLAWFULLY PRESENT.—Section 212(a)(9)(B)(v) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(9)(B)(v)) is suspended during the period beginning on the date of the enactment of this Act and ending on January 21, 2013.

(b) PAROLE.—Section 212(d)(5)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)(A)) is suspended during the period beginning on the date of the enactment of this Act and ending on January 21, 2013, except to the extent that the discretionary authority conferred under such section is exercised for the purpose of paroling an alien into the United States—

(1) to be tried for a crime, or to be a witness at trial, upon the request of a Federal, State, or local law enforcement agency;

(2) for any other significant law enforcement or national security purpose; or

(3) for a humanitarian purpose where the life of the alien is imminently threatened.

(c) CANCELLATION OF REMOVAL AND ADJUSTMENT OF STATUS FOR CERTAIN NONPERMANENT RESIDENTS.—Section 240A(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1229b(b)(1)) is suspended during

1 the period beginning on the date of the enactment of this
2 Act and ending on January 21, 2013.

3 (d) DESIGNATION FOR TEMPORARY PROTECTED
4 STATUS.—No foreign state may be designated or re-des-
5 ignated under section 244(b) of the Immigration and Na-
6 tionality Act (8 U.S.C. 1254a(b)) during the period begin-
7 ning on the date of the enactment of this Act and ending
8 on January 21, 2013. The preceding sentence shall not
9 be construed to affect any extension of a designation
10 under paragraph (3)(C) of such section, if the designation
11 was made prior to the date of the enactment of this Act.

12 (e) DEFINITION OF UNAUTHORIZED ALIEN.—Section
13 274A(h)(3) of the Immigration and Nationality Act (8
14 U.S.C. 1324a(h)(3)) is deemed amended during the period
15 beginning on the date of the enactment of this Act and
16 ending on January 21, 2013, by striking ", or by the At-
17 torney General".

18 (f) DEFERRED ACTION; EXTENDED VOLUNTARY DE-
19 PARTURE.—The Secretary of Homeland Security may not
20 grant deferred action or extended voluntary departure to
21 any alien during the period beginning on the date of the
22 enactment of this Act and ending on January 21, 2013,
23 except to the extent that such grant authority is exercised
24 for the purpose of maintaining the alien in United
25 States—

(1) to be tried for a crime, or to be a witness at trial, upon the request of a Federal, State, or local law enforcement agency;

(2) for any other significant law enforcement or national security purpose; or

(3) for a humanitarian purpose where the life of the alien is imminently threatened.

(g) REGULATIONS.—

(1) IN GENERAL.—The following provisions of title 8, Code of Federal Regulations, are suspended during the period beginning on the date of the enactment of this Act and ending on January 21, 2013:

(A) Section 274a.12(a)(11).

(B) Section 274a.12(c)(11).

(C) Section 274a.12(c)(14).

(D) Section 274a.12(c)(16).

(E) Section 274a.12(c)(18).

(2) REFERENCES.—Any reference in paragraph (1) to a section of the Code of Federal Regulations shall be construed to be a reference to that section and any successor section.

(h) TREATMENT OF CERTAIN BENEFITS.—In the case of any immigration benefit granted during the period beginning on July 12, 2011, and ending on the date of

1 the enactment of this Act under any authority suspended
2 under subsection (b), (e), (f), or (g), the benefit is revoked
3 as of the date of the enactment of this Act.

○

Mr. SMITH. Thank you, Mr. Chairman.

The American people have called upon Congress to defeat several amnesty bills in recent years. Following Congress' rejection of these attempts, the current Administration now wants to grant a "backdoor amnesty" to illegal immigrants.

What had once been rumor fueled by leaked Administration memos is now official Department of Homeland Security policy as of last month. The Director of U.S. Immigration and Customs Enforcement issued two directives on the scope of DHS officers' prosecutorial discretion that could allow millions of illegal and criminal immigrants to avoid our immigration laws.

The memos tell agency officials when to exercise prosecutorial discretion, such as when to defer the removal of immigrants, when not to stop, question, arrest, or detain an immigrant, and when to dismiss a removal proceeding.

The directives also tell officials not to seek to remove illegal immigrants who have been present illegally for many years.

Millions of illegal immigrants have been in the U.S. since the 1990's. So the ICE directives literally apply to millions of illegal immigrants.

DHS's plan to open the door to mass administrative amnesty is a rejection of Congress' constitutional rights and shows utter disdain toward the wishes of the American people.

Prosecutorial discretion is justifiable when used responsibly. In fact, I and others asked Clinton administration INS Commissioner Doris Meissner to issue guidelines recognizing that "true hardship cases [involving legal, not illegal, immigrants] should exercise discretion."

Commissioner Meissner did so, but she was careful to point out that prosecutorial discretion "must be used responsibly" and that "exercising prosecutorial discretion does not lessen the INS's commitment to enforce the immigration laws to the best of our ability. It is not an invitation to violate or ignore the law."

Just this March, Meissner stated that, "Prosecutorial discretion should be exercised on a case-by-case basis, and should not be used to immunize entire categories of noncitizens from immigration enforcement."

Unfortunately, the ICE memos make clear that DHS plans not to use but to abuse these powers. If the Obama administration has its way, millions of illegal immigrants will be able to live and work legally in the United States. This unilateral decision will saddle American communities with the costs of providing education and medical care to illegal immigrants. It will also place our communities at risk by not deporting criminal immigrants.

As a result, Senator Vitter and I introduced the HALT Act. This legislation prevents the Obama administration from abusing its authority to grant a mass administrative amnesty to illegal immigrants.

The Obama administration should not pick and choose which laws it will enforce. Congress must put a halt to the Administration's backdoor amnesty.

Thank you, Mr. Chairman. Yield back.

Mr. GALLEGLY. The gentlelady from California, the Ranking Member, my good friend Ms. Lofgren?

Ms. LOFGREN. Thank you, Mr. Chairman.

The bill we are considering today is irresponsible and blatantly political. Bills in Congress sometimes have no basis in fact, but this one takes that to a whole new level. It is designed around a conspiracy theory that really boggles the mind. And if I weren't sitting here, I wouldn't believe that the U.S. Congress would actually waste time and money on such a bill, but here we sit.

According to the majority, the bill is a response to a series of recent ICE memos that lay out immigration enforcement priorities and provide guidance on the use of agency discretion to best meet those priorities. Actually, anyone who reads the memos will see there is nothing sinister about them.

Like every other law enforcement agency on the planet, ICE has limited resources, and it must lay out enforcement priorities so that resources are not squandered. As crazy as it sounds, these memos put terrorists, criminals, and otherwise dangerous individuals at the top of that list.

If we can only deport a limited number of people, around 400,000 this year, the memos say, then ICE should focus its resources on those who would do us harm. That is just common sense.

But rather than see common sense, the majority apparently sees a diabolical plot. They allege a grand scheme to avoid enforcing immigration laws, even while the Obama administration has set all-time records with respect to removals, prosecution of immigration violations, worksite enforcement actions, fines, jail time, and assets at the border.

In 1999, a number of congressmen sent a letter to former Attorney General Reno stressing the importance of prosecutorial discretion in the immigration context, asking her to issue necessary guidance. In that letter, the congressmen cited, "Widespread agreement that some deportations were unfair and resulted in unjustifiable hardship," and they asked why the INS pursued removal in such cases when so many other more serious cases existed.

They urged for a prioritization of enforcement resources, asking the Attorney General to develop INS guidelines for the use of its prosecutorial discretion similar to those used by U.S. attorneys.

The letter was signed by the current Chair of our Judiciary Committee, as well as many other very conservative Members of the House, including former Chair Henry Hyde, former Chair Jim Sensenbrenner, Brian Bilbray, Nathan Deal, Sam Johnson, and David Dreier. I guess prosecutorial discretion wasn't so bad back then.

Ironically, it was the 1999 letter signed by the Chairman that started the chain of events that lead us to the two ICE memos at issue today. Months after Chairman Smith signed the letter asking for guidance, guidance finally came.

Memos outlining guidelines for the use of prosecutorial discretion were issued by the INS general counsel in July of 2000 and then issued by INS Commissioner Doris Meissner in November of 2000 and later issued by the first ICE Director Julie Myers in November of 2007.

These early memos are the predecessors of the two memos the majority is complaining about today. The majority never said anything about those earlier memos or the factors listed in those memos until now.

In a recent "Dear Colleague" letter seeking support for the HALT Act, Chairman Smith questions many of the factors listed by ICE for exercising discretion, focusing on certain factors, such as length of presence in the U.S., family ties, whether a person is DREAM Act eligible, as clearly indicating the Administration's plan to grant amnesty to millions of undocumented immigrants. But these factors are not new in any way. They are the same factors we have been considering for years.

In fact, length of presence, family ties, entry during childhood have been specifically listed as positive factors for agency discretion since they were first listed in the memos published by INS in 2000 in response to the Chairman's letter.

By eliminating prosecutorial discretion, it says that ICE cannot prioritize criminals over the spouses of soldiers. It says that ICE must go after innocent children the same way it goes after murderers and rapists. That is absurd, and so is this bill.

If this bill were the law, we could not grant waivers to the spouses of U.S. citizens who would suffer extreme hardship if they were separated; parole to the U.S. widows so they could attend the funerals of spouses killed in action while serving in our military; parole in orphan children to be with their U.S. citizen grandparents; parole in orphans being adopted by United States citizens, as we did after the Haitian earthquake; grant TPS in case another catastrophe like the Haiti earthquake were to happen again; grant deferred action to victims of human trafficking and violent sexual abuse; parole in child bomb victims in Iraq who need prosthetic limbs; or prevent businesspeople from getting—who are lawfully present in the United States from getting advance parole so they can do their business abroad and be able to return home to work.

You know, in the District of Columbia, it is a crime to engage in prostitution. In July of 2007, Ms. Deborah Palfrey, known as the "D.C. madam," who had been convicted under this statute, published her phone records indicating that one of our witnesses was her client. Later, Senator Vitter said, "This was a very serious sin in my past, for which I am, of course, completely responsible."

Under the D.C. criminal statute related to solicitation, the Senator could have faced 90 to 180 days for each solicitation, but he never faced trial. In fact, prosecutors never brought charges. Sure looks like he benefitted from prosecutorial discretion.

I would not mention this incident today if it didn't expose the hypocrisy of seeking to prevent the use of discretion to benefit others when one has enjoyed the benefit himself.

Now I notice that Senator Vitter has not, in fact, showed up today, but we do have his testimony. It is a part of our record. And I think it really takes the cake to get the benefit of discretion and urge that it be denied to others.

With that, I yield back.

Mr. GALLEGLY. The gentleman from Michigan, the Ranking Member of the full Committee, Mr. Conyers?

Mr. CONYERS. Thank you, Chairman Gallegly and Chairman Smith.

This is an unusual matter. H.R. 2497, the "Hinder the Administration's Legalization Temptation Act." Could I yield to anyone to tell me whose title that is? Was it originated by Members of Con-

gress or some brilliant staff person? Did you want me to yield to you?

Mr. GALLEGLY. I can't answer that question.

Mr. SMITH. I will be happy to respond to the gentleman, if he wants to yield?

Mr. CONYERS. Of course.

Mr. SMITH. We thought that was a particularly appropriate acronym, H-A-L-T. And I won't say who we should give the credit to, but it was obviously a creative mind. But it so happens that acronym is very, very appropriate, since we are trying to halt the Administration's efforts to engage in backdoor amnesty.

And thank you for yielding.

Mr. CONYERS. Well, that is fine. I just—Hinder the Administration's Legalization Act of Immigration. That would have been a title I wouldn't raise an eyebrow about, but the Hinder the Administration Legalization Temptation Act? I have never heard the word "temptation" involved in a title of a bill in my years in the Congress. But there is always a first time. So this is it.

If anybody ever uses that word again, with or without an acronym, I will remember that it started in the House Judiciary Committee by some unknown creative mind. [Laughter.]

So the majority, and particularly my dear friend, the Chairman of the Committee, full Committee, my friend Lamar Smith, thinks President Obama cannot be trusted with the authority that every other President has had. The bill's sunset date, January 21, 2013, says that Obama is such a great threat that he and only he must have his authority withdrawn.

So this is not an attack on the presidency, but an attack on the President himself. And I am just wondering am I being overcritical? And I would yield to anyone who suggests that maybe this is not the case.

This is not an attack on the office of the President. This is an attack on Barack Obama himself. Now——

Mr. SMITH. If the gentleman would yield, I would like to clarify that, if I could?

Mr. CONYERS. Yes, sir.

Mr. SMITH. This is not a personal attack on any individual. What it is, is an effort to halt what many of us perceive as being abusive executive decisions that would lead to the backdoor amnesty that I think we would like to prevent.

And in this particular instance, it is this President who, in my judgment, who has been abusing the privileges of the Administration. I would be happy to have this apply to any other President in the future.

It just so happens that the individual who is serving as President today is the one whose officials within the Administration are abusing the process. And that is the purpose of the bill is to stop those kinds of procedures.

Mr. CONYERS. Well, I thank you, Lamar Smith, for that explanation.

Do you want me to yield to you?

Mr. GALLEGLY. No. I was just going to ask a question.

Mr. CONYERS. Sure.

Mr. GALLEGLY. Maybe it is a rhetorical question, but if it is, forgive me. When you alluded to January 2013, were you conceding that that would be the end of President Obama's presidential career?

Mr. CONYERS. Well, much to your sorrow, no. [Laughter.]

Mr. GALLEGLY. Just checking.

Mr. CONYERS. That is what the bill says. The bill's sunset date is January. They are assuming that perhaps they won't have this President that endorses backdoor immigration won't be here.

Ms. LOFGREN. Would the gentleman yield?

Mr. CONYERS. Yes. May I have an additional 2 minutes, Mr. Chairman?

Mr. GALLEGLY. Without objection.

Mr. CONYERS. Thank you, sir.

And I yield to Zoe Lofgren.

Ms. LOFGREN. I thank the Ranking Member for yielding.

I would just note that the Department of Homeland Security, during the last 2 years of the Bush administration, averaged 29,343 grants of deferred action and parole a year. For the first 2 years of the Obama administration, the average was 27,800 of grants of deferred action and parole a year, actually less than the Bush administration.

So this, you know, drama of—I mean, I actually personally wish it were more. But it is less. There have been more deportations and less grants of parole and deferred action under the Obama administration than under the Bush administration.

I thank the gentleman for yielding.

Mr. CONYERS. Thanks, Zoe.

Lamar, did you know that? You couldn't have known that and then written the kind of statement and bill that you have written. I think the basic premise of the bill is that President Obama cannot be trusted to enforce our immigration laws, and I think that is just plain wrong and very unfair to the President, as Ms. Lofgren has pointed out.

In the first 2 fiscal years under President Obama, the Department of Homeland Security deported more than 779,000 people. These are record numbers and an 18 percent increase over President George Bush's last 2 years in office.

Lamar, did you know that? Because if you did, you couldn't possibly be saying that the President can't be trusted to enforce our immigration laws.

Mr. SMITH. Well, if the gentleman will yield?

The President may be enforcing some of the laws. My point is that he is not enforcing all the laws. And if you want to look to comparisons, look at this current Administration compared to the Bush administration when it comes to worksite enforcement, which is down 70 percent in just 2 years.

So, clearly, this President is not taking advantage of the various immigration laws. And in this particular case, we are talking about the application of administrative amnesty possibly to millions of individuals. That was never contemplated by any other Administration.

And when we talked about the previous Administration, we talked about prior uses of prosecutorial discretion. In the case of

the letter that I wrote—and I don't think the gentlewoman from California was present when I mentioned it, or she wouldn't have said what she did and she would have had the facts. The letter that was referred to mentioned specifically legal permanent residents. It does not apply to illegal immigrants.

And it also was on a case-by-case basis, not giving whole groups of individuals administrative amnesty. So I am afraid that that letter can't be relied upon or used in the way that the gentlewoman from California was trying to use it.

I will yield back.

Mr. GALLEGLY. The time of the gentleman has expired.

We have three distinguished witnesses today. In response to the comment that the Ranking Member made as it related to Senator Vitter, Senator Vitter was here. And because of the delay of getting started, almost an hour, he could not stay. As a result of that, without objection, his written statement will be entered into the record of the hearing.

[The prepared statement of Mr. Vitter follows:]

Statement of Senator David Vitter

Before the House of Representatives
Committee on the Judiciary
Subcommittee on Immigration Policy and Enforcement

Hearing on the "Hinder the Administration's Legalization Temptation Act"

July 26, 2011

Good afternoon, Chairman Smith, Chairman Gallegly, Vice-Chairman King, Ranking Member Lofgren, and members of the Committee. Thank you for inviting me to testify before this Committee today on the "Hinder the Administration's Legalization Temptation Act," which would prevent the Obama administration from abusing its authority by granting mass amnesty by administrative fiat. I am happy to join you today for a discussion about this important legislation, which I have introduced in the Senate as a companion to H.R. 2497.

I offer my views in my capacity as a United States Senator and as the Chairman of the U.S. Senate Border Security and Enforcement First Immigration Caucus. I founded the Caucus during my first Senate term in response to escalating illegal immigration and the failure of our federal government to address the consequences of this serious problem. The principle mission of the Caucus is to promote a true, achievable alternative to mass amnesty for illegal aliens: attrition through enforcement. Living illegally in the United States will become more difficult and less satisfying over time when the government enforces all of the laws already on the books.

We face many challenges in dealing with illegal immigration in Congress. First, we can all agree that we need to better protect our borders. Additionally, we must enact measures that remove and reduce incentives for illegal immigration. We need to ensure that only citizens and those in our country legally can be hired for jobs. There are a myriad of loopholes within current law that allow illegal aliens to take advantage of benefits intended for American citizens and

legal residents. For example, our misguided practice of birthright citizenship currently serves as a magnet for further illegal immigration and does a disservice to every would-be citizen who is following the rules.

Perhaps our toughest challenge in Congress is to oppose and defeat amnesty in all its forms. Poll after poll has proven that the overwhelming majority of the American public is opposed to amnesty. In the Senate I have had the opportunity to fight and help defeat amnesty measures such as so-called comprehensive immigration reform and the DREAM Act. As Congress continues to respect the will of the people by rejecting such attempts at granting amnesty for illegal aliens, I have noticed that amnesty advocates have modified their tactics. Out of desperation to push their amnesty agenda, the Obama administration has made the stunning decision to bypass Congress completely. We now face a new challenge as Members of Congress: we must prevent the Obama administration from abusing its authority by granting mass amnesty by administrative fiat.

We recently learned of the Administration's plan through the release of internal memos from Immigration and Customs Enforcement (ICE) Director John Morton, one of which essentially creates backdoor amnesty through agency policy. Under the guise of "prosecutorial discretion," Morton provides factors that would warrant dismissal of an order of removal for almost every illegal alien except known terrorists and convicted criminals. Far from prosecutorial discretion, Morton's proposed policy is an invitation to ignore the law. The clear implication is that President Obama's Department of Homeland Security (DHS) does not intend to fully enforce our immigration laws. The Obama administration is picking and choosing which laws it will enforce in order to grant amnesty to a sweeping number of illegal aliens.

This policy not only undermines the stability of our immigration system, but has severe fiscal consequences. Should ICE move forward with plans to grant "deferred action" to an unrestricted number of illegal aliens who would otherwise be removed, those illegal and deportable aliens would then be eligible for work authorization. I am not suggesting that DHS officials do not have the authority to exercise prosecutorial discretion in making decisions to grant parole in specific cases, but I am concerned that this authority is being abused. In 1996, Congress clearly limited the Administration's parole authority to be used "only on a case-by-case basis for urgent humanitarian reasons or significant public benefit."[1] However, these memos make clear that DHS plans to abuse these powers to grant mass legalization without any Congressional authorization.

It is astounding that the executive branch of the U.S. government has adopted a practice that allows, even encourages, individuals to exploit the loopholes of our immigration system. It is clear that Congress has the authority and the obligation to put a stop to it once and for all. The Constitution grants Congress the authority to determine our immigration policies and the Supreme Court has long upheld our authority to do so. Awarding backdoor amnesty over the objections of Congress and the American people would be a slap in the face to taxpayers and legal immigrants. I would like to thank Mr. Smith for allowing me to join him in addressing this critical issue.

Chairman Gallegly, Vice-Chairman King, Ranking Member Lofgren, and distinguished Members of the Subcommittee, thank you again for the opportunity to testify today. I look forward to working together to enact the HALT Act.

[1] Section 212(d)(5)(A) of the Immigration and Nationality Act

3

Mr. GALLEGLY. The remaining witnesses are as follows. We have Mr. Chris Crane, who currently serves as the president of the National Immigration and Customs Enforcement Council 118, American Federation of Government Employees. He has been working as an immigration enforcement agent for U.S. Immigration and Cus-

toms Enforcement at the Department of Homeland Security since 2003.

In his capacity as an immigration enforcement officer, he worked in the Criminal Alien Program for approximately 5 years and also served as a member of an ICE fugitive operation team. Prior to his service at ICE, Chris served for 11 years in the United States Marine Corps.

Ms. Jessica Vaughan serves as the policy director at the Center for Immigration Studies. She has been with the center since 1991, and her area of expertise is in the Administration and implementation of immigration policy, covering such topics as visa programs, immigration benefits, and immigration law enforcement.

Prior to joining the center, Ms. Vaughan was a Foreign Service officer with the U.S. Department of State. She holds a master's degree from Georgetown University and a bachelor's degree from Washington College in Maryland.

Our third witness, Ms. Margaret Stock, is an adjunct faculty member in the Department of Political Science at the University of Alaska in Anchorage. Professor Stock has frequently testified before Congress on issues relating to immigration and national security and has authored numerous articles on immigration and citizenship topics.

She is a retired military officer and recently concluded service as a member of the Council on Foreign Relations Independent Task Force on Immigration Policy. Professor Stock taught at the U.S. military academy at West Point, New York, from June 2001 until June 2010.

Welcome to all of you. We will start with you, Mr. Crane.

TESTIMONY OF CHRIS CRANE, PRESIDENT, NATIONAL ICE COUNCIL

Mr. CRANE. Good afternoon, Chairman Gallegly, Members of the Committee.

On June 25, 2010, ICE union leaders publicly issued a unanimous vote of no confidence in Director John Morton. To my knowledge, it is the only time in ICE or INS history that officers and employees of enforcement removal operations issued a no confidence vote in their leadership.

These unprecedented acts by ICE employees should send a loud, clear message that something is seriously wrong at ICE. ICE union leaders are in the media like never before, speaking out about gross mismanagement and matters of public safety, warning that ICE and DHS are misleading the public.

And mislead the public they do. A Federal judge recently stated, "There is ample evidence that ICE and DHS have gone out of their way to mislead the public about Secure Communities."

It is reported that the DHS Office of Inspector General will be investigating claims that ICE leadership misled public officials regarding the program. To be clear, ICE officers disagree with efforts to end the Secure Communities Program. But to be equally clear, we abhor the actions of any agency official who lies to or misleads the American public.

That is why, in the union's vote of no confidence 13 months ago, we reported ICE's misleading of the public, specifically citing the Secure Communities Program as an example.

Federal judges, law enforcement agencies, State representatives, special interest groups, ICE officers in the field, everyone says there is an integrity issue with ICE leadership. That is exactly where this conversation has to begin.

Does ICE leadership need oversight? The answer is yes. There needs to be oversight. There needs to be transparency.

I was recently appointed to the Homeland Security Advisory Committee on Secure Communities. While ICE states that there are immigration agents, plural, on the committee, I am the only one. Approximately 50 percent of the committee's members appear to be immigrants advocates. Not one committee member is a public advocate for reforms through stronger enforcement.

A solid majority of members appear to favor the immigrants advocacy viewpoint. The appearance is that ICE has selected a stacked deck for this committee. Most alarming to me, on the second day of our first meeting, the committee was told that our findings and recommendations had been written for us, when we hadn't even begun discussion of either.

Members of the Committee protested, but the Chairman overruled the group. When I requested that the agency's misleading of the public regarding Secure Communities be included in the findings, it was not permitted.

While I deeply respect the Members of the Committee as individuals, I am troubled by the Committee's activities and the methods used by ICE to select its members. In my opinion, efforts must be made to provide oversight and transparency to the activities of DHS and ICE regarding this Committee.

However, oversight and transparency may be most needed with regard to ICE's law enforcement programs. Virtually all of ICE's enforcement policies should be public, but ICE leadership refuses to put many directives in writing because they don't want the public to know that ICE agents and officers, as an example, are under orders not to arrest certain groups of aliens, that officers generally don't have prosecutorial discretion, that ICE is ordering this to happen.

Other policies that ICE puts in writing are misleading, much in the same way the Secure Communities Program was publicly misleading. The new prosecutorial discretion memo has been publicly spun by ICE as giving ICE officers more discretion when, in reality, it takes away discretion.

It has been advertised as better utilizing limited ICE manpower resources, when, in fact, it has the potential to overwhelm officers with more work. The policy cannot be effectively applied in the field, which may explain why ICE itself has been unable to develop training and guidance to officers in the field on how to enforce its own policy.

Other new ICE policies and pilot programs are equally troubling. Call-in letters that rely on aliens incarcerated in jails to self-report to ICE offices after they are released from jail, and new ICE detainers instructing jails to simply release aliens not convicted of a crime.

These policies are not an exercise of prosecutorial discretion. They are not law enforcement actions. They are the opposite. These policies take away officers' discretion and establish a system that mandates that our Nation's most fundamental immigration laws are not enforced.

In conclusion, we applaud the efforts of any Member of Congress who attempts to bring oversight to this troubled agency. And it is a troubled agency.

The safety of our officers is of little concern to agency leaders. There is no oversight as ICE investigates itself. As a union and as employees, we would very much like to work with Members of Congress to be your eyes and ears inside the agency, with the goal of providing much-needed oversight of ICE and its leadership.

Thank you.

[The prepared statement of Mr. Crane follows:]

Statement by Chris Crane, President,

National Immigration and Customs Enforcement Council 118

of the

American Federation of Government Employees

Before the

Judiciary Subcommittee on Immigration and Policy Enforcement

July 26, 2011

Chairman Smith and Members of the Subcommittee:

Good morning. My name is Chris Crane and I am the President of the National Immigration and Customs Enforcement Council 118 of the American Federation of Government Employees (AFGE). The National ICE Council is the union representing approximately 7,200 ICE employees who work primarily in the Office of Enforcement and Removal Operations. I have been an ICE Immigration and Customs Enforcement Officer for the past 8 years. During that time, I have observed many plans developed by this agency fail due to a lack of resources, commitment or leadership.

In my capacity as an ICE Immigration Enforcement Agent (IEA), I have worked the Criminal Alien Program (also known as CAP) for approximately five years. CAP is a program within ICE which targets criminal aliens who were first arrested by local police or other Federal law enforcement agencies and charged criminally. I have also served as a member of an ICE Fugitive Operations Team whose primary function was to apprehend foreign nationals who had not departed the United States after receiving an Order of Deportation from a Federal immigration judge.

Union Vote of No Confidence

On June 25, 2010, ICE union leaders across the nation publicly issued a unanimous vote of no confidence in ICE Director John Morton. It is the only time that I am aware of in the history of ICE or the history of the legacy Immigration and Naturalization Service that officers, agents and employees of Enforcement and Removal Operations issued a no confidence vote in their leadership. To be clear, the no confidence vote has never been rescinded; we remain committed to it now more than ever before.

Mr. Morton's term as director also marks the first time that ICE employees have ever taken their personal vacations to stand in picket lines publicly protesting the actions of the Agency. ICE union leaders are in the papers and on television like never before in full public view speaking out about gross mismanagement and matters of public safety; warning that ICE and DHS are misleading the public.

It is my hope that these unprecedented acts by ICE employees across the nation have sent a loud, clear message that something is seriously wrong at ICE, and that the concerns voiced are not simply those of a small group of disgruntled employees, but instead reflective of thousands of men and women working at ICE who are committed to public safety and national security, and who by the very nature of their jobs are uniquely qualified to speak regarding problems within the agency and among its leadership.

As I stated in my congressional testimony on December 10, 2009, ICE is broken. Law enforcement and public safety are no longer the priority at ICE; politics are the priority at ICE. Immigrant's advocacy groups are now brought in by ICE and DHS leadership to create ICE's law enforcement practices in the field as well as security protocols for ICE detention centers. ICE agents and officers in the field are excluded from essentially all pre-decisional involvement involving changes to law enforcement policies in the field. While we applaud public outreach, input from special interest groups and outside agencies cannot replace sound law enforcement practices and input from ICE officers and agents in the field.

Prosecutorial Discretion

The prosecutorial discretion memorandum issued by ICE Director John Morton on June 17, 2011 cannot be effectively applied in the field and has the potential to either completely overwhelm ICE's limited manpower resources or result in the indiscriminate and large scale release of aliens encountered in all ICE law enforcement operations, not just the ICE Secure Communities Program. ICE and DHS appear to be scrambling to issue policies and press releases intended to satisfy complaints from immigrant's advocacy groups. These policies do not appear to improve law enforcement practices or better utilize ICE's resources. The prosecutorial discretion memorandum was written and issued to the field in such a rush that the actual training and guidelines for officers and agents in the field, which should always be issued prior to any new policy being implemented in the field, haven't even been developed yet. ICE met its real goal of putting out a press release intended to satisfy advocacy groups, but made no attempt to effectively implement the new law enforcement policy in the field leaving officers, agents and field management confused regarding the policy's application. This failure by ICE leadership has created uncertainty among its own officers with regard to making arrests in the field, a situation that cannot exist in a law enforcement organization.

The prosecutorial discretion memorandum sets forth approximately nineteen criteria for ICE agents and officers in the field to use in determining whether an alien can be detained or arrested. Important to note, Director John Morton will determine which aliens are to be arrested and that guidance will be passed down to ICE supervisors in the field. ICE agents and officers in the field will be under orders to release and avoid arresting certain groups of aliens altogether. ICE agents and officers will follow orders, not exercise any true discretion. Claims by ICE that this memorandum gives field agents more discretion in the field are false. The purpose of this policy is to prohibit officers and agents from arresting individuals from certain groups, not to provide officers with additional options.

From an enforcement standpoint the biggest dilemma facing officers and agents in the field may be how to apply the policy to the hundreds of thousands of aliens encountered each year. Each claim made by an alien which may prevent his or her detention or arrest must be investigated. Each investigation could require hours or days. Currently approximately 5,800 ICE Enforcement

and Removal officers and agents nationwide man ICE detention centers across the country as guards; provide security and transportation to immigration courts nationwide; arrest, process and deport hundreds of thousands of aliens annually removing approximately 370, 000 aliens from the U.S each year. The numbers are staggering. No other law enforcement group does more with less. These operations have already stretched our officers too thin; we do not have the resources to support the new ICE prosecutorial discretion memo as it written. While ICE has informed the union that that it has not planned how agents and officers will effectively apply the policy in the field, ICE has been clear that the policy will be applied by officers in every case.

With that in mind, if approximately one-quarter of the aliens removed each year by ICE claimed to meet the criteria outlined in the prosecutorial discretion memo and each claim required only one hour to substantiate, this would require 100,000 man hours each year. Of course the question as to how officers and agents will substantiate these claims remains unanswered. For example, if an alien claims to be a high school graduate or attending college, ICE officers will need documentation substantiating those claims. However, schools will not provide ICE with high school diplomas or transcripts for students attending colleges or universities. ICE will be dependent on the alien making the claim to provide supporting documentation, but what protocols ICE will use to ensure that diplomas and transcripts, or any other documents are not fraudulent is not known. As the usage of fraudulent birth certificates, immigration documents, social security cards and driver's licenses is prevalent among those illegally in the U.S., this task could prove especially difficult and time consuming.

For officers and agents in the field the reality of this policy seems clear. The ICE Office of Enforcement and Removal Operations does not have the resources to properly substantiate the claims made by aliens as they apply to the new prosecutorial discretion memorandum. Officers and agents will be under intense pressure from managers to simply take the alien's word regarding a claim to avoid lengthy or troublesome attempts to substantiate claims. While releasing thousands of aliens that would have been placed into immigration proceedings in previous years, ICE managers will still be pushing officers and agents to remove approximately 400,000 aliens each year. The end result will be that ICE will simply avoid certain groups of aliens altogether.

Call-in letters – According to ICE it has implemented a pilot program in certain areas which mandates that ICE agents and officers not arrest or detain certain aliens arrested by local police. Instead, ICE agents and officers are required to mail letters to the aliens at the jail asking the aliens to report to an ICE office after their release from jail. As no charging documents have been issued by ICE in this scenario, any alien who does not report to ICE cannot in any way be held accountable for failing to report to an ICE office. As the only negative consequence results from actually reporting to ICE, as a rule aliens will not report. If implemented nationwide, this has the potential to quickly result in hundreds of thousands of aliens illegally present in the

United States who are identified by ICE agents in jails, but who are released and never placed in immigration proceedings.

Keeping in mind that ICE has justified changes like this one by claiming it is a better use of ICE's limited resources, ICE proposes that cases involving aliens who do not report to an ICE office after receipt of a call-in letter will be turned over to an ICE task force which will then locate and arrest the alien on the street. These claims are disingenuous at best as ICE knows the resources do not exist to conduct manhunts of thousands of aliens most of whom provided fake addresses and names to local police and ICE officers to begin with. The entire policy is merely another attempt by ICE to avoid enforcing violations of U.S. immigration laws for political reasons, while simultaneously attempting to convince the public that ICE is taking some type of legitimate law enforcement action.

New ICE Detainers - Traditionally, ICE detainers alerted local jails, courts and police to contact ICE before releasing specified aliens from jails or prisons to allow ICE the necessary time to take custody of the prisoner or inmate and process them for deportation – most importantly the detainer prevented the alien from being released. ICE reports that it has implemented a new pilot program in certain areas directing jails to simply release aliens not yet convicted of crimes, stating that ICE will now only take custody of aliens who have been convicted of a crime. As with the call-in letters, large numbers of aliens will be released from jails. Under previous policy, these same aliens would have been processed and required to appear before an immigration judge.

Field arrest procedures – Increasingly, ICE headquarters leadership refuses to put directives to supervisors, agents and officers in the field regarding law enforcement operations in writing. Orders and directives are given orally to prevent the activities of ICE's leadership from becoming public. Agents and officers in the field are frequently under orders not to arrest persons suspected of being in the United States illegally. At times those no arrest orders include ICE fugitives, who have been ordered deported by an immigration judge, as well as individuals who have reentered the U.S. following deportation which is a federal felony.

Agents and officers report that they are ordered not to run criminal or immigration background checks or even speak to individuals whom they reasonably suspect are in the U.S. illegally. These directives prevent officers and agents from enforcing U.S. immigration laws and prevent the apprehension of fugitives, felons and other individuals who may present a threat to public safety. Situations in which officers and agents are ordered not to run criminal background checks or speak to individuals create an especially high risk to public safety as agents may unknowingly walk away from individuals who pose a public threat.

Resources

While none of ICE's new policies claiming to better utilize the agency's resources actually seem to make any improvements, it is important to note that ICE and DHS have grossly oversimplified ICE's resource shortages to support new agency policies that focus on providing protections from arrest for many aliens illegally present in the U.S.

An accurate understanding of ICE's resources and their best usage cannot be captured by looking only at the number of aliens ICE is funded to remove each year – as ICE and DHS have done repeatedly in the media. ICE's workload can be highly unpredictable and fluctuates dramatically from office to office and from day to day. In conjunction with these increasing and decreasing workloads, the availability of ICE's resources and manpower also fluctuate from office to office and change from day to day. ICE agents and officers focus on the "worst of the worst," and make those cases a priority. However there are those days and situations in which time is available to process less significant cases and on those occasions it is in fact the most effective use of resources to do so. Every day will not lead to the apprehension of the nation's most wanted criminals for each and every ICE officer and agent nationwide. Those periods of time in which individual officers or agents only encounter lower priority cases cannot be captured in a bottle and saved for use on different date when more high priority cases are abundant. Under those circumstances it is a highly efficient use of resources for that particular officer or agent on that particular date to process cases of lower priority. This type of prioritization maximizes work performed by officers, maintains the proper focus and best utilizes ICE's day to day flow of changing resources, and also provides balanced enforcement of U.S. immigration laws.

Officer Safety

Perhaps nothing more accurately illustrates ICE's true law enforcement priorities than the disregard the agency appears to have for the safety of its own officers. Threats against local and federal law enforcement agents in the U.S. are on the rise. Intelligence reports indicate that cartels and gangs are actively seeking to capture, torture and kill ICE agents in the United States. With the shootings of ICE agents and Border Patrol agents as well as large scale murders in Mexico as an indicator, these are threats that must be taken seriously.

While most federal agencies have already prepared their officers prior to these incidents as a matter of sound law enforcement practice and officer safety – ICE in many cases has not. On March 7, 2011, the union sent a letter to ICE Director John Morton reporting that ICE Enforcement and Removal Operations officers were prohibited in some areas from carrying shotguns and rifles under the direction of Field Office Directors. ICE responded by stating that the problem did not exist.

ICE Director John Morton was then presented with information proving that ICE agents and officers in Salt Lake City, Utah were not instructor qualified with rifles issued to the Field

Office, qualification being a requirement to carrying the rifles in the field. The rifles were not issued to officers and sat locked in a safe as they had for years. The Salt Lake Office had no rifle training program in place.

Once this information was provided to Director Morton as proof of the safety concerns, a nationwide inventory was requested by the Union to determine not only the number of weapons available for use in the field but also to identify offices using policies similar to the one utilized in Salt Lake City that prohibited the use of rifles in the field. ICE Director John Morton has not responded to this request for over four months, and in doing so has ignored the safety of his officers and agents in the field. While his officers and agents await his response regarding matters of their personal safety, policies regarding non-life threatening protections for individuals present in the U.S. in violation of law are produced by Director Morton's office almost weekly.

In a separate matter, approximately one year ago the union met with Director Morton and alerted him to allegations made by ICE lab technicians and quality assurance engineers that they were ordered by ICE managers to falsify official government records and approve ammunition lots that did not meet contract specifications. If true, hundreds of millions of dollars in faulty ammunition may have been illegally approved by ICE supervisors and sent to our officers in the field, who at any time could depend on that ammunition to defend their own life, the life of a partner, or a member of the public. A contract lab technician who allegedly reported improper practices in the facility was allegedly fired following the filing of those reports and escorted off of the facility. One ICE employee who reported the incidents has been on administrative leave for years facing termination. Another ICE employee who reported the falsifying of ammunition testing records has allegedly been prohibited from entering the lab and has been restricted to his office for months. He alleges that he also faces daily harassment and is investigated by ICE for frivolous allegations as supervisors attempt to have him fired.

Director Morton has never responded to the union regarding this matter, and we are concerned that these practices continue at the facility which inspects ammunition used by ICE agents and officers in the field. In addition to obvious safety concerns and misuse of taxpayer dollars, ICE employee whistleblowers stepped forward and filed reports but instead of being rewarded now face termination for reporting suspected fraud waste and abuse and possible criminal misconduct by ICE managers. While harassment and retaliation are standard practice at ICE, these employees need assistance and oversight appears necessary at the ammunition testing facility. This is a matter for which ICE officers and agents would greatly appreciate the Committee's assistance.

Homeland Security Committee on Secure Communities

A Homeland Security Advisory Committee on the ICE Secure Communities Program was formed with each member selected by ICE Director John Morton. Approximately 50% of the committee's members appear to be immigrant's advocates and/or attorneys representing immigrants at some level. In comparison, not one member of the committee is a public advocate for reforms through stronger immigration enforcement. Some of the other members, while not identified as advocates themselves, do not oppose the majority of the positions advanced by advocates on the committee, creating a committee with little diversity on significant issues. I am the only member of the committee who is an immigration agent and has a technical understanding of the ICE programs under review; I am accompanied by a union representative who is an ICE attorney by profession. For the most part, our combined concerns are not heard within the committee.

The committee was originally tasked with providing input on only two matters – how ICE should handle traffic violators and should ICE move to a post conviction model. With that very limited scope presented to the committee for review, at one point the committee chairman moved that the committee advise on all ICE law enforcement operations. I objected stating that the committee had grossly overstepped the guidance given to it and that the committee should not be advising on other programs such as the ICE Fugitive Operations Program and ICE participation on Federal Task Forces. My concerns were over ruled, and the committee, in my opinion, continues to act far beyond its appointed duties.

Most alarming to me, the committee's "findings and proposals" were written for the committee and given to us on the second day of our first meeting. The committee had not yet discussed findings or proposals in any way and was still struggling to understand the basic ICE Secure Communities Program. Many members of the committee protested stating that the entire approach of writing the findings and proposals was improper, but the chairman did not change his position saying only that members of the committee would be permitted to "wordsmith" the findings and proposals, which were written by persons unknown to me on behalf of the committee. As a rule, only suggestions that meet with the approval of the committee chairman have been permitted. While the committee can make suggestions, it is a dictatorial relationship, and the chairman appears to have the one and only say as to whether information is added or deleted from the findings and proposals of the committee, which again, were not written by the committee.

The complaints about the Secure Communities Program thus far have come from state government representatives, county sheriffs, city police chiefs and immigrant's advocacy groups. State government representatives appear to unanimously believe that ICE and DHS have misled them regarding the nature of the program. Sheriffs and Police Chiefs state that ICE and DHS have done such a horrific job regarding communication and public relations that immigrant

communities falsely believe that local police play a role in identifying and arresting aliens as part of the Secure Communities Program, which they do not. Immigrant's advocacy groups allege that local police officers now profile individuals from certain groups and arrest them for minor state and local traffic violations with the motive of eventually having them deported through the Federal Secure Communities Program. The validity of these claims aside, the complaints provided to the committee thus far relate to mismanagement and poor communication by ICE and DHS and alleged profiling by local police not involved in the Secure Communities Program. Of course accusations that ICE leadership mismanaged the program and misled participants are an ICE leadership matter, not a failure of the Secure Communities Program that can be remedied though changes to the program. Similarly, if true, allegations that local police who do not have immigration arrest authority are profiling groups with hopes that ICE will later apprehend them under Secure Communities must be addressed by the local police and sheriff's departments. Alleged abuses by local police and sheriff's departments cannot be fixed or eliminated by changing ICE arrest protocols and practices, or by ignoring problems that may exist in individual police or sheriff's departments. Yet the committee, for reasons which I do not understand, continues to explore dramatic changes to the Secure Communities Program and ICE in general, most of these changes falling well outside of the committee's assignment, with no accountability of ICE and DHS leadership or local law enforcement agencies.

Many of the committee members have expressed strong concerns that ICE "intentionally misled" the states participating in the Secure Communities program, the public and ICE's other law enforcement partners. It has been widely discussed that the misleading nature of ICE's communications are at the source of many of the problems surrounding the ICE Secure Communities Program. The committee, however, has been prohibited from making mention in the committee's findings or recommendations that Janet Napolitano, John Morton, DHS, or ICE purposely or inadvertently misled the public or any group regarding the program as well as any problems that any misleading information may have created for immigrant communities, ICE's law enforcement partners, or the Secure Communities Program.

While I have a deep respect for the committee's members, it appears that the process of selecting members by ICE and DHS has led to a lack of appropriate balance of viewpoints and knowledge of ICE operations also needed on the committee. It is my opinion, that the findings or recommendations made by the Homeland Security Committee on Secure Communities, of which I am a member, should not be considered for the purpose of modifying any ICE law enforcement policy, practice or procedure. It is my opinion that immediate oversight of this committee is required to provide balance and integrity to the process.

Conclusion

In conclusion, we commend this Committee's efforts to bring oversight to the activities of this troubled agency, and unconditionally commit our resources to this or any future inquiries made

by this honorable body. Thank you for allowing me the opportunity to speak on behalf of our ICE employees.

This concludes my testimony, and I welcome any questions that you may have.

Mr. GALLEGLY. Thank you, Mr. Crane.
Ms. Vaughan?

TESTIMONY OF JESSICA M. VAUGHAN, POLICY DIRECTOR, CENTER FOR IMMIGRATION STUDIES

Ms. VAUGHAN. Thank you very much for the opportunity to be here today to discuss H.R. 2497.

Our work at the Center for Immigration Studies is focused on examining the impact of all forms of immigration on American society and the effects of any proposed changes to our immigration policies.

In my analysis, this bill would not have much of an effect on immigration levels, on immigration law enforcement, or on how the immigration agencies and their staff routinely do their jobs. But what it would do is to prevent any further harm to Americans and legal workers that would result if the White House or its appointees in the immigration agencies were able to expand their efforts to bring about an unpopular and ill-advised legalization scheme through executive action.

Just to set the stage, the last decade was the largest 10 years of immigration in American history. About 13 million immigrants settled here, legally and illegally. We also admitted several hundred thousand guest workers over the same time period every year.

Meanwhile, our economy lost 1 million jobs over that same decade. In 2008 and 2009 alone, 2.4 million new immigrants settled here, while 8.2 million jobs were lost in our economy.

In this economic climate, it is pretty hard to make the case that immigration regulations should be relaxed to permit illegal workers to stay, especially when most of them would be vying for the very same jobs as many unemployed U.S. workers and where there is already an oversupply of labor. Yet that is exactly what the Obama administration says it wants to do.

In various public statements and memoranda, officials say that the goals are to waive in as many immigrants as possible, to drastically scale back immigration law enforcement, and to legalize as many of the 11 million illegal aliens as possible. And it is not just talk. They have been acting on these plans.

For example, telling consular officers and benefits adjudicators to overlook things that should disqualify applicants or restricting what ICE field office staff can do, telling ICE lawyers to drop charges on thousands of illegal aliens at a time, or letting sanctuary States stay out of Secure Communities.

These actions display a shocking disregard for the public trust and for congressional authority over immigration law, not to mention the wishes of Americans. At least two-thirds of voters consistently express a desire to see stricter immigration law enforcement, not weaker.

Polls show that only about a fourth of voters approve of the way the Obama administration has handled immigration policy. They understand all of the costs and problems. That is why over the last 5 years Congress has repeatedly declined to authorize an amnesty or legalization program on any scale.

It is important to consider, too, that there is no shortage of qualified immigrants who are willing to play by the rules and go through the process the right way. At last count, the State Department reported that there were nearly 3 million people who have been sponsored for green cards who are waiting their turn overseas, and some of them for as long as 15 years. Offering illegal immigrants a path to residency in front of these applicants is patently unfair and undermines our legal immigration system.

And not enforcing immigration laws just exacerbates the crime and public safety problems. According to ICE statistics, there are

nearly 2 million criminal aliens living here, more than half of whom are at large in our communities. ICE is focused on just the worst of the worst, through excessive prosecutorial discretion and stingy use of detention, leaves too many of the worst still on our streets. And as a result, people are getting hurt needlessly.

People like 10-year-old Anthony Moore, who a couple of months ago was walking to the bus stop in Florida, when he was mowed down and killed by an unlicensed illegal alien driver. This illegal immigrant had at least two prior charges for DUI and a probation violation, but he was not enough of a priority either for Florida prosecutors or ICE to take action before the fatal accident.

And this kind of story is repeated over and over again all over the country, far too regularly. So the lack of enforcement is bad enough, but apprehension numbers for ICE, as opposed to removal numbers, have actually been going down for several years, according to ICE statistics.

But just declining to arrest or remove an illegal alien does not give that person real legal status. To accomplish that, the Administration has to rely on the parts of immigration law that are specified in this bill. These tools are designed to be used for exceptionally compelling cases. They are immigration law luxuries and not intended as a way for the executive branch to bypass Congress and its unique authority to make immigration law.

Again, while the Administration claims that these are only ideas, in fact, they already have begun trying out different forms of administrative amnesty, for example, by relaxing the extreme hardship standard for the illegal aliens who try to apply for green cards, but are disqualified and come under the 3-year/10-year bar.

Last year, about 19,000 people in that category successfully obtained extreme hardship waivers, and you have to ask yourself how extreme can these cases be if that many people are able to qualify every year? And the percentage of people who qualify has about quadrupled in the last 4 years.

Common sense tells you these aren't extreme hardship cases. They are certainly bitterly disappointed to be denied, perhaps financially stressed, and inconvenienced certainly, but not really facing what the law defines as extreme hardship.

The fact that the Administration has already started tinkering with forms of relief I think illustrates the need for this legislation. The tool of deferred action is especially susceptible to abuse since there are no statutory guidelines, and the agency has never publicly published statistics on how often it is used. So no one can monitor what is being done.

Mr. GALLEGLY. Could you please wrap up? We appreciate your testimony, but we really need to stick with the time limits.

Ms. VAUGHAN. So this bill would help uphold sound principles for immigration policy, namely that immigration to the United States should occur through legal, fair, and open processes.

[The prepared statement of Ms. Vaughan follows:]

The Hinder the Administration's Legalization Temptation (HALT) Act
(H.R. 2497)

U.S. House Judiciary Committee
Sub-committee on Immigration Policy and Enforcement
2141 Rayburn House Office Building

Tuesday, July 26, 2011
1:30 p.m.

Statement of Jessica M. Vaughan
Director of Policy Studies
Center for Immigration Studies

Thank you very much for the opportunity to be here today to discuss H.R. 2497, Mr. Smith's bill to suspend certain discretionary forms of relief from immigration law enforcement. This bill would prevent these tools, which are intended to benefit only the most exceptionally compelling cases, from being used to create backdoor legalization programs for large numbers of otherwise unqualified or ineligible illegal aliens. Such schemes run counter to the expressed wishes of Americans and their elected representatives, who have already rejected large scale legalization programs several times in the last few years. This bill would help uphold popular and revered principles for immigration policy, namely that immigration to the United States should occur through legal, fair and open processes, and in numbers and characteristics that are consistent with our national interest and determined by our elected representatives, not by administrative fiat or in service of the political agenda of executive branch appointees.

No Case for Relaxation of Immigration Rules. The last decade was the largest decade of immigration in American history. About 13 million immigrants settled here from 2000-2009; some came legally, millions of others illegally. This influx of newcomers overlapped with a difficult economic time; over the same period, our economy shed more than one million jobs.[1] According to our analysis of Census and Labor Department statistics, in 2008 and 2009 alone, 2.4 million new immigrants (legal and illegal) settled in the United States, even though 8.2 million jobs were lost over the same period. In addition, we admitted several hundred thousand of workers each year through non-immigrant guestworker programs.

In the current economic climate, it is hard to make the case that immigration regulations should be relaxed in a way that would permit large numbers of illegal workers to remain, particularly when the majority of the beneficiaries hold or would be seeking jobs in the same occupations or industries as many un- or under-employed U.S. workers, and where wages are already stagnant, in part due to an oversupply of labor. Yet that is exactly what the Obama administration has been trying to accomplish.

Obama Administration Policies and Goals: Open Admissions, Minimal Enforcement, Legalization. The Obama Administration has been explicit that its main immigration policy goals are to approve as many immigration benefits as possible; to confine immigration law enforcement to a very narrowly-defined set of illegal aliens, primarily those convicted of other crimes; and to provide legal status to as many of the approximately 11 million unlawfully-resident aliens as possible. These policy goals have been expressed in official statements[2] and memoranda and echoed by advocates in academic articles, op-eds, news media commentary, and public statements. They are reflected in many specific actions,

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[1] Steven A. Camarota, "Immigration and Economic Stagnation: An Examination of Trends, 2000-2010," Center for Immigration Studies *Backgrounder*, November, 2010, http://cis.org/highest-decade.
[2] See, for example, *Building a 21st Century Immigration System*, The White House, May, 2011, http://www.whitehouse.gov/sites/default/files/rss_viewer/immigration_blueprint.pdf.

including budget requests for the Department of Homeland Security, which for the past several years has requested funding to address only a very small part of the illegal population. Other examples include:

- Issuing new interpretations of regulations to make it harder for officers to refuse visas, eliminating certain fraud and security safeguards, and pressuring adjudicators to approve as many visa and green card applications as possible;[3]
- Reverting to "catch and release" at the border;[4]
- Foot-dragging in implementing the Secure Communities program;[5]
- Restrictions on how local law enforcement agencies carry out 287(g) agreements;[6]
- Directives to ICE field staff to drop charges for thousands of removal cases in progress;[7]
- Arranging expedited processing of benefits applications for certain criminal illegal aliens identified after arrest by local authorities;
- Lawsuit against Arizona's plan to assist and supplement federal efforts.

The most recent move to scale back immigration law enforcement came just a few weeks ago, when ICE director John Morton issued a directive now known as the "prosecutorial discretion" memos.[8] These memos put in writing what ICE personnel have been told in conference calls and other communications for some time: that officers and agents are to confine immigration law enforcement to a narrowly defined set of removable aliens, consisting mainly of those who have been convicted of so-called "serious" crimes. The new guidance detailed a long list of factors that create large groups of privileged aliens who should be given special treatment, including those who have graduated from a U.S. high school and those who are pregnant or nursing.

Non-enforcement Is Unpopular, Unfair, and Unsafe. This approach is problematic for several reasons. First, non-enforcement of immigration laws is deeply unpopular with the American public. Consistently, at least two-thirds of voters express a desire to see stricter immigration law enforcement. Only about one-fourth of voters approve of the way the Obama Administration had handled immigration policy.[9] Most Americans are aware of the economic and fiscal costs, public safety problems, and national security risks that result from illegal immigration, and the issues that are associated specifically with amnesties, which encourage more illegal immigration and impose such large burdens on government agencies that applications cannot be scrutinized effectively enough to screen out unqualified or dangerous people. Over the last five years, Congress has recognized this, and repeatedly declined to authorize an amnesty or legalization program on any scale, most recently rejecting the DREAM Act, which would have legalized perhaps one million individuals.

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[3] See Jessica Vaughan, Center for Immigration Studies blogs, "State Dept. Policy: No Mexican Left Behind," July 7, 2011, http://cis.org/vaughan/no-mexican-left-behind; "Mayorkas to USCIS Staff: Just Say Yes, or Else!," October 20, 1020, http://cis.org/vaughan/just-say-yes.

[4] Jana Winter, "Federal Agents Told To Reduce Border Arrests, Arizona Sheriff Says," FOX News, April 1, 2011, http://www.foxnews.com/us/2011/04/01/exclusive-federal-agents-told-reduce-border-arrests-arizona-sheriff-says/.

[5] Jessica Vaughan. CIS blog, "More Secure Communities Kabuki," July 11, 2011, http://cis.org/Vaughan/SecureCommunities-Boston.

[6] See Jon Feere, "The Obama Administration's 287(g): An Analysis of the New MOA," Center for Immigration Studies, October, 2009, http://cis.org/ObamasNew287g.

[7] Susan Carroll, "Immigration Cases Being Tossed By the Hundreds," *Houston Chronicle*, October 17, 2010, http://www.chron.com/disp/story.mpl/metropolitan/7249505.html.

[8] Memorandum from John Morton to all Field Office Directors, Special Agents in Charge, and Chief Counsels, June 17, 2011,

[9] Zogby and Gallup polls from August, 2010.

Secondly, there is no shortage of qualified immigrants who are willing to play by the rules and go through the process the right way. At last count, the State Department reported that there were nearly three million people who had been sponsored by a family member and filed immigrant visa applications in consulates overseas, who are waiting overseas for their visas to become available, some for more than 15 years, instead of jumping the line and taking up residence illegally.[10] The queue of three million people does not include all those who were sponsored by employers or close relatives in the categories that do not have a waiting list. Any program that offers illegal immigrants a path to residency that allows them to cut in front of these applicants is patently unfair and undermines and damages our legal immigration system.

Finally, non-enforcement of immigration laws exacerbates the crime and public safety problems associated with illegal immigration. Illegal immigration today is a form of organized crime run mainly by criminal groups that fuels additional criminal activity. Other crime problems connected to illegal immigration are drug smuggling and drug dealing, street gangs, human trafficking, and identity theft. While our research has shown that there is no evidence that illegal immigrants are significantly more likely to commit crimes than Americans or legal immigrants, there is a sizeable population of criminal aliens. According to ICE, there are nearly two million removable criminal aliens living in the United States, more than half of whom are at large in our communities, and who typically have multiple arrests and charges under their belt. ICE's policies focusing on the "worst of the worst" through excessive prosecutorial discretion, stingy use of detention to prevent those in proceedings from fleeing, and excusing the immigration violations of so-called non-criminals leaves a lot of the "worst" still on the streets. Many of these offenders have committed so-called "minor" crimes and are therefore not a priority for ICE today. But the scars they leave on our communities are hardly minor. A few recent examples:

- On May 10, 2011, Anthony Moore, age 10, was walking to the bus stop in Minneola, Florida when he was mowed down and killed by unlicensed illegal alien Mario Alberto Saucedo. Saucedo had at least two prior charges for DUI and a probation violation, but only now will face immigration charges after the fatal accident.
- Dennis McCann, age 66, was crossing the street in Chicago's Logan Square in June, 2011 when an unlicensed illegal alien drunk driver hit him and then stepped on the gas, rolling over his body and dragged him several blocks up the street until he was stopped by two witnesses. The driver, Saul Chavez, had recently completed two years probation for another aggravated drunk driving offense.
- In February, 2011, Maria Palaguachi-Cela and her four-year old son were murdered in Brockton, Massachusetts by illegal alien Luis Guaman, who was at large despite several prior arrests and warrants under different names in New York and Massachusetts for domestic assault.

Each of these deaths could have been prevented by even modestly more rigorous immigration law enforcement of the sort that is held in contempt by the Obama administration.

Administrative Amnesty. Prosecutorial discretion carried to the extreme as outlined in the Morton memos is certainly an abuse of authority. But it does not provide the illegal aliens with as many rights and privileges as would be the case if they were offered a more formal grant of relief from removal, or if they were to be excused from the penalties the law imposes on those who live here illegally. A group of senior USCIS staff put together a memo outlining a number of ways to go beyond prosecutorial discretion

[10] Jessica Vaughan, "Five Million Waiting on Family Visas," Center for Immigration Studies blog, May 19, 2009, http://cis.org/Vaughan/FamilyImmigrantWaitingList.

to legalize large numbers, potentially millions, of illegal aliens, and to expedite the green card applications of those who should be barred for illegal presence.[11]

This memo, titled "Administrative Alternatives to Comprehensive Immigration Reform," and hereafter referred to as the Administrative CIR memo, outlines 17 different ways to legalize unqualified and/or ineligible illegal aliens. It proposes several re-interpretations of law and regulation and also the use of certain sections of the Immigration and Nationality Act (INA). These tools were created to provide the Dept. of Homeland Security with the discretion to make exceptions to immigration law and allow individuals or groups of individuals who would otherwise be unqualified or ineligible to stay in the United States. Most of these forms of relief include a work authorization permit. They are designed to be used for exceptionally compelling cases, and were not intended as a way for the President, his appointees, or government staff to bypass Congress and it's unique authority to make immigration law.

The Obama Administration has already begun testing and pushing the limits of their authority over immigration policy, and has so far enacted at least seven mini or quasi-amnesties using some of these tactics and tools. These are discussed in a recent CIS memorandum written by one of my colleagues.[12]

HALT Act Provisions. The HALT Act temporarily negates certain sections of the INA, thus taking away the opportunity for the Obama Administration to use these tools as a means to legalize large numbers of illegal aliens who would be covered under its unpopular immigration reform goals. It is a reasonable response to the highly controversial executive actions outlined above. What follows is a brief discussion of each form of relief suspended by the bill and, where possible, and estimate of the number of people currently benefitting from the type of relief.

Waivers of Inadmissibility for Illegal Aliens. In 1996, Congress created a penalty that applies to those who accumulate more than six months of illegal residence, then depart and seek re-admission as a legal immigrant. Such individuals are barred from re-admission for either three years, if the illegal stay was less than one year, or ten years, if the illegal stay was more than one year. At the same time, Congress also created a waiver that would be available to spouses and sons and daughters being sponsored by U.S. citizens and green card holders, if the sponsor would experience "extreme hardship". For a variety of reasons, in the early years of its existence, relatively few people were found to be subject to the bar.[13] Now, as various quasi-amnesties have expired and as immigration agencies have implemented better methods to track entries and exits, a larger number of visa applicants have been deemed subject to the bar. It has become enough of a concern to immigration proponents that they have renewed calls to repeal or weaken the bar. For example, the USCIS Ombudsman's 2010 annual report mentioned the bar as a possible factor in the recent improvements in the family green card wait list, as more applicants must drop off the list due to excessive illegal presence.

The Administrative CIR memo suggests three ways to enable inadmissible applicants to get around the bar: expanded use of parole (see below), changing the meaning of "departure" to allow illegal

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[11] Denise A. Vanison, Roxana Bacon, Debra A. Rogers, and Donald Neufeld, Memorandum to Alejandro N. Mayorkas, http://www.propublica.org/documents/item/memo-on-alternatives-to-comprehensive-immigration-reform.

[12] David North, "America's Collection of Quasi-Amnesties: The Gray Area Between Legal and Illegal," Center for Immigration Studies, July, 2011, http://www.cis.org/quasi-amnesties.

[13] See Jessica M. Vaughan, *Bar None: An Evaluation of the 3/10 Year Bar,* Center for Immigration Studies, June, 2003, http://cis.org/EvaluatingIIRAIRA.

aliens to leave the country without "departing", and watering down the definition of "extreme hardship." It appears that USCIS may have already implemented the suggestion on "extreme hardship."[14]

State Department statistics show that the number of immigrant visa applicants found subject to the 10-year bar has risen from just over 3,000 in 2003 to nearly 22,000 in 2010 (out of a total applicant population of just under 500,000). But the percentage who are able to overcome this finding (usually through a waiver) is now up to 85% in 2010, compared to 51% in 2009 and 23% in 2006.[15] The number who are actually affected by the bar is likely higher, because, as the Ombudsman suggests, some applicants may "self-reject" or refrain from seeking the waiver if they know they cannot meet the extreme hardship standard.

If Congress were to permit the Obama administration to dilute the "extreme hardship" standards and to use the waiver provision to admit applicants who would otherwise be ineligible or be face long delays in their application, the number of waiver applicants would almost certainly grow significantly. In addition, lessening the effect of the 3/10-year penalty might encourage even more people to settle illegally before their turn.

Parole. This is a tool available to immigration officials to admit, usually on a temporary basis, individuals who are otherwise inadmissible for "urgent humanitarian reasons" (usually medical) or if the admission provides a "significant public benefit" to the United States (usually to participate in a legal proceeding). Traditionally it has been used only for those outside of the United States, and on a very limited and case-by-case basis. The Administrative CIR memo recommends vastly expanding use of this tool to legalize certain illegal aliens who are already living here, to enable them to evade the 3/10 year bar. USCIS has already taken this step for military dependents; the Memo suggests extending this relief to other groups, such illegal aliens who were brought here as children and now have U.S citizen family members, or elderly or long-term illegal aliens who cannot afford to travel abroad to complete their green card applications according to the law. Such an expansion of this tool, to provide parole purely for the convenience of illegally-resident individuals in order to avoid penalties arising from their illegal presence, is clearly well outside the scope of the law.

According to USCIS, the agency currently receives about 1,200 requests for humanitarian parole in a year, of which approximately 25 percent are granted. More widespread use of this tool for the tens of thousands affected annually by the 3/10-year bar would be a radical departure from current practice.

Cancellation of Removal and Adjustment for Non-permanent Residents. This form of relief can be granted by immigration judges to certain aliens who are in removal proceedings. To qualify, the alien must have lived here for 10 years, have good moral character, have no criminal convictions, and have a legally resident spouse, parent or child who would suffer "exceptional and extremely unusual hardship" if the alien were removed. In 2010 about 13,000 individuals were awarded this form of relief. Suspending it would have little impact on the illegal alien population or on ICE's work load, and would prevent its misuse for legalization purposes.

Temporary Protected Status. This form of relief is one of the most abused in immigration law. It provides what is supposed to be temporary safe haven to citizens of certain designated countries that are experiencing severe hardship, such as natural disasters or generalized violence, that would make it unusually difficult for people to return. It was designed to benefit those who are already present in the United States at the time of the disaster, and includes a work permit. By far the largest number of TPS

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[14] See Jessica Vaughan, "State Dept. Policy: No Mexican Left Behind," Center for Immigration Studies blog, July 7, 2011, http://www.cis.org/vaughan/no-mexican-left-behind.

[15] Actually difficult to ascertain bc stats are not from same year

grantees are citizens of three countries: El Salvador (217,000), Honduras (66,000) and Haiti (47,000). TPS aliens from El Salvador and Honduras have had this status since 2001 and 1998 respectively, causing many to question how temporary the program really is.

The Obama Administration's handling of TPS for Haitians is also instructive. As noted by my colleague David North,[16] the Administration has gone out of its way to facilitate grants of TPS for Haitians, including waiving interviews and fees and extending the application period. The latter was most troubling, as it granted TPS to another 10,000 Haitians who arrived in the United States up to a year *after* the earthquake (often overstaying their short-term visitor visa) – a significant departure from past practice.

An even greater concern is that the administration might be persuaded by a number of immigrant and civil liberties groups that have proposed extending TPS protection to citizens of Mexico, in light of the extreme violence and deterioration of civil society associated with the government's war on the drug cartels. Such a move would legalize the seven to thirteen million Mexicans who are living here (legally and illegally), and it is unlikely that an effort would be made to distinguish between ordinary illegal migrants seeking work and those genuinely threatened by the violence. Other countries mentioned as possible candidates for a TPS designation are Peru, Pakistan, Sri Lanka, India, Indonesia, Thailand, Myanmar, Malaysia, Maldives, Tanzania, Seychelles, Bangladesh, and Kenya.[17]

Definition of Illegal Alien. There is a clause in the INA that essentially allows the Homeland Security Secretary to declare at his or her discretion that certain illegal aliens are not illegal aliens.

Deferred Action and Extended Voluntary Departure. Deferred action is a more formal way of exercising prosecutorial discretion that is available to USCIS, ICE and CBP. There is no statutory basis for this form of relief, but it is well established as a matter of policy. However, the lack of statutory guidelines makes it especially susceptible to abuse. Deferred action enables the government to make a formal determination not to pursue removal of an unqualified or unlawfully present individual for a specific period of time, usually for extraordinary humanitarian or law enforcement purposes. For example, some foreign students affected by Hurricane Katrina were granted deferred action, as were Haitians who fled to the United States on non-immigrant visas following the earthquake in 2010. As with other forms of relief, beneficiaries can receive a work permit.

The immigration agency has traditionally held that deferred action is a tool that exists for the convenience of the government, and is not an immigration benefit per se, and it has resisted organized pressure to formalize the application process, publicize its availability, and thereby encourage more people to apply. Because there are no statutory definitions or rules regarding grants of deferred action, many advocates for amnesty and expanded immigration have periodically tried to make the case for large-scale grants of deferred action for groups of people who have no other legal immigration options, such as the so-called DREAM Act illegal aliens. The USCIS Administrative Amnesty Memo recommended that USCIS increase use of this tool as a way of legalizing these and other large groups of illegal aliens. It also noted one problem with such a step; because there is no fee currently charged to process deferred action requests, the agency (really applicants in other legal categories) would have to cover the cost of processing all the applications, making it very accomplish a large-scale deferred action program.

There are no statistics available on the number of grants of Deferred Action. The USCIS Ombudsman issued a formal recommendation in 2007 that the agency provide these statistics on a

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[16] North, op cit, http://www.cis.org/quasi-amnesties#25.

[17] Ruth Ellen Wasem and Karma Ester, *Temporary Protected Status: Current Policy and Issues,* Congressional Research Service, January 19, 2010, http://www.immigration.com/sites/default/files/crs_tps_immpolicy.pdf.

quarterly basis, and repeated the recommendation in its 2011 set of requests.[18] Congress should press USCIS and the other immigration agencies to fulfill this recommendation in order to monitor use of this extraordinary tool.

Jessica M. Vaughan
Director of Policy Studies
Center for Immigration Studies
jmv@cis.org

The Center for Immigration Studies (www.cis.org) is a non-profit, non-partisan research institute that studies the impact of immigration on American society, and promotes a pro-immigrant, low-immigration vision for immigration policy. Jessica M. Vaughan is a former State Department consular officer and expert on visas, immigration benefits and immigration law enforcement.

[18] Memo from USCIS Ombudsman Prakash Khatri to Director Emilio Gonzalez, April 6, 2007, http://www.dhs.gov/xlibrary/assets/CISOmbudsman_RR_32_O_Deferred_Action_04-06-07.pdf. See also "Deferred Action: Recommendations to Improve Transparency and Consistency in the USCIS Process," USCIS Ombudsman Office, July 11, 2011, http://www.dhs.gov/xlibrary/assets/cisomb-combined-dar.pdf.

Mr. GALLEGLY. Thank you, Ms. Vaughan.
Ms. Stock?

TESTIMONY OF MARGARET D. STOCK, ADJUNCT PROFESSOR, UNIVERSITY OF ALASKA-ANCHORAGE

Ms. STOCK. Chairman Smith, Chairman Gallegly, Ranking Member Conyers, Ranking Member Lofgren, and distinguished Members of the Subcommittee, I am honored to be here to provide my testimony.

I am an attorney with the law firm of Lane Powell PC, working in its Anchorage, Alaska, office, and my other credentials are in the record. The opinions I am expressing today, however, are my own.

The HALT Act is costly, misguided, irresponsible, and will undermine immigration law enforcement. I am pleased to have the opportunity to explain why the HALT Act should not be enacted. Among other things, the HALT Act would hurt many Americans and their families, hurt hundreds of thousands of legal immigrants, harm the Government's power to respond to foreign policy emergencies, interfere with the President's constitutional authority over foreign affairs, and lead to untold hardship for many noncitizens in cases where the rigid and complex nature of U.S. immigration law provides no avenue for them to enter or stay in the United States legally.

I would also disagree vehemently with Ms. Vaughan's no impact assessment. This bill will cause huge harm and impact on all three agencies within DHS, not just ICE, but also CBP and USCIS.

The Members of this Subcommittee are undoubtedly aware of the reality of our Nation's broken immigration system. The discretionary authorities that the HALT Act seeks to overturn, albeit temporarily, are important safety valves within this broken system. The following cases are some individual examples of situations where the executive branch has used administrative discretion to promote justice in individual immigration cases, but would be unable to do so if the HALT bill were to become law.

The HALT Act would prevent the Government from granting parole to persons in need of urgent medical care where there is no imminent threat to life, such as the Afghan woman who was paroled into the United States last year after her husband cut off her nose and ears.

The HALT Act would halt the opportunity that military families have to seek parole in place and deferred action on a case-by-case basis only to prevent separation during deployments and to allow disabled military members and veterans to have their family members with them as they undergo medical treatment.

The HALT Act ends all Cuban paroles, a longstanding, decades-old program, and the only categorical program that existed under Doris Meissner and other immigration commissioners.

The Members of this Committee are no doubt aware of the case of Hotaru Ferschke, the widow of deceased U.S. Marine Michael Ferschke. Mrs. Ferschke was recently the beneficiary of an exceptionally rare private bill. Only two of those have passed in the last few years.

Enacted by Congress and signed into law by the President because the technicalities of U.S. immigration law prevented Mrs. Ferschke, a person who was seeking lawful immigration to the United States, from obtaining an immigrant visa to come here after her husband was killed in combat in Afghanistan. Mrs. Ferschke

wanted to come to the U.S. to raise her infant United States citizen son, Michael Ferschke's child, in Sergeant Firski's hometown in Tennessee.

While Mrs. Ferschke was ultimately able to obtain relief through a private bill, the process was very lengthy. And during that process, Mrs. Ferschke needed parole in order to remain in the United States and to travel internationally while the private bill was being pursued.

The HALT Act would terminate the ability of DHS agencies to allow such persons to remain in the United States and to travel internationally while Members of Congress and Senators pursue the very lengthy legislative process of enacting a private bill.

If the HALT Act is enacted, American families will experience more separations and hardship, as their family members will not be able to qualify for cancellation of removal after demonstrating exceptional and extremely unusual hardship to a judge.

Military families will be harmed by the HALT Act, as cancellation removal has been granted in cases such as the one that I attached to my written testimony. Interestingly, Chairman Smith, the HALT Act would retain cancellation of removal for criminal aliens who have green cards. The noncriminal ones would lose cancellation.

In my written testimony, I provide many more examples of individuals and vulnerable, compelling groups who could no longer be protected if the HALT bill becomes law. I am pleased to hear Mr. Gallegly say that he would be willing to support private bills on behalf of these folks, and I will ask the people I listed in my testimony to request private bills because I do believe that is one solution if HALT is enacted. But it is a difficult one and lengthy.

Ironically, the HALT Act will create chaos in the legal immigration system, as hundreds of thousands of adjustment applicants, many of them skilled workers, college professors, business executives, outstanding athletes, scientists, and the immediate relatives of U.S. citizens will no longer be able to travel internationally while their adjustment applications are pending. These are the qualified immigrants that Ms. Vaughan was discussing.

They will be deprived of their advance parole authority, which they use to travel internationally during the many months it takes for USCIS to process their adjustment applications.

The HALT Act's stated purpose is to prevent a backdoor amnesty by the Obama administration. But none of the provisions targeted by HALT provide any amnesty or permanent legal status to anyone. Instead, the HALT Act suspends an extremely narrow set of protections that the Government only extends on a highly selective and case-by-case basis for the most part when there are humanitarian concerns or other compelling circumstances and no other avenue of relief is available.

Justice requires some reasonable flexibility and administrative discretion in the enforcement of immigration laws. Ms. Lofgren already quoted the letter from 1999 in which many congressmen on both sides urged the agency to develop guidelines for the use of its prosecutorial discretion.

The recent memoranda issued by John Morton, like other prosecutorial discretion memoranda issued by prior agency heads, re-

spond directly to this congressional demand for guidelines on the use of prosecutorial discretion. It makes no sense for Congress to suspend statutory provisions allowing for the use of prosecutorial discretion because an agency head has attempted to answer a congressional suggestion to create guidelines for the use of that discretion.

Some level of enforcement and prosecutorial flexibility is present in every law enforcement program in this country. Local police, for example, do not devote the same level of enforcement effort to minor property crimes or prostitution as they do to violent felonies.

The costs of deporting someone are substantial. Deportation costs include the expenses of arrest, detention hearings, and physical removal. DHS and specifically ICE need the discretion to be able to prioritize their enforcement activities to those who present threats to our public safety and national security, such as those who have committed violent felonies. Our Nation's safety and security depend upon it.

Deportations and worksite enforcement have substantially increased under the Obama administration, as compared to the prior Bush administration. I should note that on the same day the prosecutorial discretion memos were released, the Obama administration broke records by issuing 1,000 notices to employers around the country about worksite enforcement.

In fact, this enforcement is so much so that the President's own supporters are complaining about the level of it. There is no basis for asserting that the Obama administration has implemented any amnesty program and, thus, no need for the HALT Act.

Instead of improving an already-broken and dysfunctional system, the HALT Act would worsen the current dire situation. Instead of constituting a step toward sensible and comprehensive immigration reform, the HALT Act would constitute a major step backwards.

Thank you very much.

[The prepared statement of Ms. Stock follows:]

Prepared Statement of

Margaret D. Stock
Of Counsel, Lane Powell PC;
Adjunct Professor, University of Alaska Anchorage;
Lieutenant Colonel (Retired), Military Police Corps, US Army Reserve.

On

"Hinder the Administration's Legalization Temptation (HALT) Act"

Before the

Committee on the Judiciary
Subcommittee on Immigration Policy and Enforcement

July 26, 2011

Washington, D.C.

Chairman Smith, Chairman Gallegly, Ranking Member Conyers, Ranking Member Lofgren and distinguished Members of the Subcommittee, my name is Margaret Stock. I am honored to be here to provide my testimony as an expert in the field of immigration law and to discuss H.R. 2497, the Hinder the Administration's Legalization Temptation (HALT) Act.

I am an attorney with the law firm of Lane Powell PC, working in its Anchorage, Alaska office. I am a retired Lieutenant Colonel in the Military Police Corps, US Army Reserve. I also teach on a part-time basis in the Political Science Department at the University of Alaska Anchorage, and I previously taught at the United States Military Academy, West Point, New York, for nine years (five years on a full-time basis, four years on a part-time basis); I teach or have taught subjects such as American Government, International Relations, Comparative Government, and National Security Law & Policy. My professional affiliations include membership in the Alaska Bar Association, American Bar Association (where I am a member of the Commission on Immigration), the American Immigration Lawyers Association, the Federalist Society for Law and Public Policy, the Republican National Lawyers Association, and other civic and professional organizations. As an attorney and a graduate of the Harvard Law School, I have practiced in the area of immigration law for more than fifteen years. I have written and spoken extensively on the issue of immigration and national security. I have represented hundreds of businesses, immigrants, and citizens seeking to navigate the difficult maze of the US immigration system. In 2009, I concluded work as a member of the Council on Foreign Relations Independent Task Force on US Immigration Policy, which was headed by Jeb Bush and Thomas F. "Mac" McLarty III. Finally, prior to my transfer to the Retired Reserve in June 2010, I worked for several years on immigration and citizenship issues relating to military service while on temporary detail to the US Army Accessions Command, the Assistant Secretary of the Army for Manpower and Reserve Affairs, and United States Special Operations Command. The opinions I am expressing today are my own.

I am honored to be appearing before you this afternoon to discuss the HALT Act and to explain why the HALT Act should not be enacted. Among other things, the HALT Act would hurt many Americans and their families, would harm the Government's power to respond to foreign policy emergencies, and would lead to untold hardship for many noncitizens in cases

where the rigid and complex nature of US immigration law provides no avenue for them to enter or stay in the United States legally.

The Members of this Subcommittee are undoubtedly aware of the reality of our nation's broken immigration system. Our immigration system is dysfunctional and irrational, and the situation only promises to get worse without comprehensive action by Congress. Many years ago, former Immigration & Naturalization Service (INS) spokesperson Karen Kraushaar said that US "immigration law is a mystery and a mastery of obfuscation." The system she described has deteriorated since then. Our nation's ever more complex and restrictive legal immigration system makes it nearly impossible for most people to immigrate to the United States legally, and provides no means for people to enter or stay in the United States legally in many compelling circumstances. The discretionary authorities that the HALT Act seeks to overturn—albeit temporarily—are important safety valves within this increasingly complex and dysfunctional system.

What would the HALT Act do? In short, the bill would suspend several existing executive branch powers until the end of the President Barack Obama's term on January 21, 2013. The powers suspended include protections for U.S. citizens and lawful permanent residents ("green card" holders) who would suffer hardship if their family members were deported. The government could no longer provide humanitarian parole, deferred action, or work authorization in many extremely compelling cases. The HALT Act would also suspend the President's power to designate Temporary Protected Status (TPS). The Executive Branch's power to respond to many foreign affairs emergencies would be curtailed. Here are some example of the effects of the HALT Act:

- The HALT Act would prevent the parole into the United States of many babies and children who are granted parole today in humanitarian situations, such as when a US citizen parent dies overseas and the child needs parole to enter the United States to join his or her American citizen grandparents, or when a baby is born overseas to a young mother after the mother has been approved to come to the United States as an immigrant or refugee but the baby does not independently qualify for the same status.

- The HALT Act would prevent the government from granting parole to people who are seeking to testify in court cases unless a law enforcement agency has requested the parole.[1] This would result in the denial of a request for parole for most civil cases, including international child custody disputes.

- The HALT Act would suspend the Cuban Family Reunification Parole Program and the decades-old practice of granting paroles and work authorization to certain Cubans so that they may seek adjustment under the Cuban Adjustment Act, Public Law 89-732, November 2, 1966. The HALT Act would also halt the Cuban Medical Professional Parole Program.[2]

- The HALT Act would prevent DHS agencies from granting emergency parole to foreigners who seek to donate organs to American relatives who are in vital need of organ donations, leading potentially to the deaths of the Americans.

- The HALT Act would prevent our government from granting a temporary visit to those injured in war, such as a child bomb victim in Iraq in need of urgent medical care if there is no imminent threat to life (for example, if the child needs a prosthetic limb).

- The HALT Act would prevent family members from spending time with their dying loved ones, as parole is often used to bring someone into the US when a family member is dying and there is no time for the person to undergo lengthy visa processing.

- The HALT Act would prevent the government from granting parole to other persons in need of urgent medical care where there is no imminent threat to life, such as the

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[1] The bill contains an exception only for cases where a noncitizen is to be tried for a crime or is a witness at trial and a Federal, State, or local law enforcement agency has requested the parole. This exception would not apply to most child custody cases or other civil cases where no law enforcement agency has asked for the person to testify at trial.

[2] See US Dep't of State, Cuban Medical Professional Parole Program, http://www.state.gov/p/wha/rls/fs/2009/115414.htm (allowing Cuban medical personnel conscripted to study or work in a third country under the direction of the Cuban government to enter the United States).

Afghan woman who was paroled into the United States last year after her husband cut off her nose and ears.[3]

- The HALT Act would place new limits on the ongoing program whereby the Department of Defense requests significant public benefit and humanitarian parole for certain non-citizens who come to the attention of DOD. For example, at one point several years ago, the Department of Defense initiated a request for parole for the parent of a deceased Navy SEAL, so that the parent would not have to wait many years for a Family Fourth Preference petition to become current. The "national security" exception under the HALT Act would not likely cover such a situation.

- While the HALT Act retains some limited exceptions allowing for parole or deferred action in cases where there is a national security, intelligence, or law enforcement reason for the parole or deferred action, or in cases where there is an "imminent threat" to the life of the alien, anyone granted discretionary relief under those provisions would not be permitted to work. So, for example, if the Department of Defense requested a parole for an Afghan translator who has been targeted for assassination by insurgents because she was translating for American forces, she could be paroled into the United States, but she would not be given a work permit. DOD would have to ask Congress for the funds to support her or seek charitable aid for her, and could not employ her as a DOD translator.

- The HALT Act would also potentially limit the use of parole for the humanitarian emergency evacuation of certain overseas individuals of particular military, diplomatic, or foreign affairs interest to the United States. For example, the INA 212(a)(5)(A) parole authority was used to evacuate certain non-citizen US military family members when Mount Pinatubo erupted in the Philippines in 1991. The authority was used again in 1996 and 1997 to evacuate certain Iraqis from northern Iraq, who were then paroled in Guam so that they could be screened by US law enforcement and intelligence agencies before they were allowed to apply for asylum

[3] See, e.g., Atia Abawi, Cable News Network, "Afghan Woman Whose Nose, Ears Cut Off, Travels to US," Aug. 4, 2010, available at http://articles.cnn.com/2010-08-04/world/afghanistan.mutilated.girl.update_1_afghan-women-afghan-woman-taliban?_s=PM:WORLD.

and travel to other parts of the United States. While the HALT Act's "national security" and "imminent threat" exceptions might potentially encompass some situations of this nature, the parameters of those narrow exceptions are unclear and likely do not cover the traditional "humanitarian" justification given for the use of this type of parole.

- The HALT Act will suspend the President's executive power to designate Temporary Protective Status for countries suffering disasters such as earthquakes, hurricanes, tsunamis, or environmental disasters (examples include Haiti, El Salvador, or Honduras) or countries experiencing civil war or other armed conflict (examples include Sudan or Somalia). In addition to protecting individuals who would otherwise be required to return to disaster-affected or conflict-ridden areas, TPS facilitates the prompt injection of private funds into the affected country and thereby reduces the use and duration of US foreign aid, saving US taxpayers' money.

- The HALT Act would undercut vital protections that Congress has enacted for the victims of domestic violence, sexual abuse, violent crimes, and human trafficking. The most frequent use of deferred action by this Administration has been to benefit these individuals. The HALT Act suspends the deferred action grants that thousands of domestic abuse survivors depend upon while they seek protection under the Violence Against Women Act. Even if granted deferred action under the HALT Act after showing a "significant law enforcement" purpose for the grant, battered spouses would be denied the opportunity to work, hindering their financial independence from their abusers. Similarly, the Halt Act would preclude temporary relief for certain crime and trafficking victims (T and U visa holders).[4]

- The HALT Act eliminates two very limited but important forms of relief for the foreign family members of US citizens and lawful permanent residents—the waivers of the 3 and 10 year bars and cancellation of removal for non-lawful permanent residents. An immigration

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[4] The HALT Act does contain an exception for granting parole or deferred action in cases where there is a "significant law enforcement purpose" for the grant, but such persons could not work legally, as the work authorization provisions for parole and deferred action are suspended under the HALT Act, even in cases that fit within the narrow HALT Act exceptions allowing a grant of parole or deferred action.

judge would no longer have authority to cancel a deportation on the grounds that a non-citizen's deportation would result in "exceptional and extremely unusual hardship" to a qualifying U.S. citizen or lawful permanent resident family member. Spouses and children of US citizens and permanent residents who depart the US to seek immigrant visas overseas would face 3- to 10-year waits to be reunited with their American relatives, regardless of the hardship that such a wait might impose. Under the HALT Act, U.S. citizen minors or those with serious illnesses could be separated from their parents or caretakers. Likewise, U.S. military personnel would be unable to reunite with their foreign-born spouses and many would have to leave the military as a result of having no one to care for their children.

- The HALT Act would halt the opportunity that some military families have to seek parole in place and deferred action—on a case by case basis only—to prevent separation during deployments and to allow disabled military members and veterans to have their family members with them as they undergo medical treatment.

- Finally, the HALT Act will create chaos in the legal immigration system, as hundreds of thousands of adjustment applicants—many of them skilled workers, college professors, business people, outstanding athletes, scientists, and the immediate relatives of US citizens—will no longer be able to travel internationally while their adjustment applications are pending.[5] It is typical, for example, for a business person who has applied for adjustment to request "advance parole" so she can travel internationally during the many months that it takes for USCIS to process her adjustment application—but under the HALT Act, USCIS will be unable to approve this type of routine request for travel permission.

The HALT Act's stated purpose is to prevent a "backdoor amnesty" by the Obama administration. But none of the provisions targeted by HALT provide any amnesty or permanent legal status to anyone. Instead, the HALT Act suspends an extremely narrow set of

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[5] See Adjudicator's Field Manual, Chapter 54.1 ("There is no separate statutory authority for advance parole. Rather, the use of advance parole is an outgrowth of administrative practice stemming from the general parole authority at section 212(d)(5) of the Act, and is now incorporated into regulation. The practice of authorization of advance parole has also been recognized by Federal courts.")

protections that the government can extend only on a highly selective and case-by-case basis when there are humanitarian concerns or other compelling circumstances and no other avenue of relief is available. These are also often cases where a Member of Congress or Senator has requested that the agency provide a remedy.

Justice requires some reasonable flexibility and administrative discretion in the enforcement of immigration laws. In fact, Mr. Chairman, you were one of twenty-eight Congressional Representatives who called for the use of such discretion in a 1999 letter to then-US Attorney Janet Reno and then-INS Commissioner Doris Meissner. In the letter, you and other Congressional Representatives stated that there was "widespread agreement that some deportations were unfair and resulted in unjustifiable hardship . . . We write to you because many people believe that you have the discretion to alleviate some of the hardships . . . True hardship cases call for the exercise of such discretion, and over the past year many Members of Congress have urged the INS to develop guidelines for the use of its prosecutorial discretion."[6] The recent memoranda issued by John Morton—like other prosecutorial discretion memoranda issued by prior INS and DHS agency heads—respond directly to this Congressional demand for guidelines on the use of prosecutorial discretion. It makes no sense for Congress to suspend statutory provisions allowing for the use of prosecutorial discretion because an agency head has attempted to create guidelines for the use of such discretion.

The following cases are some individual examples of situations where—at the request of Congressional Representatives and Senators—the Executive Branch has used administrative discretion to promote justice in individual immigration cases—but would be unable to do so if the HALT bill were to become law.

The Members of this subcommittee are no doubt aware of the case of Hotaru Fershke, the widow of deceased US Marine Michael Ferschke. Mrs. Ferschke was recently the beneficiary of an exceptionally rare private bill, enacted by Congress and signed into law by the President

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[6] Lamar Smith et al., Letter to The Honorable Janet Reno and The Honorable Doris M. Meissner, "Re: Guidelines for Use of Prosecutorial Discretion in Removal Proceedings," November 4, 1999, reprinted in 76 Interpreter Releases 1730 (Dec. 3, 1999).

because the technicalities of US immigration law prevented Mrs. Ferschke from obtaining an immigrant visa to come to the United States after her husband was killed in combat in Afghanistan. Mrs. Ferschke wanted to come to the United States to raise her infant United States citizen son—Michael Ferschke's child—in Sergeant Ferschke's hometown in Tennessee. While Mrs. Ferschke was ultimately able to obtain relief from our harsh immigration laws through a private bill, the process was very lengthy. When a person such as Mrs. Ferschke pursues a private bill, however, she often needs parole or deferred action to allow her to remain in the United States while the private bill is being pursued. The HALT Act would terminate the ability of DHS agencies to allow such persons to remain in the United States while Members of Congress and Senators pursue the lengthy legislative process of enacting a private bill.

An example of a person who will be harmed immediately by passage of the HALT Act is Fereshteh Sani, a woman whose father and mother were executed by Iranian government officials in 1988. Fereshteh has been in the United States since 1999, and has graduated from college and medical school here; she is currently a resident in Emergency Medicine at Bellevue Hospital in New York City. She is in the United States on a grant of deferred action, which is scheduled to expire on September 14, 2011. Senator George Allen six years ago introduced a private bill on her behalf in the United States Senate, but the bill was not enacted.[7] If the HALT Act becomes law, Fereshteh will no longer be able to work legally in the United States and will have no status here. Presumably, ICE will then be obliged to deport her.

Another beneficiary of deferred action who will lose her status under the HALT Act is Folosade Ajayi, the widow of Specialist Anthony Ajayi, a lawful permanent resident US Army soldier who died in 2000 at Fort Jackson, South Carolina. Specialist Ajayi had filed I-130 visa petitions for his wife and two children, but of course the family was on a long waiting list in the Family Second Preference category. The petitions were approved by USCIS more than four years after Specialist Ajayi's death, but were merely "pending" at the time of his death. Because Specialist Ajayi died before the petitions were approved, his widow and minor children were unable to take advantage of Immigration & Nationality Act section 213A(f)(5)(B), which allows for humanitarian reinstatement but only if the petitions were approved before the death occurs.

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[7] S. 1188, 109th Congress, 1st Session, A Bill for the Relief of Fereshteh Sani, June 7, 2005.

Military legal assistance attorneys who were advising Mrs. Ajayi failed to tell her about a statutory change that created a two-year deadline for requesting posthumous citizenship for her husband. Congresswoman Sue Kelly of New York briefly pursued a private bill for the family, but that bill was never enacted. In 2009, USCIS granted deferred action to the Ajayi family; this grant of deferred action was renewed recently. The HALT bill, if enacted, will require ICE to deport this family to Africa some eleven years after they came to the United States. This will be a traumatic and cruel outcome for this military family, whose husband and father died while serving the United States.[8]

If the HALT Act is enacted, American families will experience more separations and hardship, as their family members will not longer be able to qualify for cancellation of removal after demonstrating "exceptional and extremely unusual hardship" under Section 240A(b)(1) of the Immigration & Nationality Act. Military families will be harmed by the HALT Act, as cancellation of removal has been granted in cases such as a 2010 Board of Immigration Appeals case (copy attached) in which a US citizen military member was set to be deployed to a combat zone, leaving her 4 year old daughter behind. Her undocumented non-citizen spouse was the child's primary caregiver. The Army soldier needed the peace of mind of knowing her US citizen daughter was safe in the United States with her father while she was serving in the US military. Because of the availability of the discretionary remedy of cancellation of removal—which the HALT Act would suspend—the military spouse was able to obtain a green card, allowing him to care for their child while his wife was deployed to Iraq.

On July 9, 2010, many Members of Congress—Xavier Becerra, Howard Berman, Anh "Joseph" Cao, John Conyers, Henry Cuellar, Susan Davis, Lincoln Diaz-Balart, Mario Diaz-Balart, Sam Johnson, Zoe Lofgren, Solomon Ortiz, Mike Pence, David Price, Silvestre Reyes, Ileana Ros-Lehtinen, Adam Putnam, Mac Thornberry, and Michael Turner—wrote to Secretary

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[8] The new INA Section 204(l) only applies (even assuming it is interpreted as retroactive to deaths preceding enactment) if the beneficiaries were "resident" in the U.S. on the date of death (as well as now). The Ajayi beneficiaries were in Kenya when Specialist Ajayi died, waiting on I-130 approval and a visa number, and were brought to the U.S. by the Army after his death. Because Specialist Ajayi was only a Lawful Permanent Resident at the time of his death, his family members are not entitled to the benefits of the widow(er) self-petition statute.

of Homeland Security Janet Napolitano to request that she use her discretionary parole and deferred action authority to benefit military families. Janet Napolitano responded on August 30, 2010, stating that "[o]n a case-by-case basis, DHS utilizes parole and deferred action to minimize periods of family separation, and to facilitate adjustment of status within the United States by immigrants who are the spouses, parents and children of military members." The HALT Act would terminate this laudable and worthy exercise of Executive Branch discretionary authority, which has done much to enhance military readiness.

Discretionary relief has been granted to military family members in many Congressional districts, including, for example, Chairman Smith's district. A few weeks ago the San Antonio Express News reported on the case of the wife of Sergeant Jorge Nolasco, an Army National Guard soldier who has served two tours of duty in Iraq.[9] Sergeant Nolasco's wife was only able to adjust her status because of USCIS's parole authority. If HALT had been in place, she would have been deported to Mexico to wait for at least ten years while her husband served in the US Army.

It is important to note that this discretionary authority is being used sparingly. About two thirds of requests made to USCIS Headquarters for humanitarian parole are denied, and even military families face denials of their requests for discretionary relief. Deferred action is granted only rarely. Cancellation of removal is subject to an annual cap and the standard of "exceptional and extremely unusual hardship" is very difficult to meet. This underscores the point that there is no "amnesty," and discretionary relief is only being granted under narrow circumstances on a case-by-case basis.

Some level of enforcement and prosecutorial flexibility is present in every law enforcement program in this country. Local police, for example, do not devote the same level of enforcement effort to minor property crimes or prostitution as they do to violent felonies. The costs of deporting someone are substantial; deportation costs include the expenses of arrest, detention, hearings, and physical removal. Congress has not provided the Department of

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[9] Jason Buch, "Immigration Provision Can Benefit Military Spouses," San Antonio Express News, June 28, 2011.

Homeland Security with the funding or resources to deport every immigration law violator. When faced with a choice of allocating limited enforcement dollars between, for example, undocumented aliens engaged in criminal activities and individuals who were brought to this country illegally as young children through no fault of their own, who have subsequently succeeded in school, and who now enjoy extensive community (and often Congressional delegation support) for their remaining in the country, DHS has reasonably prioritized enforcement action against the undocumented aliens engaged in criminal activity. I should note that deportation figures have substantially increased under the Obama administration as compared to the prior Bush administration, so much so that the President's own supporters are complaining about the level of these deportations. According to figures published this past week by the Associated Press, the Administration deported nearly 393,000 people in the fiscal year that ended Sept. 30, half of whom were considered criminals.[10] This is almost 10% more that the number of deportations in 2008, the last full year of the Bush administration.[11]

There is no basis for asserting that the Obama administration has implemented any amnesty program, and thus no need for the HALT Act. Instead of improving an already broken and dysfunctional system, the HALT Act would worsen the current dire situation. Instead of constituting a step towards sensible and comprehensive immigration reform, the HALT Act would constitute a major step backwards.

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[10] Drunken Driving, Traffic Deportations Way Up, USA Today, July 22, 2011, available at http://www.usatoday.com/news/washington/2011-07-22-criminal-immigrants_n.htm?csp=34news.

[11] Peter Slevin, "Deportation of Illegal Immigrants Increases Under the Obama Administration," Washington Post, July 26, 2010, available at http://www.washingtonpost.com/wp-dyn/content/article/2010/07/25/AR2010072501790.html.

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

Feal, Sophie I., Esq.
ECBA Volunteer Lawyers Project, Inc.
237 Main Street, Ste 1000
Buffalo, NY 14203-0000

Office of the District Counsel/BTV
130 Delaware Avenue, Room 203
Buffalo, NY 14202

Name: [redacted] [redacted]

Date of this notice: 4/30/2010

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Adkins-Blanch, Charles K.
Kendall-Clark, Molly
Miller, Neil P.

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U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: [redacted] - Batavia, NY

Date: APR 30 2010

In re: [redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Sophie I. Feal, Esquire

ON BEHALF OF DHS: Adam N. Greenway
Assistant Chief Counsel

APPLICATION: Cancellation of removal

In an oral decision dated April 22, 2009, the Immigration Judge denied the respondent's application for cancellation of removal under section 240A(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b). The respondent has appealed the Immigration Judge's denial of relief. The appeal will be sustained.

The Board reviews an Immigration Judge's findings of fact, including findings as to the credibility of testimony, under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i); *Matter of S-H-*, 23 I&N Dec. 462, 464-65 (BIA 2002). We review questions of law, discretion, and judgment and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R § 1003.1(d)(3)(ii).

The Immigration Judge denied the respondent's application for cancellation of removal, concluding that he failed to demonstrate exceptional and extremely unusual hardship to his United States citizen child, born in October 2005, and United States citizen spouse, if he must return to Mexico (I.J. at 7-8). He reached such conclusion on the basis that the respondent failed to submit adequate evidence supporting his hardship claim.

On de novo review, we find that the evidence demonstrates that the respondent's qualifying relatives, most notably his United States citizen spouse, would suffer "exceptional and extremely unusual hardship" if the respondent returned to Mexico. *See* section 240A(b)(1)(D) of the Act; *Matter of Recinas*, 23 I&N Dec. 467 (BIA 2002); *Matter of Andazola*, 23 I&N Dec. 319 (BIA 2002); *Matter of Monreal*, 23 I&N Dec. 56, 62 (BIA 2001). The evidence reflects that the respondent's spouse has been on active duty with the United States armed forces since July 2006, and she expected to be deployed for duty in Afghanistan in 2009 (Exh. 3). The evidence also indicates that the respondent has been the primary caretaker of his daughter while his spouse fulfilled her military obligations (Tr. at 28; Exh. 3). Moreover, the respondent's spouse indicated that it would be very difficult for her to focus on her duties in Afghanistan while thinking that the respondent was removed from the United States and the care of her daughter was uncertain (Exh. 3). To that effect, the evidence further indicates that although the respondent's parents care for his daughter while he and his spouse are away, neither the respondent's parents nor his spouse's parents have lawful status

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in the United States (Tr. at 28; Exh. 3). As such, their ability to continue to care for the respondent's daughter is speculative. Overall, we find that the entirety of the available evidence supports a conclusion that the respondent's removal from the United States would impose on his spouse and child exceptional and extremely unusual hardship. Accordingly, we conclude that the respondent has demonstrated eligibility for cancellation of removal under section 240A(b) of the Act. In view of the foregoing, the following orders shall be entered.

ORDER: The respondent's appeal is sustained.

FURTHER ORDER: Pursuant to 8 C.F.R. § 1003.1(d)(6), the record is remanded to the Immigration Judge for the purpose of allowing the Department of Homeland Security the opportunity to complete or update identity, law enforcement, or security investigations or examinations, and further proceedings, if necessary, and for the entry of an order as provided by 8 C.F.R. § 1003.47(h). *See* Background and Security Investigations in Proceedings Before Immigration Judges and the Board of Immigration Appeals, 70 Fed. Reg. 4743, 4752-54 (Jan. 31, 2005).

FOR THE BOARD

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Congress of the United States
House of Representatives
Washington, DC 20515

July 9, 2010

The Honorable Janet Napolitano
Secretary of Homeland Security
Department of Homeland Security
Washington, DC 20528

Dear Secretary Napolitano:

We write to commend your attention to a May 8, 2010 New York Times article entitled, "Illegal Status of Army Spouses Often Leads to Snags." It describes the struggle of U.S. Army Lt. Kenneth Tenebro to serve his country while at the same time navigating a complex immigration system that has, thus far, failed to grant legal immigration status for his wife, Wilma.

The article explains that Lt. Tenebro,

> served one tour of duty in Iraq, dodging roadside bombs, and he would like to do another. But throughout that first mission, he harbored a fear he did not share with anyone in the military. Lieutenant Tenebro worried that his wife, Wilma, back home in New York with their infant daughter, would be deported.

Although Lt. Tenebro would like to continue deploying for combat, today he does not volunteer for deployment for fear of losing his wife to deportation and because he does not know what would happen to his three-year-old daughter while he is away on a military mission.

Lt. Tenebro is not alone. Many soldiers are unable to secure legal immigration status for their family members, even as they risk their lives for our country. Some have testified before Congress about their own stories and those of fellow soldiers they seek to assist.

This is not only an issue of keeping U.S. citizen families together. It is a military readiness issue. After 33 years of service, Retired Lieutenant General Ricardo Sanchez, a former commander of ground forces in Iraq, stated in a 2008 letter to the House Committee on the Judiciary, "We should not continue to allow our citizenship laws and immigration bureaucracy to put our war-fighting readiness at risk." He explained:

> As a battlefield commander, the last thing I needed was a soldier to be distracted by significant family issues back home. Resolving citizenship status for family members while serving our country, especially during

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> combat, must not be allowed to continue detracting from the readiness of our forces. When soldiers have to worry about their families, individual readiness falters – which can lead to degradation in unit effectiveness and the risk of mission failure. I have personally witnessed this on the battlefield.

Although many of the immigration issues experienced by our men and women in uniform require legislative action, Congress has already given you tools to provide some relief to these brave soldiers and their families. We hope that you will use all the power at your disposal to assist Lt. Tenebro and other soldiers, veterans, and their close family members to attain durable solutions. For example, DHS can join in motions to reopen cases where there may be legal relief available; consider deferred action where there is no permanent relief available but significant equities exist, such as deployment abroad; favorably exercise its parole authority for close family members that entered without inspection; forbear from initiating removal in certain cases where equities warrant exercise of prosecutorial discretion; and, other tools that would ease the burden for soldiers suffering from immigration-related problems to the extent that the current law allows. Of course, we expect that you will continue to conduct all necessary national security and criminal background checks before providing relief in any case.

As this country is engaged in two wars in Iraq and Afghanistan, we must do everything we can to address the immigration needs of our soldiers. As Lt. Gen. Sanchez stated,

> It matters greatly that those who fight for this country know that America values their sacrifices. As leaders, it is our duty to sustain the readiness, morale and war-fighting spirit of our warriors. We must not fail them for America's future depends on their sacrifices and their willingness to serve.

Thank you for your attention to this matter. We look forward to your immediate response.

Sincerely,

Zoe Lofgren

Mac Thornberry

John Conyers, Jr.

Mike Pence

Howard Berman

Ileana Ros-Lehtinen

Silvestre Reyes

Sam Johnson

Solomon Ortiz

Michael Turner

David Price

Adam Putnam

Henry Cuellar

Lincoln Diaz-Balart

Xavier Becerra

Mario Diaz-Balart

Susan Davis

Anh "Joseph" Cao

Secretary

U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

August 30, 2010

The Honorable Zoe Lofgren
U.S. House of Representatives
Washington, DC 20515

Dear Representative Lofgren:

Thank you for your July 9, 2010 letter regarding the immigration needs of soldiers and their families. The Department of Homeland Security (DHS), including U.S. Citizenship and Immigration Services (USCIS), is committed to assisting military families. In partnership with the Department of Defense, USCIS launched the Naturalization at Basic Training Initiative in August 2009, a program that gives non-citizen enlistees an opportunity to naturalize immediately before graduation from basic training. Since January 2009, USCIS has naturalized over 500 military personnel through this initiative.

In addition, a new DHS policy under this Administration promotes the use of several discretionary authorities to help military dependents secure permanent immigration status in the United States as soon as possible. On a case-by-case basis, DHS utilizes parole and deferred action to minimize periods of family separation, and to facilitate adjustment of status within the United States by immigrants who are the spouses, parents and children of military members. Where military dependents have already departed the United States to seek an immigrant visa through consulate processing, DHS in collaboration with the Department of State, is expediting the adjudication of all necessary waivers, including the Form I-601, Waiver of Inadmissibility.

Finally, DHS as a matter of policy does not initiate removal proceedings involving military dependents absent the existence of serious, negative factors indicating that the individuals pose a threat to public safety or national security. On a case by case basis, we also consider requests for joint motions to reopen past proceedings where relief for a military dependent appears to be available.

Thank you for your concern. I hope to continue to foster a close working relationship with you on this and other important issues. An identical letter will be sent to the representatives who co-signed your letter. If you need additional assistance, please do not hesitate to contact me at (202) 282-8203.

Yours very truly,

Janet Napolitano

www.dhs.gov

Mr. GALLEGLY. Thank you, Ms. Stock.

First of all, I would like to respond to your reference to me being willing to entertain consideration on special bills.

I think the record is clear on this. I have been on this Committee for over 20 years, and I have voted on many, many, many special

bills in the affirmative. Not all, but most. And I would say that I am not the only one up here that has voted on special bills.

And I would think that the Chairman would certainly be in that category as well, who has voted on special. So that is a mechanism that we do use.

Ms. STOCK. Could I request one on behalf of two people that are listed in my written testimony?

Mr. GALLEGLY. Through regular order, we will be happy to see that that takes place, through regular order.

Ms. LOFGREN. Would the Chairman yield?

Mr. GALLEGLY. I have really very limited amount of time, but I would yield.

Ms. LOFGREN. I would just note, in fact, that the Chairman has voted for private bills. I acknowledge that. But because of the difference between what the Senate is doing, we have only passed 3 private bills in 8 years that have actually become——

And I thank the gentleman for yielding.

Mr. GALLEGLY. Well, the leadership on the Senate is a little different than our leadership over here, to my good friend from California, as we will probably see in the next few days.

With that, Mr. Crane, the leadership over at DHS and the policies of DHS and the will of DHS in enforcing our immigration laws by many is concerning. How would you define the will of the leadership in DHS to actually enforce our immigration laws?

Mr. CRANE. I think officers in the field, sir, would tell you that the motivation is purely political. They are trying to do a balancing act between a PR campaign to make the American public think that they are actually taking the necessary law enforcement actions and somehow satisfying immigrants advocacy groups.

I don't think our real focus right now at the headquarters level really is law enforcement. And I think if you look at the folks that we have up at ICE headquarters, you will find out that they don't have a background in this business. Most of them are attorneys. They are folks from other law enforcement agencies. They came from homeland security investigations, which really doesn't do immigration work. They don't really have a foundation in what we do, and it has just become a political motivation, I think, in everything that we do.

Mr. GALLEGLY. From your perspective, does ICE have sufficient resources to remove any of the most serious criminal immigrants, or is this simply an excuse not to enforce laws that the Administration doesn't agree with?

Mr. CRANE. I think that DHS and ICE have both oversimplified our resources out in the field and how it actually works in the field. There are those days when we have the ability, you know, we don't catch all the worst of the worst every single day of the week in every single location across the country.

And in that regard, we do have the ability to have a more balanced approach to immigration enforcement but, at the same time, focus on the worst of the worst, which is what we do. But there are those days when we have the ability to concentrate on lower-priority cases, and that is what we do.

Now, in terms of resources, absolutely we need more resources. But it is not that simple. We do have the ability to go out——

Mr. GALLEGLY. Well——

Mr. CRANE. I am sorry.

Mr. GALLEGLY [continuing]. The real question really had to do with considering the limited amount of resources you have. Are there sufficient resources to deal with the most serious criminal aliens, or are some of those passed over, as I said, because of philosophical differences with the law, rather than the fact that I guess in the—to do it selectively rather than by the rule of law?

Mr. CRANE. I think at this point, based on the folks, the people that are here that we are able to identify, I think we do have the resources to remove or apprehend and arrest the worst of the worst.

Mr. GALLEGLY. Ms. Vaughan, is it appropriate for the Administration to use deferred action and other types of prosecutorial discretion in order to achieve the policy goals that Congress has clearly rejected?

Ms. VAUGHAN. No, absolutely not. I mean, Congress has the authority to make immigration laws. And while the executive branch needs some discretion for the most exceptional cases sometimes, it is not appropriate to use these tools to bypass Congress when it can't get its way.

And I think deferred action has the potential to be abused on a very grand scale if Congress were not to exercise some oversight over the Administration. And because it doesn't have a statutory basis, like there are definitions for temporary protected status and for other parts—some of the other forms of relief that are listed in the bill, but deferred action has not been utilized in the same way and doesn't have the same kind of controls on it.

And deferred action is also one specific form of relief that has been put out there to be used for a general amnesty in memos that were circulated within USCIS. So it is clear that that has been the plan.

Mr. GALLEGLY. Okay. Thank you very much, Ms. Vaughan.

Ms. Stock, same question?

Ms. STOCK. Well, I would disagree that you need to enact a law that gets rid of deferred action in order to deal with particular cases where you feel that it may have been granted in error.

Mr. GALLEGLY. That really wasn't the question.

Ms. STOCK. Well, the bill would eliminate the——

Mr. GALLEGLY. No. The question I had, if you will indulge me, is, is it appropriate for the Administration to use deferred action or other types of prosecutorial discretion to achieve immigration policy that has clearly been rejected by the U.S. Congress? That is the question.

Ms. STOCK. Well, the problem is I haven't seen them do that. They usually do it in response to——

Mr. GALLEGLY. That is still not the question.

Ms. STOCK. They do it in response to congressional requests. As I put in the record, a letter from Members of Congress on both sides of the House requesting the use of deferred action on behalf of military personnel.

Mr. GALLEGLY. Okay.

Ms. STOCK. And I put that letter in. I didn't have time to read it all into the record. But——

Mr. GALLEGLY. Thank you.

Ms. STOCK [continuing]. The letter in my testimony.

Mr. GALLEGLY. Thank you, Ms. Stock.

I still don't think you answered the question, but I respect your right.

Ms. Lofgren?

Ms. LOFGREN. Thank you, Mr. Chairman.

Just a couple of comments. I am a product of a union household. My grandfather was a Teamster. My dad was recording secretary of Local 888 of the Teamsters. My grandfather on the other side was a business agent for the Machinists Union. So I certainly respect unions, but I also respect management.

And there is a role for management, and it seems to me when it comes to law enforcement, it is just like a city police department. I mean, when the mayor and the city council and the chief of police say we are going after auto thefts, gangbangers, and burglaries, the guy on the street is not supposed to go out and spend his time ticketing jaywalkers.

I mean, the priorities are set by the civilian authorities. And I think that the testimony from Mr. Crane really flies in the face of that.

I am not a defender of the department. In fact, I had tremendous criticism of ICE because they told local communities that participation in Secure Communities was optional. And in my county, the chief of police for the City of San Jose, the 10th largest city in the United States, didn't want to participate because it was interfering with his community policing strategy. And the sheriff of the county didn't want to participate.

And there was a unanimous vote, Democrats and Republicans on the county board, saying they didn't want to participate. And then it changed. In terms of an IG investigation, I asked the IG to investigate what happened, and I hope to find out what happened. I was not happy with that.

But having said that, this bill, I think, as I said before, is a huge mistake. Because it is not about the personalities. We will find out what happened and whatever. If it was wrong instead of error, corrective action will be taken.

I have some questions for you, Colonel Stock, if I could? You have talked in your written testimony about the hardship that could result if the HALT Act were enacted. Can you elaborate on some of the use of discretion and how it benefits military men and women?

I think about a case that was in Los Angeles, and I wasn't involved in the case, but I read about it in the LA Times of a guy who came back from Iraq with some traumatic injuries. His wife didn't have her documents. He was an American soldier. Their kids were American citizens, and she was caring for him.

And I think she got deferred action so she could take care of her husband. Would that be possible if the HALT Act were enacted?

Ms. STOCK. I believe you are talking about the Barrios case? And she was granted parole in place. She also would have been cancellation eligible, but the agency realized that it didn't make sense from a cost perspective to put her through a whole deportation proceeding to pursue cancellation.

Under the HALT Act, however, she would not have been eligible for any relief. Her husband would have been left in the United States with their children. She would have been forced to go back to her home country for 10 years before returning to the United States.

Luckily, the HALT Act had not been enacted when her case came into the news. And she, I believe, had also attempted a private bill, but nothing had ever come of that.

Ms. LOFGREN. Let me ask you about the deferred action. The statistics are this. Last year, 12,338 people were granted deferred action. 11,796 of those were victims of domestic violence, human trafficking, or serious crimes, seeking legal protection specifically created by Congress for such vulnerable individuals.

Why is deferred action in cases like that important, for example, for domestic violence victims?

Ms. STOCK. Well, it is very important so they don't get deported, which is usually what their abusers want. In fact, one of the common tools that abusers use to try to subjugate their spouses in this situation is the threat of deportation. They will call agencies and try to have their spouses deported.

And it is important understand the reason their spouses don't have any papers is because they won't file them for them. You know, these are people who are entitled to be lawful, but they are being abused——

Ms. LOFGREN. So they are victimized. Their abuser is using the system.

Ms. STOCK. They are victimized, and deferred action is important to allow them to stay in the United States to get work permission so they can get away from their abuser and pursue the remedies which——

Ms. LOFGREN. I would note that is why the U Visa was a product of bipartisanship here in the Congress, to prevent that.

Let me talk about the extreme hardship, and there has been, Ms. Vaughan mentioned, an increase in the number of extreme hardships granted. It occurs to me that a substantial number of the people who are seeking those waivers are from Mexico. And we now have—we have had over 40,000 people murdered by the drug cartels in Mexico.

It seems to me, and we are paying hazard duty pay to Americans who are working in our embassies there because it is so violent and so dangerous. If it is a 10-year bar, you are basically telling the American spouse, and you and your wife are going to live in Ciudad Juarez for the next 10 years, where the bodies are piling up. Could that be a factor in the extreme hardship area?

Ms. STOCK. Yes, indeed, Ms. Lofgren, it is a factor. In fact, that is one of the reasons why DoD requested the discretionary remedies for military families. Because some of the military families were being targeted by the bad guys down in Mexico.

And there are an extremely large number of people seeking waivers in Mexico. To separate them for 10 years, to have a military family that can't have the person providing childcare in the country for 10 years is definitely an exceptional and extremely unusual hardship. And it is relatively easy to show that burden by putting

in all the proper documentation and the psychological reports, the reports about violence in Mexico, and so forth and so on.

Ms. LOFGREN. My time has expired, Mr. Chairman.

I wonder if I could ask for a unanimous consent request to put in the record a letter signed by over 70 national, State, and local organizations that work with immigrant survivors of domestic violence, sexual assault, human trafficking, and other violent crimes. Letters from five persons who adopted or are in the process of adopting Haitian orphans admitted through humanitarian parole, as well as organizational statements from the First Focus Campaign for Children, the Hebrew Immigrant Aid Society, the National Association of Latino Elected and Appointed Officials Educational Fund, the ACLU, and the Asian American Center for Advancing Justice.

Mr. GALLEGLY. Without objection, they will be made a part of the record of the hearing.

[The information referred to follows:]

July 25, 2011

The Honorable Lamar Smith, Chairman
The Honorable John Conyers, Ranking Member
House Judiciary Committee

The Honorable Elton Gallegly, Chairman
The Honorable Zoe Lofgren, Ranking Member
House Subcommittee on Immigration Policy and Enforcement

Dear Representatives Smith, Conyers, Gallegly and Lofgren,

We write to express our alarm at the effect that H.R. 2497, the Hinder the Administration's Legalization Temptation Act (HALT Act) would have on immigrant victims of domestic violence, sexual assault, human trafficking and other crimes, including children. HALT will not serve the purpose implied by its title. By denying victims such vital and basic protections against deportation as "Deferred Action," HALT will instead further endanger these already vulnerable populations. As local, state and national organizations that work with survivors of these crimes, we know from personal experience that Deferred Action is essential to the safety and security of those we help.

Deferred Action is not itself a legal status or "legalization" – it is simply a bare minimum assurance that the individual does not face imminent deportation. In the domestic violence context, it also serves as an essential tool for providing economic independence to immigrant victims. For over 15 years, US Citizenship and Immigration Services (USCIS) has granted Deferred Action as an interim measure for immigrant victims of domestic violence *whose petitions under the Violence Against Women Act (VAWA) have already been approved*, but who must wait to apply for lawful permanent residence until their priority dates become current under our family preference system. For these approved self-petitioners, Deferred Action is an essential, discretionary tool for granting legal work authorization. CIS also occasionally uses Deferred Action for U and T applicants where necessary to ensure that those who have been helpful to law enforcement are not deported or denied work authorization while awaiting final adjudication of their claims. The agency's discretion to use Deferred Action is essential to ensuring abusers and crime perpetrators do not thwart victims' safety and access to justice by threatening victims with deportation if they reveal crimes and abuse.

As you may recall, the 1994 Violence Against Women Act (VAWA) that created the self-petitioning route was a bi-partisan effort. Through successive VAWA reauthorizations, and through the repeated enactment and reauthorization of related laws over more than 15 years, Congress has maintained that strong bipartisan support and reaffirmed its commitment to protect immigrant victims of domestic violence, sexual assault, human trafficking, and other crimes. [1] Because the overarching goal of VAWA was to ensure that the legal system is not used as weapon by abusers against their victims, USCIS grants Deferred Action to approved self-petitioners awaiting adjustment so they can work legally and escape their abusers' economic control. In our experience, it is often not until a victim obtains Deferred Action and work authorization that she feels secure enough to leave her abuser. Many battered immigrants also fear they will lose custody of their children to an abusive spouse if they have no means to support themselves. If a battered immigrant cannot work, she cannot feed, clothe and care for herself and her

[1] VAWA's "self-petitioning" provisions, created by the 1994 law, help victims abused by their citizen or lawful permanent resident spouses or parents to obtain independent legal immigration status. Provisions for "U" and "T" visas, created in the bi-partisan Victims of Trafficking and Violence Prevention Act of 2000, offer protections to immigrant victims of domestic violence, sexual assault and trafficking who have suffered substantial physical or emotional injury and are cooperating with law enforcement in the investigation or prosecution of the crimes.

children, and she is highly likely to remain trapped in a violent home.[2] Even if she is able to flee to an emergency domestic violence shelter for a month or two, without work authorization, she typically cannot access any transitional or longer-term housing programs and may feel she has no choice but to return to the abuser or face homelessness.

By eliminating Deferred Action as a tool for helping victims of domestic violence and other victims of crimes, HALT would restore a powerful weapon to batterers' and crime perpetrators' arsenals against victims vulnerable to removal. HALT would eliminate the ability of a battered immigrant to survive on her own, and would condemn her once more to be subject to the control and violence of her abuser. Considering the long history of bipartisan support for protecting immigrant survivors of domestic violence, sexual assault and human trafficking, we assume this cannot be the intent of the proposed law.

On behalf of the vulnerable women and children we serve, and with great fear of the unintended consequences to them of this proposal, we implore Representatives Smith and Gallegly to rescind your support of the HALT Act. We urge Representatives Conyers and Lofgren to raise vigorous opposition to this and any other law that would eviscerate the protections Republicans and Democrats joined together to create in the Violence Against Women Act and its progeny.

Sincerely,

National Organizations

ASISTA Immigration Assistance
Ayuda
Casa de Esperanza: National Latina Network for Healthy Families and Communities
Central American Legal Assistance
Coalition to Abolish Slavery & Trafficking
Dwa Fanm
Futures Without Violence
Heartland Alliance's National Immigrant Justice Center
Tahirih Justice Center
Violence Intervention Program, Inc.
Women's Refugee Commission

Organizations by State

California
Asian Pacific Islander Legal Outreach
California Rural Legal Assistance Foundation, Inc
CARECEN Los Angeles
CARECEN San Francisco
Centro Legal de la Raza
Connecticut Legal Services
Immigration Center for Women and Children
International Institute of the Bay Area
Salvadorian American National Network

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[2] See http://www.legalmomentum.org/our-work/immigrant-women-program/reform-laws-wish-act.html (citing a study that found that more than two-thirds of battered immigrant women still trapped in abusive relationships said that lack of money was the biggest obstacle to leaving).

District of Columbia
Mil Mujeres

Florida
Florida Costal Immigrant Rights Clinic
Lucha Project—Florida Immigrant Advocacy Center

Georgia
Cherokee Family Violence Center

Illinois
Centro Romero

Iowa
Iowa Coalition Against Sexual Assault

Maine
Immigrant Legal Advocacy Project

Maryland
Centro Cultural MILPA
Mid-Shore Council on Family Violence

Massachusetts
Boston College Immigration & Asylum Project
Boston University Civil Litigation Program
Healing Abuse Working for Change (HAWC)
Neighborhood Legal Services

Minnesota
Battered Women's Legal Advocacy Project

Nebraska
Justice for Our Neighbors

New York
Barrier Free Living Family of Companies
Centro Hispano Cuzcatlan
CONNECT, Inc.
Empire Justice Center
F-E-G-S, Health and Human Services System
Good Shepherd Services
Jewish Board of Family & Children's Services
Horizon Domestic Violence Shelter (Jewish Board of Family & Children's Services)
Northern Manhattan Improvement Corp.—Domestic Violence Project
St. Brigid's Casa
Transition Center Domestic Violence Shelter (Jewish Board of Family & Children's Services)
Zonta Club of Westchester

North Carolina
Latin American Coalition

Oregon
Immigration Counseling Service

Lane County Legal Aid and Advocacy Center

Pennsylvania
Hebrew Immigrant Aid Society Pennsylvania
Southeast Asian Mutual Assistance Associations Coalition

Texas
American Gateways—Formerly the Political Asylum Project of Austin
Human Rights Initiative of North Texas, Inc.
Las Americas Immigrant Advocacy Center
Refugio del Rio Grande
Texas Civil Rights Project

Virginia
Just Neighbors

Washington
Northwest Immigrant Rights Project

Wisconsin
Domestic Violence Immigration Clinic—University of Wisconsin Law School
Wisconsin Coalition Against Domestic Violence

Additional Individual Signatories
Affiliations listed for identification purposes only

Alicia M. Heflin, Esq.
B. John Ovink, Esq.
Christina L. Milsner-Pollard, J.D., L.L.M
Gibbs Houston Pauw
Immigration Law Offices of Mahoney & Tomlinson, P.C.
Jon Eric Garde, Esq.
Murad & Murad, P.C.
Nancy Falgout, P.C.
Perretta Law Office
Scott D. Pollock & Associates, P.C.
Sisters of St. Dominic, Congregation of the Most Holy Name
The Law Office of Jennifer Walker Gates

I believe that Humanitarian Parole was lifesaving for the children of Maison des Enfants de Dieu. I am an adoptive mother of children from Haiti (already home by the time of the earthquake) and a medical doctor. I had been to Maison the October before the earthquake and done medical evaluations on the children and staff and was thus well acquainted with their state of health and well-being prior to the earthquake and had a point of comparison when I arrived a week after the earthquake. The children had been reduced to just 2 meals per day as supplies were almost gone. There was no gas for the vehicles to go looking for more supplies, the water truck had not been able to come and there were only a couple of containers of clean drinking water left. Most of the infant formula was also gone and the nannies had resorted to using whole milk powder which is not sufficient in nutritional content for infants and causes many of them to have stomach upset and diarrhea. Several of the infants were already sick with fever and diarrhea. Because the children were all outside due to the fears of structural compromise of the building, they were even more susceptible to dehydration from the heat and I was very concerned that some of the infants might die due to the terrible conditions and lack of resources. Several of the children were treated with IV fluid rehydration from the limited medical supplies that were on hand at the orphanage.

While some supplies were brought to the orphanage in that second week after the quake (poptarts!) it was not sufficient to sustain the number of children and staff that were residing at Maison for any prolonged period of time and there was always the insecurity of not knowing when more supplies might be available or what they might be and if they would be appropriate for babies and young children to survive on. The city was in chaos with looting, rubble blocked roads, and people wandering the streets with their belongings on their heads, carrying whatever they had. It was a disaster area and it was really as horrific as the T.V. showed. Armed looters did try to rob the orphanage at one point, and gunshots were heard very close to the orphanage every night as the children slept outside with no security wall and no lighting.

The children that qualified for Humanitarian Parole all had committed adoptive families who were understandably very concerned with their health and welfare. The staff of Maison made a concerted effort to contact surviving birth families to notify them of the possibility that their children may be evacuated and the only problem encountered was that there were many requests to take additional children to the U.S. as well. There were many babies and toddlers who were having diarrhea on the evacuation flight to the U.S. and needed rehydration solutions while in the holding area at Sanford airport. Several of them were taken straight to the hospital once released into the care of their Host families. One child was so lethargic by the time he was through process that he was no longer able to take oral fluids.

I have no doubt that Humanitarian Parole for the orphans of Haiti saved many lives, including those of the children at Maison. Maison was better able to get supplies than some of the outlying orphanages, and yet the situation was not sustainable with the number of children to care for and their level of sickness that was already developing. It would be a disaster and a travesty if the discretion to grant Humanitarian Parole were removed from the Executive Branch of the U.S. government. I am so glad that no children in the care of Maison des Enfants de Dieu lost their lives in the earthquake or as a result of lack of action on the part of the U.S. Government and want to thank all those involved in making a difference in the lives of these children.

Tawnya Constantino, M.D.
Salt Lake City, Utah

This testimony is in reference to the HALT Bill that is soon to be discussed and voted on by congress.

My name is Patrick Flowers and I have a completed adoption of our son, from Port-au-Prince, Haiti. Our son was issued Humanitarian Parole after the earthquake that struck. Port-au-Prince, Haiti in January 2010.

I traveled to Haiti one week after the earthquake to the orphanage (Maison de enfants de due) where my son lived to help facilitate Humanitarian Paroles for children who had adoptions in process.

When I reached the orphanage through all the destruction and death, I found the orphanage in dire need and distress. Food supply was almost gone and water was in desperate need. All the children were outside of the building and sleeping on the ground. The enfant babies were all in the back of a box truck spread out on sheets to sleep. I have been to the country of Haiti many time and never witnessed anything like this. My goal was to gather all Dossiers of the children and carry them to the US Embassy to process for Humanitarian Parole. This took five days of going back and forth to the Embassy to get the children cleared for Parole.

Now, our life has change so much having our son, Jamesley at home. My wife and I have not been able to have children and we feel like he is our biological child. We have not had any problems during his transition and he is very happy. He has the best health care, plenty of food, but most of all he has our love. He has blessed our lives in ways we totally had not expected.

We would have eventually got Jamesley home from Haiti under normal circumstances, but after the earthquake happened we might not have ever got him home without the Humanitarian Parole. Selfishly my heart breaks to think about not getting him home, but most of all what would have happened to all the children if they stayed in Haiti without food and water. Humanitarian Parole saved lives in Haiti. If you were adopting a child from a country in distress from a natural disaster, would you want YOUR child to be able to get out??

Please vote to save lives and keep the option of Humanitarian Parole open.

Thank You,

Patrick Flowers
Adoptive Parent

409 Lake Tomahawk
Livingston, Texas 77351
936.327.0409

7/23/2011

To Whom It May Concern,

My husband and I first met Vanessa Fleurigene, the child we now call daughter, when we went on a work trip to Port au Prince, Haiti in June 2010. As a school psychologist and marriage/family therapist I was traveling to provide initial trauma counseling to the children and staff at Maison orphanage in Port au Prince. On our first night visiting the orphanage we met an amazing 9 year old little girl named Vanessa. Vanessa was unable to walk at the time, being severely impacted by a physical disability called Blount's Disease. This disease had left her with severely bowed legs that had been becoming progressively worse with age. The next day Vanessa was part of a group of girls, whom I was counseling, who had all been impacted by the earthquake. Vanessa was open, honest and brave in her recollection of the earthquake. She calmly reported that she had been living at a school for disabled children (St. Francis) when the earthquake happened. She remembered being buried for four days under the rubble and having several cuts and wounds that required treatment after she was pulled out. At this time she was returned to her paternal grandmother and they lived to together in a tent in an overcrowded tent camp in Port au Prince. Her grandmother, being unable to care for Vanessa's multiple needs, subsequently brought her to Maison orphanage which is where we met her.

Vanessa's story is one of both despair and resilience. We learned later Vanessa's mother was a impoverished unwed teenager when Vanessa was born, and her father deceased when Vanessa was only a few days old. Her grandmother clearly loved Vanessa very much but when her physical disability became clear she took her to Saint Francis School for disable children where Vanessa eventually became a resident. At the time of the earthquake in January 2010, Vanessa was a frail 8 year old disabled child who had never experienced the stability and love of an intact family unit. What struck most visitors to Maison orphanage was Vanessa's humor and strong will. She clearly is a survivor. In my meetings with Vanessa however, I began to have growing concern regarding the level of trauma that she had experienced in the earthquake. My husband, Tony, and I decided that we had to do something to get her surgery to her legs before her condition was irreversible. I expressed concern that given her trauma in the earthquake that the surgery may re-trigger a traumatic experience for her. This is when we decided that we would not only agree to be a host family for Vanessa, should she be able to receive her surgery in the US, but that we would also begin the process to adopt her.

What followed over the course of the last year was a frustrating process of paperwork, fees and regulations. Both we and the staff at Maison orphanage began collecting the necessary requirements to begin the process of obtaining a visa for Vanessa to come to the US for her surgery. By the end of the summer the Denver Children's Hospital had already agreed to provide Vanessa with her surgery at no cost. We were therefore disheartened when we received news in the fall that Vanessa has been denied a temporary medical visa. We subsequently worked with For His Glory Adoption Ministry to apply for a humanitarian parole visa for Vanessa. This visa was initially denied as well. I believe that at face value Vanessa's physical disability did not appear to be a condition that required immediate intervention. We additionally had submitted a clear statement that we were in no way attempting to circumvent the typical and required procedures to complete Vanessa's adoption in Haiti. We contacted our local senator's office and responded to the appropriate USCIS

officials and were relieved to receive a letter of approval granting Vanessa a one year humanitarian parole.

On May 20th, 2011 nearly one year from the start of our efforts I escorted Vanessa out of Haiti and into the United States. Two weeks later she received her surgeries at the Denver Children's Hospital and the experience more then confirmed that she had in fact been impacted severely by the earthquake in Haiti. When Vanessa awoke from her first surgery she was screaming uncontrollably. Screaming for me; and screaming why, why, why. She reached out the air and wanted to know why she could not see any people. As the doctors struggled to manage her pain this went on for nearly four days. She screamed uncontrollably in pain, even after being prescribed an amount of pain medication much greater then that typically prescribed to a child her age undergoing similar surgery. Of course Vanessa was not a typical case. Her physical disability was the worst that the orthopedic surgeon had ever seen. The local news station partnered with the hospital to conduct a news story on her and our family's efforts to help her. She was expected to stay in the hospital for four days and instead spent nearly two weeks in the hospital requiring two surgeries. Despite all of her strength, it was clear that she had been gravely impacted by the earthquake. Research shows that children who have been traumatized exhibited a stronger reaction and less resilience to later trauma. Vanessa displayed this in her reaction to the pain both verbally and physiologically. I watched as her heart-rate would sky rocket from 90 bpm to 140bpm just by someone moving her leg. She screamed that she thought she was going to die and begged us to pray over her. By the time psychiatry was involved the medical team agreed that Vanessa met criteria to be diagnosed with Post Traumatic Stress Disorder.

Vanessa is now home with our family and recovering well. While we have many behaviors and psychological needs to work through, she has benefited from being in a family setting. She is now off of all of her pain medications and is expected to be walking soon. Had Vanessa not received her parole visa she would have been left with a permanent physical disability. If she had been able to receive surgery in Haiti, not only would it have likely been less advanced, but she would not have had access to the pain medication and psychiatric care that she received in the United States. And most importantly she would not have had the understanding, love and support of our family to be there with her. As a mental health professional myself, I can testify that Vanessa presents the symptoms of Post Traumatic Stress Disorder complicated by her history of neglect and being a physically disabled child. Had she received her surgery in Haiti, in the absence of psychiatric care her mental health would most likely have been permanently detioriated.

At this time, we do not know what Vanessa's future holds. Her current humanitarian parole will expire in May 2012 and it is unlikely that our adoption case will be final in Haiti at that point. We fear that should she be required to return to Haiti that her mental health as well as physical health and mobility will be adversely impacted. We however do intend on followed all rules and regulations to complete our adoption of Vanessa into our family.

Sincerely,

Kari Potthoff, PhD
Licensed School Psychologist
Licensed Marriage and Family Therapist

I believe Humanitarian Parole had a significant impact on those that received it primarily those children that came to the U.S. under that program. As the President of the organization that supports Maison des Enfants de Dieu in PAP Haiti I saw that HP was life saving. The children that arrived under this program from Maison were already in the process of adoption and had families waiting for them. Many of these families had been in the process for 1-2 years some longer. Maison was without security, clean water, formula, food, shelter, all the basics to sustain life. Our infants were not receiving proper nutrition and had developed diarrhea and were in significant danger of dehydration. Our babies were in the back of a truck and the older children were living in tents. My son among was those children. Personally, we had been in our adoption process for over a year. To my knowledge none of the children processing adoptions prior to the earthquake has ever been released from IBESR. Without HP loss of paperwork due to the earthquake would have significantly impacted the adoption process for those families that were processing adoptions when the earthquake occurred. I personally worked with USCIS to insure that all necessary paperwork available was received by USCIS to process those children who qualified for HP to come home to their families. I know that many in USCIS and the State Dept. worked tirelessly to process qualified children and I am so thankful for their efforts because they did save lives.

My son is well adjusted and happy to be in our family. He has biological relatives in our family and HP helped complete our family.

It would be a disaster and a travesty if the discretion to grant Humanitarian Parole were removed from the Executive Branch of the U.S. government. I am so glad that no children in the care of Maison des Enfants de Dieu lost their lives in the earthquake or as a result of lack of action on the part of the U.S. Government and want to thank all those involved in making a difference in the lives of these children. Thank you for saving my sons life and bringing him home to our family.

Kim Harmon

Ben Gets His Green Card

Harmon Family

Keith and Tana Karr
4674 Skywriter Cir.
Colorado Springs, CO 80922
(719) 302-5576
thekarrz@gmail.com

July 23, 2011

To Whom it May Concern:

I'd like to share with you the life-saving impact the Humanitarian Parole program made in the lives of our daughters following the Haiti earthquake in January 2010.

For 20-months prior to the earthquake, we had been in the process of adopting Aliyah and Christela from Maison des Enfants de Dieu in Port-au-Prince. They had been in our hearts as our little girls, and our other children at home prayed for them daily and couldn't wait until the day their sisters came home.

Aliyah had been in the orphanage for three years since she was 3-weeks old – the orphanage was the only life she had ever known. Prior to the earthquake, we did not believe she would come home to our family until she was four or five years old. It has been such an incredible blessing to have her home with us, not worrying about if she was safe or if she had food to eat and clean water to drink since the earthquake.

Christela had been abandoned at 8-months old next to the orphanage. She was extremely mal-nourished and weighed less than 6 pounds. She spent weeks in the hospital in Port-au-Prince regaining her strength. Unfortunately, while in the hospital there, she also contracted Tuberculosis and was soon also diagnosed as HIV positive. Thanks to an incredible program in Port-au-Prince and the orphanage, she was nursed back to health. Her tuberculosis had been completely treated, she had begun to gain weight and had started anti-retroviral treatment for HIV.

At the time of the earthquake, our paperwork was all in the Presidential Offices for review. When we first heard of the earthquake, our first thought was, "Are our girls OK? Is everyone at the orphanage OK?" Once we knew how everyone was, our next thought was, "All our paperwork is buried in the rubble. It will be years before the adoption process is up and going again following this, and who knows how long before our girls come home." Within a short time, we began to hear that the orphanage was running low on food and water and that looters had come to steal what they could, but left because there was nothing left to take. As parents, all we wanted was to be able to hold our girls, protect them and provide for them the things they needed. We watched helplessly as the babies from our orphanage were on CNN and Fox News in the back of a box truck with very little formula and food. The days following the earthquake were ones of uncertainty, helplessness and fear.

A few days after the earthquake, the orphanage began to run out of the medication that Christela was on to treat her HIV. We knew it was only a matter of time before they were completely out, and given the conditions in Port-au-Prince, we had no idea if or when they would be able to get the medication her life depended on.

We were so completely relieved and thankful when both of our girls were granted Humanitarian Parole. For Aliyah, it meant she was able to join her forever family at just over three years old and begin to receive the additional care and love that a family can give. For Christela, it meant that as well, but it also made the difference between life and death. Because the orphanage had run out of her medications, in just 12 days from the day of the earthquake to the day we first received her in the U.S., her HIV condition had worsened and her immune system was very compromised. Had she remained in Haiti much longer without her medication and the personal

care we were able to provide, she ultimately would have progressed to full blown AIDS and then passed away needlessly.

We would like to thank everyone who made it possible for our girls to come home on Humanitarian Parole following the earthquake. Without it, we do not know if Christela would have ever made it home.

Respectfully,

Keith & Tana Karr

FIRST FOCUS
CAMPAIGN FOR CHILDREN

1110 Vermont Avenue NW • Suite 900 • Washington, DC 20005
p: 202.657.0677 • f: 202.657.0671

FIRST FOCUS CAMPAIGN FOR CHILDREN
STATEMENT FOR THE RECORD

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION POLICY AND ENFORCEMENT

AT A HEARING ENTITLED

"H.R. 2497, THE "HINDER THE ADMINISTRATION'S LEGALIZATION TEMPTATION (HALT) ACT"

JULY 26, 2011

Chairman Gallegly and members of the House Subcommittee on Immigration, thank you for the opportunity to submit this statement regarding the July 26th hearing on the Hinder the Administration's Legalization Temptation (HALT) Act.

The First Focus Campaign for Children is a bipartisan children's advocacy organization dedicated to making children and families a priority in federal policy and budget decisions. Our organization is also committed to ensuring that our nation's immigration policies promote the well-being of children and families. We fully support the Administration's ability to exercise prosecutorial discretion as well as other relief options while enforcing our immigration laws, especially when the best interest of a child is at stake in such decisions. We strongly oppose the HALT Act as it would eliminate the Administration's use of prosecutorial discretion for humanitarian purposes and directly threaten the safety and well-being of children and families.

While we oppose the HALT Act in its entirety, we are particularly concerned with the provisions that would restrict the Administration's use of humanitarian parole, cancellation of removal, and deferred action. All these measures have been used by this Administration as well as by preceding Administrations to protect children and families with the most need. For example, last January Haiti suffered a devastating earthquake which left over 1,200 children orphaned. At the time, the Administration responded quickly and efficiently by granting humanitarian parole to young Haitian survivors and providing them a safe haven in the United States with adoptive families. One such child is Vanessa, an eight-year-old survivor of the earthquake who spent nearly four days under the rubble of an orphanage before being rescued. A few months later, she was granted humanitarian parole and taken in by a loving family that is currently in the process of adopting her. In addition to being able to receive a life-changing surgery to correct her severely bowed legs, Vanessa also received the mental health treatment she so

urgently needed. Late last year, the U.S. Congress went on to pass the Help Haiti Act, bipartisan legislation that ultimately provided much needed relief to Haitian orphans by granting them Legal Permanent Resident (LPR) status. To suspend or restrict the use of humanitarian parole for any amount of time would be irresponsible and unnecessarily put lives at risk. While the HALT Act makes an exception in cases where "the life of an alien is imminently threatened," it restricts authority that in a time of emergency could delay the need for a quick response.

Humanitarian parole has also been used in the past to protect the safety and well-being of U.S. citizens. One such case is that of Hermenegildo Ortega, the sole caregiver of two children who was deported to Mexico from Orange County, California in 2003. After Ortega's girlfriend passed away from AIDS in 1996, he became the legal guardian of his girlfriend's son, who had been diagnosed with HIV, and their daughter. After his deportation, his children were sent to live in foster care. Ortega was later granted a one-day visa to argue his case before the family court, where he pleaded for humanitarian parole in order to be reunited with his children and remain in the U.S., where his son could get the life-sustaining medical care he needed. The family court judge ultimately recommended that Ortega be allowed to remain in the country to care for his U.S. citizen children. Ortega's story exemplifies the importance of being able to weigh the hardship that deportation of a parent can have on a U.S. citizen child.

The HALT Act would also restrict the Administration's use of deferred action, meaning that DHS would no longer be able to defer the deportation of young people who were brought to the U.S. as children. Currently, there are nearly 1 million undocumented children under the age of 18 who consider the U.S. their home yet live in constant fear of deportation. One such young person is Walter Lara, one of the first youths to be granted deferred action in 2009. Walter was just three years old when his family first immigrated to the U.S., and he did not learn of his undocumented status until he was in the process of applying to college. Despite limited options, Walter graduated from Miami Dade College with a 3.7 GPA and a major in Computer Animation. After learning of his pending deportation, First Focus joined with other organizations in a campaign to prevent his removal. In July of 2009, DHS ultimately granted Walter deferred action just a few days before his scheduled deportation. Since Walter's case, several deserving youths have also received deferred action. We firmly believe that it is vital for DHS to continue to exercise its authority of prosecutorial discretion with regards to these young people, who should not be punished for the actions of their parents. It is simply makes no sense to separate these young people from their families and deport them to a country they often no longer remember.

Cancellation of removal is another important component of our immigration law that has been used in the past to preserve family unity. Currently, the Department of Homeland Security (DHS) has the ability to grant cancellation of removal to an immigrant who has been in the U.S. at least ten years and whose deportation would result in "exceptional and extremely unusual hardship" to a U.S. citizen or LPR spouse, parent, or child. The importance of cancellation of removal has significant implications given that over 5 million children living in the U.S., the vast majority of whom are U.S. citizens, live with at least one undocumented parent. Even with the policy currently in place, over 108,000 children were separated from a parent due to deportation between 1997 and 2007. To put more children at risk of losing a parent would run contrary to our American values.

In closing, Mr. Chairman and members of the committee, we hope that as Congress continues to discuss the future of U.S. immigration policy that the impact on children and families also be considered. Too often, immigration policies fail to take into account the potential harm to the youngest and most vulnerable members of our society. Currently, children of immigrants comprise nearly a quarter of all U.S. children, and the future prosperity of our

country is directly linked to their long-term well-being. It benefits no one to deport a student like Walter Lara, to separate a child with HIV from his father, or to deny Americans the ability to respond to humanitarian crises overseas involving orphaned children like those in Haiti. In fact, it defies common sense. As advocates for children, we firmly believe that the Administration must retain discretion to grant common sense and humanitarian relief that is consistent with the family values our nation cherishes. Rather than pursue harmful proposals such as the HALT Act, we hope that Congress can engage in an honest discussion about a comprehensive fix to our immigration system that honors our American values of putting children first and keeping families together. The First Focus Campaign for Children looks forward to working with you to achieve this important goal. If you have any questions, please contact Wendy Cervantes, VP for immigration and child rights policy, at 202-657-0637.

Sincerely,

Bruce Lesley

Bruce Lesley
President

HIAS

HIAS Statement in Opposition to the HALT Act (H.R. 2497)

The Hebrew Immigrant Aid Society (HIAS), the international migration agency of the American Jewish community, stands in opposition to the "Hinder the Administration's Legalization Temptation (HALT) Act." If passed, the HALT Act would eliminate some of the few remaining safety valves in our immigration laws until January 21st, 2013 - the day after the next Presidential inauguration.

The HALT Act calls for a suspension of life-saving forms of discretionary immigration relief such as Temporary Protected Status, humanitarian parole, and prosecutorial discretion. It would also harm U.S citizens and lawful permanent residents (LPR) by eliminating protections for individuals whose deportation would result in "extreme hardship" to a U.S. citizen or LPR family member. Furthermore, the HALT Act would force the Department of Homeland Security to go after low-priority individuals instead of pursuing those who threaten our communities and homeland security.

According to Gideon Aronoff, President & CEO of HIAS, "the Jewish community has long called on our national leaders to reform our immigration laws to 'welcome the stranger' and to create an effective federal immigration system characterized by the rule of law and the humane treatment of newcomers. If passed, this legislation would do much more harm than good. It would not make us any safer, and it would eliminate protections for the most vulnerable."

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Founded in 1881, HIAS, the international migration agency of the American Jewish community, is the oldest international migration and refugee resettlement agency in the United States. Dedicated to assisting persecuted and oppressed people worldwide and delivering them to countries of safe haven, to date HIAS has assisted more than 4.5 million people.

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1122 W. Washington Blvd., Third Floor
Los Angeles, CA 90015
Tel: (213) 747-7606
Fax: (213) 747-7664

600 Pennsylvania Ave., SE Suite 230
Washington, DC 20003
Tel: (202) 546-2536
Fax: (202) 546-8121

1314 Texas Avenue, Suite 410
Houston, TX 77002
Tel: (713) 228-6600
Fax (713) 228-6606

110 Wall Street, 16th Floor
New York, NY 10005
Tel: (212) 480-1918
Fax: (212) 480-1697

5950 Lakehurst Drive, Suite 160
Orlando, FL 32819
Tel: (321) 795-3757

Testimony

By

Arturo Vargas, Executive Director
National Association of Latino Elected and Appointed Officials (NALEO) Educational Fund

Before

The Committee on the Judiciary
Subcommittee on Immigration Policy and Enforcement

At the hearing on

H.R. 2497
"Hinder the Administration's Legalization Temptation Act"

Washington, DC
July 26, 2011

Chairman Gallegly, Ranking Member Lofgren and members of the subcommittee. Thank you for the opportunity to submit this testimony regarding H.R. 2497, the "Hinder the Administration's Legalization Temptation Act" (HALT).

The NALEO Educational Fund is the leading national non-profit organization that facilitates Latino participation in the American political process, from citizenship to public service. The NALEO Educational Fund's constituency includes more than 6,000 Latino elected and appointed officials nationwide, and our Board is comprised of Republicans, Democrats, and Independents.

The NALEO Educational Fund works on immigration issues through policy development and advocacy at the local, state and federal level. For over 20 years, we have also educated Latino newcomers about the importance of U.S. citizenship and provided assistance with the naturalization application process. Over the years, we have assisted more than 140,000 legal permanent residents to take the important step to U.S. citizenship through naturalization application form completion workshops and other services throughout the country. Our assistance efforts have been accompanied by a comprehensive national public service and media campaign to inform newcomers about the opportunities and requirements of U.S. citizenship. Our civic engagement community and policy activities are at the forefront of efforts to ensure that the naturalization process is accessible and affordable for the nation's legal permanent residents, many of whom are members of the Latino community.

The NALEO Educational Fund believes that our nation's immigration system must effectively and fairly regulate how persons from other countries are allowed to enter, work and live in the United States. This system must accomplish and balance several important goals that are in the best interests of the nation. Our immigration policies must restore public confidence in a system of laws that promote national security and public safety. In addition, these policies must recognize that immigrants have made invaluable contributions to the progress of the United States, and that they continue to enrich the social, economic, cultural and civic life of our country. Our policies must also recognize the important role that immigrant workers and their families play in the future growth of our nation. In order to best ensure our nation's security and public safety, we must utilize strong, sound and humane measures to enforce our immigration laws.

The NALEO Educational Fund opposes the HALT Act because it will impair effective and humane enforcement of our immigration laws by restricting the President's right to exercise prosecutorial discretion. In order to best utilize limited human and financial resources, agencies must use discretion based on national priorities. Prosecutorial discretion has been upheld by the Supreme Court and in the past has received bipartisan and bicameral support. Moreover, the HALT Act goes beyond limiting prosecutorial discretion and seeks to suspend long respected forms of immigration relief, including Temporary Protected Status (TPS) and family unity waivers.

Prosecutorial discretion can serve the interests of law enforcement and ensure that vulnerable victims are able to stay with their families. The U.S. Immigration and Customs Enforcement recently released prosecutorial discretion guidelines for victims and witnesses of crime, including domestic violence and individuals involved in significant efforts to protect their civil rights and liberties. The important use of prosecutorial discretion will avoid deterring individuals from reporting crimes and from pursuing actions to protect their civil rights. Without this form of relief, victims or witnesses of domestic violence may be detained and subject to removal proceeding, a damaging and unfair consequence for defending themselves.

In the absence of Congressional action on comprehensive immigration reform, prosecutorial discretion authority and other forms of immigration relief are valuable and indispensible tools that must be maintained in order to effectively manage our current immigration system. The suspension of these provisions of Federal immigration law, including the long standing prosecutorial discretion authority, will produce unconstructive and negative consequences for immigrants and the nation.

Negative Consequences of the HALT Act

The HALT Act legislation seeks to suspend President Barack Obama's authority to grant waivers of inadmissibility, parole, cancellation of removal, designation or re-designation of TPS, and grant deferred action, which temporarily suspends deportation.

Waiver of Inadmissibility

The HALT Act will suspend the administration's authority to allow a select few U.S. citizens to avoid up to 10 years of separation from their immigrant family members. For example, U.S. citizens who are married to undocumented immigrants who entered the United States without a visa cannot

sponsor their spouses for a visa within the United States, but must send their spouses back to their home countries – a waiver of inadmissibility can provide relief to family members under these circumstances. Separating U.S. citizens from members of their immediate family runs contrary to our national immigration values of supporting family unification.

Parole

The HALT Act would suspend the parole power of the government to permit a temporary stay for urgent humanitarian reasons or significant public benefit. Recently, military personnel have found help getting legal status for their undocumented spouses through a parole, but this form of relief would be terminated if the HALT Act were to pass.

Cancellation of Removal

The HALT Act would bar cancellation of removal, which cancels deportation and grants legal status if an undocumented immigrant has a U.S. citizen or permanent resident spouse, parent, or child who would be seriously harmed if the immigrant were deported. The current implementation of this form of relief requires that the hardship caused must be exceptional and unusual. The undocumented immigrant must also have lived in the United States for 10 years and be of good moral character. This is an important form of relief that may protect a child with a serious illness from being deported with their family to a country where she will not get adequate medical care, or prevent an elderly U.S. citizen parent from being left destitute due to the deportation of the family's primary breadwinner.

Designation or Re-designation of TPS

The HALT Act would suspend new or renewed designations of TPS between now and January 21, 2013. These designations have been crucial during times of crises throughout the world, most recently in the aftermath of the devastating earthquake that ravaged Haiti. Passage of the HALT Act would hinder the government's ability to act in an expeditious manner when confronted with an international emergency—leaving the Administration powerless to help victims in need.

Deferred Action

The HALT Act would also bar deferred action, which temporarily suspends deportation. Such suspensions have been granted recently to a youth who was brought to the United States at a young

age and has subsequently grown up here and wants to contribute to society, and the parent of U.S. citizen children who has lived in the United States for many years. Like these two scenarios, there are many other cases where deferred action is the only form of relief available to individuals that want to get right with the system but face no legal mechanism to do so.

Conclusion

The HALT Act will undermine the Administration's ability to use good judgment by balancing government priorities, employing good stewardship of limited government resources, and balancing humanitarian concerns. The purpose of this committee should be to work on fixing our broken immigration system. Supporting the HALT Act will not provide solutions to our current immigration challenges. The NALEO Educational Fund opposes the HALT Act, and urges members of the House of Representatives to reject this unsound and unfair legislation.

Thank you for your consideration of our views.

Written Statement of the
American Civil Liberties Union

Laura W. Murphy
Director, Washington Legislative Office

Joanne Lin
Legislative Counsel
jlin@dcaclu.org

Before the

Subcommittee on Immigration Policy and Enforcement
House Judiciary Committee

For a Hearing on

H.R. 2497, the "Hinder the Administration's Legalization Temptation Act"

July 26, 2011

The American Civil Liberties Union (ACLU) is a non-partisan public interest organization dedicated to upholding our constitutional and other legal protections. On behalf of over a half million members, countless additional activists and supporters, and 53 affiliates nationwide, we respectfully submit this statement for the record of the House Judiciary Committee's Subcommittee on Immigration Policy and Enforcement hearing on H.R. 2497, the "Hinder the Administration's Legalization Temptation Act" (HALT Act).

The HALT Act, sponsored by Chairman Lamar Smith, attempts to invalidate the legal authority of the executive branch to use its discretion in administering immigration laws. The HALT Act seeks to tie the hands of Immigration Judges ("IJs") from granting vital immigration protections created by Congress including the long-established form of immigration relief -- cancellation of removal for non-permanent residents. The HALT Act also seeks to strip the ability of the Department of Homeland Security ("DHS") to defer initiating removal actions against individuals, except in extremely limited circumstances. Notably the HALT Act is specifically aimed at stripping the *Obama* administration's authority to exercise discretion in administering the immigration laws, as the bill would sunset on January 21, 2013, the day after the next presidential inauguration.

Permanent expulsion from the U.S. brings many severe consequences to immigrants and their U.S. citizen family members. For most individuals facing expulsion and permanent separation from family members, the only thing standing between them and deportation is the opportunity to present their case before an immigration officer or judge who can make an individualized decision on whether immigration relief is warranted. This is the hallmark of due process, namely that any application of the law must be tailored to the particular facts of an individual case. In the immigration context, due process demands that individuals facing

expulsion must be given individualized consideration for discretionary relief. This principle of individualized consideration is precisely what the HALT Act seeks to annihilate.

In passing the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRAIRA") of 1996, Congress stripped the executive branch of much of the discretionary authority it had long been accorded in administering immigration laws. The HALT Act now seeks to eliminate what little discretionary authority remains in the current immigration laws, by removing the Obama administration's authority to exercise discretion in individual cases. The HALT Act aims to force the Obama administration to follow a "one-size-fits-all" deportation policy, regardless of whether an individual has been victimized, endured hardship, excelled in education or in the workforce, or possesses U.S. citizen family or other community ties.

The ACLU strongly opposes the HALT Act because it contravenes the fundamental principles of due process and fairness that are a cornerstone of the U.S. system of justice and which the constitution affords to every person regardless of immigration status. The HALT Act would cripple discretion in the application of immigration laws, closing off critical avenues of mitigation including cancellation of removal and deferred action.

First, the HALT Act would suspend cancellation of removal for non-permanent residents under the Immigration and Nationality Act ("INA") § 240(b)(1). Cancellation of removal for non-permanent residents was created in IIRAIRA, the 1996 bill authored and championed by Lamar Smith. A granted application allows an applicant to become a permanent resident. The statutory requirements for cancellation of removal for non-permanent residents are extremely rigorous. An applicant must demonstrate: (1) she has been physically present in the U.S. for 10 years preceding the date of the request; (2) she has been a person of good moral character during those 10 years (e.g., no criminal/immigration record); (3) she has not been convicted of an offense as described

under §§ 212(a)(2) [controlled substance violations, crimes involving moral turpitude], 237(a)(2) [deportable criminal offenses], 237(a)(3) [documentary fraud]; (4) that removal would result in exceptional and extremely unusual hardship to her spouse, parent, or child who is a U.S. citizen or a permanent resident.

An IJ will balance certain positive factors against negative factors in determining whether an applicant should be permitted to remain in the U.S. An IJ will consider such factors as family ties, history of employment, community service, long residency in the U.S., property and assets, criminal record, immigration violations, rehabilitation, and remorse. Cancellation of removal is discretionary in nature, permitting an IJ to grant or deny the application as she deems fit. Even if an applicant can demonstrate all of the above factors, this does not mean that an application will be granted, only that she has demonstrated *prima facie* (minimum standards for eligibility) eligibility.

A Board of Immigration Appeals ("BIA") decision, *Matter of Recinas*, 23 I. & N. Dec. 467 (BIA 2002) (en banc), demonstrates how difficult it is to be granted cancellation of removal and how important the individualized consideration is that would be swept aside by the HALT Act. Ms. Recinas was a single mother of six children including four U.S. citizens. She and her children had no close relatives in Mexico. Her entire family lived in the U.S. including her permanent resident parents and five U.S. citizen siblings. A small business owner, Ms. Recinas was the sole breadwinner for her family. The BIA concluded that "the heavy financial and familial burden on [Ms. Recinas], the lack of support from the children's father, the United States citizen children's unfamiliarity with the Spanish language, the lawful residence in this country of all of [her] immediate family, and the concomitant lack of family in Mexico combine to render the hardship in this case well beyond that which is normally experienced in most cases of removal." *Id.* at 472.

The HALT Act would prohibit an IJ from granting cancellation of removal, even in cases of such "exceptional and extremely unusual" cases of hardship. By removing cancellation of removal for non-permanent residents from the immigration statute, the HALT Act would bar an IJ from making an individualized consideration of the particular facts presented in an immigration case, thereby stripping the deportation process of due process. This would result in mandatory deportation in many cases, regardless of individual circumstances and the burdens placed on U.S. citizen and permanent resident family members.

In addition to eliminating a statutorily-authorized form of immigration relief, the HALT Act aims to tie the Obama administration's hands from granting deferred action to individuals including abused spouses, crime victims, college students, and those serving in the armed forces. Throughout the history of our immigration system, the executive branch has determined that there are important categories of individuals who fall outside the ambit of our country's immigration enforcement priorities and who present compelling sympathetic facts warranting relief from deportation. In the absence of enacted legislation that would create new statutory forms of immigration relief, deferred action remains a critical tool of the executive to exercise its discretion in administering the immigration laws. Deferred action is a critical form of discretion that DHS exercises to decline to remove such individuals at a given point in time.

Deferred action does not confer permanent residency or any immigration status on an individual; nor does it prevent DHS from initiating removal proceedings against an individual. Rather deferred action is a type of discretionary authority that DHS exercises to choose *not* to place an individual in removal proceedings <u>or</u> *not* to execute an order of removal at a particular time. Nothing precludes DHS from lifting a deferred action grant in the future and pursuing removal proceedings against an individual.

Over the years DHS has, at times, designated certain categories of individuals to be eligible for deferred action. For example, in the Victims of Trafficking and Violence Protection Act of 2000, Congress created the U non-immigrant visa for crime victims who cooperate with law enforcement in criminal investigations. It took seven years before DHS promulgated regulations regarding the U non-immigrant visa. Between 2000 and 2007 DHS decided to grant deferred action to those individuals who qualified for U visa interim relief; these individuals included survivors of sexual assault, domestic violence, and other crimes who cooperated with law enforcement in criminal investigations

Likewise DHS's longstanding practice has been to grant deferred action to people with approved self-petitions filed under the Violence Against Women Act ("VAWA"), namely abused spouses and children of U.S. citizens and permanent residents. Under the family immigration system, many approved VAWA self-petitioners must wait several years before they can apply for permanent resident status. During this interim wait period DHS's practice has been to grant them deferred action so they can remain in the U.S. before they apply for permanent residency.

Similarly DHS has granted deferred action to U.S. citizen widows and widowers and their children, where the spouses were married less than two years before the U.S. citizen spouse's death. Also, after Hurricane Katrina, DHS granted deferred action to foreign students adversely impacted by the hurricane.

Most recently in 2011, education and immigration advocacy groups have been urging the Obama administration to grant deferred action to young people who have grown up in the U.S., have graduated from U.S. high schools, but cannot work or pursue higher education because of their undocumented status. This category of individuals is often referred to as DREAMers. To date, DHS has declined to adopt a categorical policy of granting deferred action to DREAMers.

The HALT Act would bar DHS from granting deferred action except in extremely limited circumstances: "to the extent that such grant authority is exercised for the purpose of maintaining the alien in United States--

> (1) to be tried for a crime, or to be a witness at trial, upon the request of a Federal, State, or local law enforcement agency;
> (2) for any other significant law enforcement or national security purpose; or
> (3) for a humanitarian purpose where the life of the alien is imminently threatened."

Under these never-before-seen requirements, virtually all of the above-listed categories of individuals who have been granted deferred action – abused spouses, abused children, crime victims, widows/widowers of U.S. citizens, hurricane victims – would not qualify for deferred action. Absent a grant of deferred action, these individuals would be at immediate risk of arrest, detention, and expulsion from the U.S. The HALT Act's severe restriction of deferred action is a direct effort to place these individuals on the road to swift deportation, even though they do not fall under ICE's immigration enforcement priorities and do not pose a risk to public safety or national security.

As the two examples of cancellation of removal and deferred action demonstrate, the HALT Act would impose a cruel regime of categorical deportation for some of the most vulnerable immigrants in our society. The HALT Act aims to gut entirely due process from the immigration system by throwing out the long-established practice of individualized consideration. Stripping the Obama administration's ability to grant cancellation of removal and deferred action violates due process, departs from long-established DHS practice, and does nothing to advance our country's immigration enforcement priorities. The ACLU urges the House Committee on the Judiciary to reject the HALT Act in the name of due process and fairness.

Written Statement Submitted by the Asian American Center for Advancing Justice

House Committee on the Judiciary
Subcommittee on Immigration Policy and Enforcement

Hearing on H.R. 2497 "Hinder the Administration's Legalization Temptation Act"

July 26, 2011

Today the House Subcommittee on Immigration Policy and Enforcement will hold a hearing on H.R. 2497, "Hinder the Administration's Legalization Temptation Act" or HALT Act. The Asian American Center for Advancing Justice (Center for Advancing Justice) strongly condemns the HALT Act and urges the Subcommittee to focus this hearing on positive solutions to fix our broken immigration system, rather than bills like this that will harm vulnerable immigrants.

Collectively, the members of the Center for Advancing Justice are non-profit, non-partisan organizations that enrich and empower the Asian American and Pacific Islander (AAPI) community and other underserved populations through public policy, advocacy, litigation, research and community education. Our mission is to promote a fair and equitable society for *all* by working for civil and human rights and empowering AAPIs and other underserved communities. The Center for Advancing Justice advocates for fair and humane immigration policies that honor the valuable contributions that hard working immigrants have made – and continue to make – to our country.

The HALT Act seeks to undermine the administration's discretionary authority at the expense of immigrants. As drafted, the HALT Act would suspend the executive branch's discretionary authority in certain immigration cases. The bill would expire after President Obama's current term ends. Immigration law has long granted the executive branch the power to exercise discretion and provide relief in appropriate cases. Prosecutorial and judicial discretion play a critical role in providing relief in the most compelling cases.

H.R. 2497, if passed, would greatly harm AAPI immigrants and their loved ones. For example, the legislation would suspend two very limited forms of protection – unlawful presence waivers and nonpermanent resident cancellation of removal – for individuals whose deportation would result in "extreme hardship" or "exceptional and extremely unusual hardship" to a U.S. citizen or legal permanent resident family member. Immigrants who have families here and deep ties to America could be ripped from their loved ones if the administration is unable to grant relief in appropriate cases.

Among its other provisions, the HALT Act would also eliminate relief in the form of deferred action except for three very limited circumstances. Deferred action is another form of limited relief that has benefitted some members of the AAPI community. In particular, limited numbers of young undocumented AAPI immigrants, who have grown up in the U.S. and hope to legalize their status under the DREAM Act someday, have been granted deferred action. This temporary form of relief allows these young people to stay in the only country most of them have ever known.

Overall, the HALT Act, which would also eliminate critical protections Congress legislated for victims of domestic violence and suspend the administration's ability to designate temporary protected status for countries wracked by natural disasters or civil war, will hurt many members of the AAPI community, as well as other vulnerable immigrants.

In addition to harming some of the most vulnerable people in U.S., including citizens and legal permanent residents, the HALT Act would threaten the public safety of all living in America. The bill attempts to strip the Department of Homeland Security (DHS) of its prosecutorial discretion and forces DHS to deport low-priority individuals, who are contributing members of American society, rather than prioritize serious criminal offenders, who threaten our national security and our communities.

The HALT Act will do nothing to repair our broken immigration system. Judicious use of executive discretion balances justice and fairness in our immigration system. We urge the Subcommittee to protect the executive branch's long-standing authority to grant relief in appropriate cases. Thank you.

With that, I would yield to the gentleman from Texas, the Chairman of the full Committee, Mr. Smith.

Mr. SMITH. Thank you, Mr. Gallegly.

Mr. Crane, let me direct a couple of questions to you. You mentioned the unprecedented vote, I think, 13 months ago. It was a vote of no confidence in the ICE officials. Have you seen any action by this Administration since that vote of no confidence to change your mind about this Administration and its apparent unwillingness or intentional desire to not enforce some immigration laws?

Mr. CRANE. No, sir. I think, from our perspective, things are actually getting worse. I think that the most recent policies kind of point that out.

Mr. SMITH. What do you mean, specifically? Why are things even worse than 13 months ago?

Mr. CRANE. Well, I think, you know, issues like the prosecutorial discretion memo, I think those, you know, present some real obstacles for us. We see them as being purely political in nature. The agency, when they issued that policy, didn't even issue guidelines or training to the field to let people know how to enforce it. It was just kind of a knee-jerk reaction to satisfy certain groups.

Mr. SMITH. Now you mentioned that you feel that there are, in fact, orders not to arrest some individuals, some illegal immigrants. Why do you think that is the case? Do you have evidence of that?

Mr. CRANE. I don't know if we can actually give you physical evidence of it. We could possibly give you witness statements, officer statements from the field. ICE has gone to a system where they hardly put anything in writing. Everything is done verbally, even the directives coming from headquarters, because they don't want anything slipping out to the media. They don't want the public to see what they are doing behind closed doors.

So our officers are absolutely being told on operations you can't run background checks. You can't run criminal checks. You can't run immigration checks. You can't talk to anyone when you go out in the field.

If you have a target to arrest and you walk into a house—and this individual was convicted of drug distribution and you walk into a house, and he is in there with five other individuals, all sleeping on the floor, all with pockets full of cash, you can't talk to anybody. Get your target and get out of the house.

Mr. SMITH. Do you think there are some ICE agents who would be willing to testify as to what you have just said before a hearing of this Subcommittee, or would they lose their job?

Mr. CRANE. They will definitely ruin their careers if they do it. ICE is a horrific place for retaliation. That is something that we have been talking about since 2009 when I gave my first testimony. The internal investigations are corrupt. Our management officials, they really lack integrity, and I don't think—I would certainly be willing to ask, sir. But we would be asking a lot for them. They would be putting their whole careers on the line.

Mr. SMITH. Okay. Perhaps there will be some way for us to get their testimony and still protect their identity. And if so, we will pursue that with you because I think that is incredibly damaging comment about this Administration and certainly reinforces the need for us to pass legislation to try to counter that mindset, that

unwillingness to enforce the laws or unwillingness to deport individuals.

Because the result of all that is that a lot of Americans may lose their lives, may be injured. You don't know what the consequences are. And that actually takes me to my next question to Ms. Vaughan.

Do you feel that Administration policy has already resulted in some innocent Americans losing their lives and in other innocent Americans being unnecessarily injured or maimed?

Ms. VAUGHAN. Yes, I do. I feel quite confident that that is the case, not just Americans, but also immigrants as well. There was one case up near where I live in Massachusetts of a woman and her 4-year-old son who were murdered by an illegal alien who had been arrested and charged with acts of violence on more than one occasion before, both in New York State and in Massachusetts, and who was not detected because he used false names.

If the Secure Communities Program, for example, had been in place, he would have been detected. And I have heard from individuals who are in a position to know that that is a case that they would have prioritized, if they had known that he had been arrested.

But ICE is allowing States, effectively, to not participate in Secure Communities for political reasons. They have not required Massachusetts to participate, even though they have both the mandate and the authority to do so. So I believe that her life and her son's life, as does the district attorney, who is now trying to extradite that former illegal alien from Ecuador, also believes that it would have saved two lives in that situation.

Mr. SMITH. And I assume that there are dozens, if not hundreds or thousands, of similar cases across the country where crimes were committed by individuals who should not have been allowed to remain in our country.

Ms. VAUGHAN. Definitely. Their family members often write to me and ask what can be done.

Mr. SMITH. Okay. Thank you all for your testimony.

I yield back, Mr. Chairman.

Mr. GALLEGLY. I thank the Chairman.

From Puerto Rico, my good friend Mr. Pierluisi?

Mr. PIERLUISI. I will yield my time, my turn to Congresswoman Sheila Jackson Lee.

Mr. GALLEGLY. Ms. Jackson Lee?

Ms. JACKSON LEE. Let me thank my very——

Ms. LOFGREN. If I may, Mr. Chairman? That was my mistake, and I don't think Mr. Pierluisi needs to yield his time. Ms. Jackson Lee should be recognized before Mr. Pierluisi.

That is my mistake.

Mr. PIERLUISI. I appreciate that very much.

Mr. GALLEGLY. Very good.

Ms. LOFGREN. My error.

Ms. JACKSON LEE. Well, I thank both of my colleagues, and I thank Mr. Pierluisi for being such a distinguished colleague and friend. We all have overlapping Members, and I thank the Ranking Member for his courtesies.

This is an important hearing, and I thank the Ranking Member for establishing a framework that I know was established before—Ms. Lofgren and Mr. Conyers before I came.

But I do want to acknowledge that Mr. Smith and I have worked together in years past on a number of legislative initiatives, and I even enjoyed his support on a letter that I know he knows, the famous letter that was signed by a late colleague and certainly adored Member of this Committee, Mr. Hyde. That in the second paragraph mentioned, "However, cases of apparent extreme hardship have caused concern," and the gist of the letter is asking for discretion. I think 1999 was still the presidency of President Clinton.

I also want to say that I look forward to this Committee and Homeland Security embracing our ICE officers to ensure—I will join anyone on their increased pay and compensation. I don't, in any way, want to diminish the important work that they do, and most of all, I want to see them safe and secure and express my sadness for the tragic losses that they have experienced and most recently. I think that is an important statement, and we all need to own up to the important work that ICE does.

At the same time, I think it is important for law enforcement to be collaborative and not be afraid of policymakers who are making decisions that are rational and speak to the wide diversity of the work that law enforcement has to do. So, for example, let me be very clear on the record, I abhor criminal aliens who may prey upon our citizens, and I believe that we have provided all manner of resources to ensure that criminal aliens who are violating the rights of our citizens and their family members maybe are brought to justice.

We salute ICE for its work. But I can't, for the life of me, believe that Mr. Morton, who has taken an oath of office, would in any way give oral demands to do untoward things. And he is not here today, and I want to say that he has a right to defend himself. And I have, in the course of my interaction with ICE, I have seen the performance of Mr. Morton on behalf of this Nation and his support for his men and women in ICE, fighting for them.

We were on an airplane where he was headed down to the family in Brownsville, a tragedy that happened and that we are all working together to ensure that that doesn't not happen. So let me be very clear on that, and I stand as a person that takes no backseat to support of unions and labor and employee organizations. But I think that we have to be balanced in our representation for someone who is not here.

Let me, Colonel Stock, pose this question quickly to you. Thank you for your service.

Thank you, Mr. Crane, for your service. And Ms. Vaughan.

But I believe you served in the U.S. Army and taught at West Point for many years. It is my understanding that it is considered best practice among military, governmental, and public policy decision-makers to be presented with the full range of options available to them, but that outlining all options is not the same as endorsing such options.

Does this comport with your understanding of this process? Do you think that the draft USCIS memorandum on administrative

options from last year is significant enough to raise concerns of an impending amnesty?

Ms. STOCK. Thank you for that question, Congresswoman Jackson Lee, and I think that is a really important question because I can't quite understand the uproar that is being caused by people having leaked what looks to me like a standard options memo that every public policy student is allowed to write to decision-makers.

That is standard practice in the Federal Government, and in public policy schools, they teach this—that when you have a new boss and he is unfamiliar with the authority that he exercises, you are supposed to write him an options paper, laying out all possible options to solve a problem. This is called the scientific decision-making process. In the Pentagon, they call it the military decision-making model.

It doesn't mean you are actually going to implement all the options. It is to lay them all out so you can study their feasibility, acceptability, and suitability, which includes the political aspects of them. So——

Ms. JACKSON LEE. Using——

Ms. STOCK [continuing]. To criticize that is somewhat misguided, and I suspect that there is an options paper out there at the Internal Revenue Service right now about the amnesty that they have going on.

Ms. JACKSON LEE. So that the procedures, if I might, that are rumored to be throwing away the keys, letting criminal aliens run wild, and not being with good judgment is not the case. This is a situation where mercy cases, hardship cases are being allowed to be considered by thoughtful law enforcement to decide what to do.

Is that what the case is?

Ms. STOCK. Well, that is my understanding of what is going on. But the memo that they are talking about was simply an options memo that is a standard practice in public policy. It is standard at the Pentagon, except usually there, they classify it so they can jail the guy that leaked it to the Hill.

It is a standard thing to lay out these public policy memos, and for example, if you have a crisis in a foreign country, you might say one option is to send in the 82nd Airborne. The second option is to issue temporary protected status to nationals of that country, which will cause a money flow and help stabilize that foreign country.

So what they were doing there at DHS was simply standard public policy practice, and it goes on every day in every agency of the Government. And I seriously——

Ms. JACKSON LEE. So passing the HALT bill is not something that you think is imperative?

Ms. STOCK. You don't need to eliminate the discretionary authority of CBP, USCIS, and also some discretionary authority of ICE in order to address the fact that people are laying out options memos internally within an agency, no. That would be a gross mistake.

Ms. JACKSON LEE. I thank the Chairman, and I agree——

Mr. GALLEGLY. Time of the gentlewoman——

Ms. JACKSON LEE [continuing]. The HALT bill should not be an imperative and should not pass.

And I thank the Chairman for his courtesy, and I yield back.

Mr. GALLEGLY. I thank the gentlelady.

The gentleman from Michigan, Mr. Conyers?

Mr. CONYERS. Thank you, Mr. Chairman.

With all due respect to Pedro Pierluisi, I am going to yield some time to Zoe Lofgren.

Thank you, sir.

Mr. GALLEGLY. The gentlelady from California?

Ms. LOFGREN. Well, thank you, Mr. Conyers.

I did have a question, Mr. Crane, for you. You are under oath, of course, and you indicated that unnamed individuals would be fearful of coming forth to identify orders that might constitute misconduct. But you are here today, and I am wondering if you can tell the Committee who in ICE gave those directions?

Mr. CRANE. I am not prepared to give you those names right now, ma'am. I could not. But——

Ms. LOFGREN. Well, if you won't give us the names, I don't believe what you are saying is true. I mean, you are here——

Mr. CRANE. I will get you the names, ma'am.

Ms. LOFGREN. You are known.

Mr. CRANE. I will get you the names.

Ms. LOFGREN. I have another question for you. We are conducting not an oversight hearing, but a hearing on this bill. In your testimony, you specifically comment on the actions of the Secure Communities Advisory Committee.

Now it is my understanding that the bylaws of this Committee require confidentiality of the proceedings to ensure fair process and debate of these issues. How is it that you are able to publicly comment on these activities, when all the other Members of the Committee are prohibited from doing so?

Mr. CRANE. I don't know that that is completely true, ma'am. I know that there were——

Ms. LOFGREN. So you are saying the bylaws permit you to talk about what is going on?

Mr. CRANE. What I would like to say is that there was actually at the last meeting that we attended, there was some very strong language about our ability to go out and talk publicly about what was being said, that we couldn't give out the actual recommendations and findings.

So that is my understanding of the process. They have——

Ms. LOFGREN. Okay. Well, we will look into this further then and not in the Committee, as that is not my understanding. But we will come to an understanding of it.

I would like to ask you, Colonel Stock, you know, I come from Silicon Valley, and we have a tremendous number of really amazing inventors, engineers. Some of them come from countries where there is tremendous backlog in petitions, for example, India or China. And because Silicon Valley and the technology world is multinational, if you are going to be successful in business, you sometimes have to travel.

Many of these individuals get advance parole if they have to go over to Europe or someplace to do something for their company. If the HALT Act was passed, how would these scientists and engineers go and attend to the business overseas and get back in?

Ms. STOCK. Well, they wouldn't. That is the problem. Once they have applied for adjustment of status, the current requirement is they have to get advance parole to travel internationally, and that is going to be the biggest impact of the HALT bill, if it is enacted, is suspending the ability of hundreds of thousands of these folks while the bill is in effect. Until January 2013, none of them will be able to travel internationally once they have filed for adjustment of status.

This is not just going to affect Silicon Valley. It is going to affect the spouses of U.S. citizens, and it is going to affect people who need to go overseas for a funeral. We have had military cases where we have needed advance parole for somebody with a pending adjustment application so they could go to a spouse's funeral overseas.

So that is actually the biggest impact. And I looked at the numbers, and we have had more than a million people getting advance parole in the past several years. And during the period that this bill will be in effect, if it is enacted, there will be probably about 500,000 people who are legal, have never broken immigration laws, and will be unable to get travel permission to travel internationally because the parole authority has been eliminated or suspended.

Ms. LOFGREN. Well, I think that is a serious—I don't know if anybody has done an analysis of the economic impact on the American economy. But it just seems to me that that would be a pretty severe blow to—I mean, the Valley is coming back. The tech world is coming back.

Ms. STOCK. Yes.

Ms. LOFGREN. That would be a severe problem, it would seem to me.

You know, one of the things that everybody is for is orphans. And I am wondering if you could outline the impact that this—we had a number of letters here from adopting families. How often are these discretionary tools utilized with families that are adopting children?

Ms. STOCK. It is used frequently, and I have handled some of those cases. And it is not just the traditional ones that you are thinking about. But I handled a case, for example, once where USCIS paroled somebody in because a U.S. citizen was killed overseas, and there was a baby. And the baby had not yet derived U.S. citizenship.

I know you are familiar with the complicated rules regarding derivative U.S. citizenship.

Ms. LOFGREN. Right.

Ms. STOCK. The grandparents wanted to take custody of the baby and bring the baby back with them to live in the United States of America, and there was no option under immigration law for them to do that, absent parole. There is no grandchild visa for tragic circumstances like this.

A private bill would have taken a very, very long time to get through, and this was a baby that needed to be in the immediate care of the grandparents. So that is the kind of situation.

There are also orphan and adopted children cases that get messed up for technical reasons. The parole authority is used in those cases. There are after-acquired child cases, where a child is

born to somebody who has been approved to come to the United States in some category, and there is no way to get the child in because of the complicated procedures. So the parole authority is used at USCIS headquarters to bring the child in.

Those cases would be halted under the HALT Act.

Mr. GALLEGLY. The time of the——

Ms. LOFGREN. I would yield back to the gentleman, and thanks——

Mr. GALLEGLY. The time of the gentleman has expired.

Mr. CONYERS. Thanks a lot, Zoe.

Mr. GALLEGLY. Without objection, I will give the gentleman one additional minute.

Mr. CONYERS. Thank you, Mr. Chairman.

I yield to Ms. Sheila Jackson Lee.

Ms. JACKSON LEE. Thank you very much.

I think when we talk just about statistics and policies, let me share with you the case of Nelson Delgado, who is a military veteran, a husband, and the father of two young U.S. citizen children, 9-year-old Esmeralda, 4-year-old Angel.

He served 1 year in Iraq, 4 years in the Marines on active duty, another 4 in Reserve. Nelson, who immigrated legally, married Olivia, an undocumented immigrant who came from Mexico in 1995. A few years later, Olivia went back to Mexico to visit her sick father and reentered.

Because of her departure after years of unlawful presence triggered a 10-year bar, Olivia was barred from seeking legal residency for 10 years, now faces deportation. This baffles Nelson because he served his country, and now he is being separated from his wife and his children.

Mr. Crane, could you find it in your heart and within the laws and a flexible policy to be able to be responsive to Mr. Delgado?

Mr. CRANE. To be honest with you, ma'am, we do see cases that, you know——

Ms. JACKSON LEE. And you would be willing to have some flexibility and be well to receive that kind of counsel to be flexible in the deportation of his wife? Would you take into consideration his service, his willingness to die for his country?

Mr. CRANE. Well, first of all, ma'am, in the process, of course, that wouldn't be my place.

Ms. JACKSON LEE. But do you see the viability of that?

Mr. CRANE. Yes, I do, ma'am.

Ms. JACKSON LEE. And Ms. Stock?

Ms. STOCK. Well, the problem is, if the HALT Act were passed, there is no solution. You can't solve that.

Ms. JACKSON LEE. That is correct. And it allows no broad discretion using judgment and determining that this is a viable case in terms of her deportation, separating her from her military spouse and the children.

Ms. STOCK. That is correct, ma'am.

Ms. JACKSON LEE. That cuts off everything.

Ms. STOCK. She is just stuck outside the United States for 10 years.

Mr. GALLEGLY. The time of the gentlelady is expired.

Ms. JACKSON LEE. Thank you. I yield back.

Mr. GALLEGLY. Mr. Gowdy?

Mr. GOWDY. I thank the Chairman.

Mr. Crane, I see the word or the phrase "prosecutorial discretion," and I always thought that prosecutorial discretion was held by a prosecutor in deciding whether or not there were sufficient facts to warrant the reasonable likelihood of a successful conviction.

Giving discretion to law enforcement officers or ordering law enforcement officers not to pursue certain criminal violations is not prosecutorial discretion. That is something I am not familiar with. So let me ask you from your perspective, it says ICE must prioritize the use of its enforcement personnel, detention space, and assets. What do you think about being told which laws to enforce and which ones not to enforce?

Mr. CRANE. Well, I think that prosecutorial discretion as officers is something that we have to exercise because there are simply too many cases that we can't apprehend every single individual. We do have to have law enforcement priorities in the field.

However, I think that what we are seeing in the field as officers right now is more of a mandated order to allow certain individuals or certain groups of individuals to not be charged or arrested under immigration law. So that is our issue with it.

Mr. GOWDY. I guess a cynic would suggest that the Administration was trying to get through memoranda what it could not get legislatively. Is that an overly cynical way of looking at it?

Mr. CRANE. I think it certainly has that appearance, sir.

Mr. GOWDY. Is there someplace where we can sign up for an email blast and we can find out which criminal laws will be enforced today and which ones will not? Is that kept secret?

Because I would love to know which Federal laws will be enforced by Federal law enforcement on a daily basis and which ones are not. That might help me direct my daily activities a little better.

Mr. CRANE. I couldn't agree with you more, sir. I think everyone in the American public needs to know exactly what ICE is doing. However, there is not even an email like that for employees to see.

Mr. GOWDY. I can't imagine the frustration. I have worked with ICE and its predecessor agency for 6 years. A lot of respect for those special agents. I can't imagine having your hands tied by memo.

Have you expressed your frustration at having your badge limited? And if so, what was the result?

Mr. CRANE. We don't really have a lot of interaction with Director Morton. He has not been friendly to the unions, to the employees. I absolutely believe that management has a place in this process, very strongly. But they are not really participating with us in that way. They don't seem to want to know the officers' opinion from the field.

Mr. GOWDY. Do you think the policies are driven by something other than an apportionment of law enforcement resources? Could there possibly be a political component to any of this?

Mr. CRANE. Absolutely. I mean, we are completely confused. I know Secretary Napolitano came to the Appropriations Committee I believe it was last year and told congressmen that ICE doesn't

need any more resources. We have all the people that we need because we have this magical thing called Secure Communities, which is this great force multiplier, which is absolutely false. It is incorrect.

It is not an arrest multiplier for us by any means. If anything, it creates more work for us. Yet at the same time, we have the agency come out and say we don't have enough resources. We don't have enough manpower to arrest all these folks. So we need to make changes to our policies.

So from our perspective, the agency can't have it both ways. They have got to start being straight with the American public about what resources we have and we don't have. And quite frankly, give our officers the appropriate priorities and training, but let us really exercise prosecutorial discretion in the field, and I promise everyone on this Committee that we will do a good job of it. And if we are not, we will be held accountable for it.

Mr. GOWDY. Have any officers been disciplined for eschewing the memo and actually following the law as it is passed by the House, Senate, and signed by the President?

Mr. CRANE. ICE really doesn't do business like that for the most part. Generally, when something like that happens, it involves retaliation at some kind of level.

You won't see future promotions. You will find yourself on a different detail. But very rarely do they step out, that wide out into the open and let anyone see that they are actually taking an action against an officer for something that specific.

Mr. GOWDY. So the Administration does not ask for additional resources, but hides behind a lack of resources and setting nonlegislative priorities for the enforcement of ICE?

Mr. CRANE. That is my appearance of the situation, yes, sir.

Mr. GOWDY. Thank you, Special Agent.

Mr. GALLEGLY. Thank you, Mr. Gowdy.

Mr. Pierluisi?

Mr. PIERLUISI. Thank you, Mr. Chairman.

It is clear that Members of this Subcommittee hold differing views on immigration policy. But I hope that all of us can agree on one point, that the executive branch should target its limited immigration enforcement resources on the removal of dangerous criminal aliens.

If that is, indeed, our goal, as I believe it should be, then the HALT Act represents a step backward, not forward. Passage of this bill would make us less, rather than more, secure. With the Federal Government tightening its budget, ICE does not have unlimited funding. In fact, ICE only has resources to remove approximately 400,000 aliens per year. With limited resources, whom should ICE deport?

Should it deport the alien murderer or rapist? Or should it deport the noncriminal undocumented spouse of a U.S. military serviceman? I think most reasonable people would agree that ICE should deport an alien murderer or rapist above the noncriminal spouse.

Yet under the HALT Act, the executive branch would lose its discretion to prioritize its resources. The result would be a de facto lottery, where undocumented immigrants are removed in the order

in which they are processed, not on the basis of their danger to the U.S.

This approach confounds common sense, and let me add a couple of thoughts, hopefully within the timeframe. I am troubled, actually, that the bill has this language about temptation. I mean, I am tempted to say lots of things, Mr. Ranking Member. But I am going to keep it civil.

Now one thing, this is like putting the carriage in front of the horse. There is no record here. I hear you, Mr. Crane. But the statistics do not support what you are saying.

And when you are asked to give some names and specifics, you refuse to do so. You say that, well, in due course, you will. Well, that puts us in a very uncomfortable position because the first thing that should be done by this Committee is to do oversight, the oversight that you were complaining about that hasn't been done.

Once you do oversight and you determine that there has been abuse, then you take action. But there hasn't been any oversight, and the statistics, by the way, if anything, show a lot of enforcement in this last couple of years by this Administration.

In fact, I was even amazed that you have the impression that immigration and advocacy groups are very pleased with this Administration. Let me tell you, sir. It is the opposite. I mean, I have yet to hear any immigration advocacy group praise ICE or DHS. So that confounds me.

At the same time, I see that there is talk about these memos, and I tell you there is a difference between a decisional memo and a deliberative memo. A decisional memo binds officers to do X, Y, and Z. A deliberative memo is like what you were saying, Ms. Stock. It is simply options that are laid out, specifics that are laid out for the benefit of the officials who have this prosecutorial discretion.

Lastly, prosecutorial discretion, but of course you have it. I am a former attorney general. You have it at the State, at the local, at the county level. You have it. And in the Federal Government, of all places, you have it a lot. And there is more than any time before with the limited resources that we have.

So now, having said all of that, let me ask a couple of questions. Ms. Stock, if this were to become law, would the Government now be able to deport all individuals who are not legally present in the United States? Or would the Government still be able to deport only a certain number of individuals?

Ms. STOCK. Well, the Government would only be able to deport a certain number of individuals because Congress has only given a certain amount of money and resources to the agencies. And there simply are not the resources available to deport every single unauthorized immigrant in the United States. That is borne out by numerous studies.

There is a mismatch between the numbers and the resources, and that is why priorities are important. And I think it is also important to point out that ICE is going to take a big budget hit on this particular bill because one of the tools that ICE uses investigatively is parole authority. They will give parole to an undocumented immigrant that they are using for the purpose of an investigation, and they will give that undocumented immigrant work

permission to perhaps infiltrate an unscrupulous employer, go to work for that employer and support himself while this informant is in the country working for ICE.

They are going to lose the ability to give work permission to those folks. So they are now going to have to support those individuals. They will still be able to use them for law enforcement purpose parole, but they are going to have to come to Congress for the money to support those individuals—housing, food, et cetera. And they are going to lose the tool of being able to give them a work permit to go use for purposes of the investigation.

So there is going to be a budget hit on this, and I also mention in my testimony that the Pentagon is going to have budget implications because they also parole people in and expect them to get work permits and go to work as translators, for example, for the Pentagon. That authority is taken away. Even in the exceptions that are in the bill for national security and law enforcement, those people aren't allowed to work.

So there are going to be budget impacts to this bill, and you will have to ask ICE how many people they parole in for law enforcement investigative purposes. But I know because I have worked with them that they do that.

Mr. GALLEGLY. I thank the gentleman. The time of the gentleman has expired.

I want to thank the three witnesses that were here today for your testimony and your patience, since we had to get a little late start. But unfortunately, there are certain things we don't have total control on around here, if you hadn't noticed.

In any event, I look forward to working with you in the future.

I thank the Members of the Committee on both sides for attending today and look forward to working on this issue in the near future.

With that, the Subcommittee stands adjourned.

[Whereupon, at 3:39 p.m., the Subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

Office of Government
and International Affairs
1156 15th Street, NW
Washington, DC 20005
t: 202.785.4200
f: 202.785.4115
www.ajc.org

Statement of
Richard T. Foltin, Esq.
Director of National and Legislative Affairs
Office of Government and International Affairs
American Jewish Committee

Submitted on behalf of the American Jewish Committee to
The House Judiciary Subcommittee
on Immigration Policy and Enforcement

Hearing on
The "Hinder the Administration's Legalization Temptation" Act (HALT Act),
H.R. 2497

July 26, 2011

T: (202) 785-5463, F: (202) 659-9896
e-mail: foltinr@ajc.org

From its founding in 1906, the American Jewish Committee (AJC) has been a strong voice in support of fair and generous treatment of immigrants. As a faith-based organization, we call attention to the moral dimensions of public policy that uphold the human dignity of each person, all of whom are made *b'tselem elohim*, in the image of G-d. We engage the immigration issue with the goal of fashioning an immigration system that facilitates legal status and family unity in the interest of serving the dignity and rights of every individual, even as it enhances out national security and promotes respect for the rule of law.

Against this background, AJC strongly opposes to the "Hinder the Administration's Legalization Temptation (HALT) Act" (H.R. 2497). If passed, the HALT Act would eliminate some of the few remaining safety valves in our immigration laws until January 21, 2013—the day after the next Presidential inauguration.

The HALT Act calls for a suspension of life-saving forms of discretionary immigration relief such as Temporary Protected Status (TPS), humanitarian parole, and prosecutorial discretion. For example, the HALT Act would suspend TPS—the protection granted to Haitians after the recent devastating earthquake—making it impossible for the Obama Administration to respond to humanitarian crises. It would also harm U.S. citizens and lawful permanent residents (LPR) by eliminating protections for individuals whose deportation would result in "extreme hardship" to a U.S. citizen or LPR family member. Furthermore, the HALT Act would force the Department of Homeland Security to focus enforcement efforts on low-priority individuals rather than pursuing those who threaten our communities and homeland security.

Administrative authority must be preserved in order to ensure that forms of discretionary relief are available when needed. AJC supports enforcement policies that are consistent with humanitarian values and with the need to treat all individuals with respect, while allowing authorities to carry out the critical task of identifying and preventing entry of terrorists and dangerous criminals, thereby bolstering our national security. The HALT Act, however, would take away the Administration's power to grant administrative relief, which would fundamentally interfere with the government's ability to prioritize its removal cases and focus its resources on serious criminals and those who pose a true security risk. All this would seriously put at risk the Administration's ability to protect our national security.

In sum, the HALT Act would take a broken immigration system and make it even more inflexible and unworkable, at the expense of vulnerable immigrants and our national security. This is not the way to solve our immigration crisis, but only further highlights the necessity for passing legislation that comprehensively overhauls our broken immigration system.

AJC appreciates the opportunity to submit this statement and welcomes your questions and comments.

Assistant Secretary for Legislative Affairs
U.S. Department of Homeland Security
Washington, DC 20528

JUL 2 6 2011

The Honorable Lamar Smith
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

We understand that earlier this afternoon the House Judiciary Committee held a hearing on H.R. 2497, the "Hinder the Administration's Legalization Temptation (HALT) Act." We are concerned by a number of pointed statements made at today's hearing regarding the Obama Administration's immigration enforcement efforts. In light of the Committee's curious choice not to invite a representative from the Department of Homeland Security (DHS) (or any representative from the Administration) to testify on a matter so centrally tied to DHS's mission and critically important to our Nation's security, I write to express several points regarding the Administration's unprecedented record of immigration enforcement.

U.S. Immigration and Customs Enforcement (ICE) is pursuing a serious, smart, and effective approach to immigration enforcement that prioritizes the use of its resources in a manner that best enhances public safety, promotes border security, and protects the integrity of the immigration system. For these priorities to be implemented properly, ICE must provide clear guidance to its agents, officers, and attorneys in the field. The recent guidance issued by ICE Director John Morton provides the necessary direction and re-iterates the agency's enforcement priorities.

The guidance issued by Director Morton does not in any way represent an abdication of our responsibilities to enforce immigration laws enacted by Congress. Rather, it improves the way we fulfill those responsibilities by focusing our resources in a way that also furthers our underlying enforcement goals of enhancing public safety and promoting border security.

Our FY 2010 statistics are illustrative. In March 2010, Director Morton issued a memo that clarified the agency enforcement priorities that are reinforced in the most recent prosecutorial discretion memo. In the following year, ICE removed more aliens than it had removed in FY 2008. Moreover, the type of aliens who were removed significantly changed.

In FY 2010, ICE removed 79,000 more aliens who had been convicted of a crime then it had in FY 2008 and, for the first time ever, fifty percent of the aliens removed by ICE in a fiscal year were convicted criminals.

These numbers clearly demonstrate that the implementation of priorities does not in any way restrict enforcement. Instead, adoption of priorities makes enforcement smarter and more effective. As a result, ICE will continue to prioritize the enhancement of public safety and border security by identifying, apprehending, and removing criminal aliens, repeat immigration violators and recent border crossers.

These enforcement policies build upon practices that long predate the Department of Homeland Security. Since the days of the Immigration and Naturalization Service (INS), immigration enforcement officers, agents, and attorneys have always exercised discretion, where appropriate, in individual cases based on the unique factors presented by that particular case. This approach is in line with practices outlined in memos published during the previous administration.[1] Furthermore, it is hardly different from that for which you and a bipartisan group of colleagues advocated in a 1999 letter to then-Attorney General Janet Reno and then-INS Commissioner Doris Meissner, in part questioning why the Clinton Administration was not exercising discretion in *more* cases.[2] ("We write to you because many people believe that you have the discretion to alleviate some of the hardships, and we wish to solicit your views as to why you have been unwilling to exercise such authority in some of the cases that have occurred."[3]) You recognized then, as we do now, that deferred action has justifiable uses when exercised responsibly.

We have also implemented a smart and effective approach to worksite enforcement. Focusing on employers who knowingly and repeatedly hire illegal labor, we are targeting the root cause of illegal immigration, utilizing robust Form I-9 inspections, civil fines, and debarment, and enhancing compliance tools like E-Verify. In FY 2009-2010, ICE arrested more than 300 employers on criminal charges, conducted more the 3600 Form I-9 inspections, and issued nearly 300 final orders or fines totaling almost $8 million. In short, our approach to worksite has been working, and has been successful at bringing employers into compliance with the law.

DHS is engaged in serious and sustained immigration enforcement that prioritizes the use of its resources in a manner that best enhances public safety and removes dangerous criminals from our streets. Within those priorities, our use of discretion is limited, and fits with our clearly-articulated priorities. We look forward to continuing to work with you on this and other issues critical to DHS's mission and the Nation's security.

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[1] William J. Howard, Principal Legal Advisor, Prosecutorial Discretion (October 24, 2005); Julie L. Myers, Assistant Secretary, Prosecutorial and Custody Discretion (November 7, 2007).
[2] *See Guidelines for Use of Prosecutorial Discretion in Removal Proceedings*, letter to Janet Reno, Attorney General, and Doris M. Meissner, Commissioner, Immigration and Naturalization Service, from Representatives Hyde, Frank, Smith, Jackson Lee, McCollum, Frost, Barrett, Berman, Bilbray, Brown, Canady, Cubin, Deal, Diaz-Balart, Dreier, Filner, E.B. Johnson, S. Johnson, Kennedy, Martinez, McGovern, Meehan, Sensenbrenner, Shays, Waxman, Granger, Green, and Rodriguez (November 4, 1999).
[3] *Id.* at 2.

Should you wish to discuss the Administration's immigration enforcement record further, please do not hesitate to contact me at (202) 447-5890.

Respectfully,

Nelson Peacock
Assistant Secretary
Office of Legislative Affairs

cc: The Honorable John Conyers, Jr.
Committee on the Judiciary

The Honorable Elton Gallegly
Chairman, Subcommittee on Immigration Policy and Enforcement
Committee on the Judiciary

The Honorable Zoe Lofgren
Subcommittee on Immigration Policy and Enforcement
Committee on the Judiciary

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