TESTIMONY OF CHARLES KUCK

Before the
House Judiciary

SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW

CONCERNING

IMMIGRATON REFORM LEGISLATION

November 8, 2007
10:00 A.M.
2141 Rayburn House Office Building

INTRODUCTION – I am Charles H. Kuck, National President-Elect of the American Immigration Lawyers Association (AILA). AILA is the immigration bar association of more than 11,000 attorneys who practice immigration law. Founded in 1946, the association is a nonpartisan, nonprofit organization and is affiliated with the American Bar Association (ABA). AILA members represent millions of immigrants in a variety of legal situations, including: U.S. families who have applied for permanent residence for their spouses, children, and other close relatives to enter and reside lawfully in the United States (U.S.); U.S. businesses, universities, colleges, and industries that sponsor highly skilled foreign professionals seeking to enter the U.S. on a temporary basis or, having proved the unavailability of U.S. workers when required, on a permanent basis; applicants for naturalization; applicants for derivative citizenship as well as those qualifying for automatic citizenship; and healthcare workers, asylum seekers, often on a pro bono basis; as well as athletes, entertainers, exchange visitors, artists, and foreign students. AILA members have long assisted both Congress and government agencies in contributing ideas to increase port of entry inspection efficiencies, database integration, security enhancement and accountability, and technology oversight, and continue to work through our national liaison activities with federal agencies engaged in the administration and enforcement of our immigration laws to identify ways to improve both enforcement and adjudicative processes and procedures.

SCOPE OF THE PROBLEM, OR WHAT IS WRONG WITH THE IMMIGRATION SYSTEM TODAY?

We Need Legislation that Fixes our Current Immigration Laws, which Current Immigration Laws Discourage, Rather than Encourage, Legal Migration. The Save American Comprehensive Immigration Act of 2007, H.R. 750, Balances Enforcement of Current, Positive Immigration Laws with Corrections to Current,

Negative Immigration Laws to Begin to Resolve the Immigration Situation in America.

Lawmakers remain divided over key questions such as whether or not to grant legal status to some or all of the 12 million undocumented immigrants now living in the United States, and whether or not new enforcement measures should be accompanied by an expansion of legal avenues for temporary or permanent immigration as well.[1]

There are approximately 12 million undocumented immigrants living in the United States today. This population has continued to increase *despite* ten years of consistent and significant increases in the border-enforcement budget and a parallel surge in the number of Border Patrol agents stationed on the nation's borders. Indeed, a proper understanding of the causes of international migration suggests that punitive immigration and border policies tend to backfire, and this is precisely what has happened in the case of the United States and Mexico.[2]

These punitive immigration policies not only affect undocumented immigrants from Mexico, but immigrants from all countries, without regard to gender, marital status, age, employment status, occupation or education. Many have lived here in the U.S. for years; have ties to the communities, pay taxes, own homes, and have close family members who are either U.S. citizens or lawful permanent residents. Indeed, but for the punitive nature of our current immigration laws, many well-deserving and hardworking undocumented immigrants would be eligible to apply for permanent resident status.

Congresswoman Sheila Jackson-Lee has introduced important legislation, in the form of the Save America Comprehensive Immigration Act of 2007, H.R. 750, which incorporates vital and necessary changes to our current immigration laws. What many in Congress and the mass media fail to understand is how minor changes in the law today can help us solve our current immigration conundrum, and help dissipate the climate of hatred and fear that is beginning to build against immigrants. We cannot tolerate another mass hysteria in American against Immigrants. We are too good a nation to allow this to happen. If history has taught us anything about immigrants, it is that immigrants are good for American.

But, past Congressional action has resulted in nonsensical and simply bad immigration laws. We have to understand how certain provisions of the Immigration and Nationality Act actually discourage, rather than encourage, legal immigration. To do so, it is essential to 1) identify those provisions; 2) show how they disqualify otherwise eligible undocumented immigrants from acquiring lawful permanent resident status; 3) provide real-life examples of how these provisions affect U.S. citizen and lawful permanent resident families and employers; and 4) provide legislative alternatives to

[1] Immigration Policy in Focus: Learning from IRCA: Lessons for Comprehensive Immigration Reform, by Jimmy Gomez and Walter A. Ewing, Volume 5, Issue 4, May 2006

[2] AILF IPC "Beyond the Border Build up: Towards a New Approach to Mexico-U.S. Migration, Volume 4, Issue 7 By Douglas Massey

these punitive measures, that will reduce the number of undocumented immigrants in the U.S. and restore principles of fundamental fairness and justice to our immigration system. The Save America Comprehensive Immigration Act of 2007 is broad based and incorporates both effective means of smartly increasing the enforcement of immigration laws, but also recognized that some provisions in our current immigration laws are simply bad. Bad laws do not help America. Congress has a long history of fixing bad laws when the effects of those laws become apparent.

The opportunity to address one of the most pressing issues in America today is not one I take lightly. I am grateful to Congresswoman Jackson-Lee for the chance to tell this Committee, and the Congress as a hole, how vital movement on Immigration Legislation is resolving what as become for too many in politics and the media, a "hot-button" issue designed to inflame passion and prejudice, rather than to resolve problems. Many people say they don't hate immigrants, they just want people to follow the law and come to the U.S. legally. Let's take those folks at their word. I dare say then, everyone wants that exact same thing. However, when the laws simply do not function to lead to that ultimate positive end, then the laws must change. Our laws do NOT encourage legal immigration!

Now, I do not have necessary time today to talk about all of the positive enforcement tools in H.R. 750, nor do I have time to speak to all of the many other positive aspects of this Bill. So, I want to focus this testimony on the I consider to be some of the most necessary changes to our bad immigration laws and on how the Save America Comprehensive Immigration Act of 2007 positively ameliorates the harsh effects of some of the most offending sections found in:

- INA § 212(a)(9(B)(i)(I) and (II) relating to inadmissibility based on unlawful presence;
- INA § 212(a)(6)(C)(ii) relating to false claims to U.S. citizenship; and
- INA § 240A(b) relating to cancellation of removal for certain nonpermanent resident aliens.

SPECIFIC SHORTCOMINGS OF THE IMMIGRATION AND NATIONALITY ACT

UNLAWFUL PRESENCE AND THE THREE AND TEN YEAR BARS

Starting with changes enacted by IIRAIRA in 1996, Section 212(a)(9)(B) of the Immigration and Nationality Act, as amended, created new automatic bars to reentry to the United States for "unlawful presence". It applies to people who have been unlawfully present in the country for six months or longer, whether or not they were living in the U.S. lawfully at one time. Under these provisions, noncitizens who try to enter the U.S.

after having previously been in the country unlawfully for more than 180 days, but less than one year, will be barred from reentering the U.S. for three years. Noncitizens that have been in the U.S. unlawfully for one year or more will be barred from reentering the U.S. for ten years.

An immigrant is deemed to be unlawfully present after their authorized stay expires or if they are present in the United States without ever having been admitted or inspected. The period of "unlawful presence" is accumulated while the undocumented immigrant is living in the U.S. The bars to admissibility, however, are triggered when an immigrant leaves the U.S. This means, for example, that when an undocumented immigrant who is otherwise eligible for an immigrant visa, leaves the U.S. to apply for the visa at a U.S. Consulate abroad, the immigrant will be subject to either the 3 or 10 year bar, meaning that he or she will have to wait another 3 or 10 years outside the U.S. before they can re-enter.

The end result is that many immigrants who have family in the U.S., who have worked and paid taxes in the U.S., who have established their lives in the US, who contribute to their communities, whose children and spouses are US citizens or lawful permanent residents; and who are employed are ineligible for permanent residence or even for temporary work visas until they wait outside the U.S. for either three or ten years.

There is a waiver of the three and ten year bars in INA § 212(a)(9)(B)(v). To qualify for the waiver, the applicant must establish that denial of the waiver would result in "extreme hardship" to the U.S. citizen/lawful permanent resident spouse or parent. Unfortunately, extreme hardship to the immigrant is not recognized. Nor his extreme hardship to her children considered relevant; it is also not recognized in the hardship determination. Most important to understand is that extreme hardship involves more than the usual level of hardship associated with being separated from one's family . They are literally trapped inside the United States: damned if they go, damned if they stay. Dante would be happy. This law has created the perfect "catch-22" for immigrants who have unlawful presence, even those, like children brought here when minors, who had on choice in the matter.

The standards for what constitute "extreme hardship" at some posts are quite stringent, and the approval rates dismally low. One particular U.S. Consulate has stated: "The key term in the provision 'extreme' and thus only in cases of real, actual or prospective injury to the United States national or lawful permanent resident will the bar be removed. Common results of the bar, such as separation, financial difficulties, etc., in and of themselves are insufficient to warrant approval of an application unless combined with much more extreme impacts." Matter of Ngai, 19 I & N Dec. 245. The approval rates at consulates fluctuate depending on changes in personnel. There are no bright lines and there are no assurances that an individual will be able to demonstrate sufficient hardship.

Unfortunately, decisions on waiver applications are frequently made arbitrarily and capriciously with reckless disregard of the human toll on the applicants, their families and employers. Rather than discouraging unlawful migration to the U.S., the three and ten year bars encourage people to remain in the U.S. unlawfully notwithstanding that immigrant visas have been approved for them and visa numbers are available. After all, if you knew the chance of your returning to live with your wife and children were less than 10% (the approval rate in some countries), would you leave? Or would you take your chances and stay.

Finally, decisions on the waiver application are not reviewable by any court or entity outside of the Executive Branch. And, with applicants having to wait anywhere from 6-12 months outside the U.S. while their waiver applications are being considered, the difficulties faced in make this choice of separation is agonizing. Leaving the U.S. for an indefinite period of time in order to apply for a visa is alone a disincentive for applying at the consulate, and knowing that a denied waiver will result in a three or, most often a ten year reentry bar makes it even more unlikely that people will assume that risk.

As a result, far from curtailing illegal immigration and deterring people from overstaying their visa as intended, this policy actually contributes to the unprecedented rise in the number of undocumented immigrants. The statistics are clear, this law, coupled with increase border enforcement (which is not a bad thing) literally stopped the old back and forth flow of "migrant" labor, and instead has made the flow one way. The dramatic rise in those immigrants unlawfully present in the United States started immediately after the effective date of this law. Thus, faced with the choice of either voluntarily leaving their families in the U.S. for a period of three or ten years, or being forced underground but remaining united with their families, many naturally chose the latter, joining the legions of undocumented individuals in this country, and virtually eliminating the circular migration patterns that had characterized immigration to and from Latin America.

Example: The case of Jose Mara Rodriguez is an example of how these bars negatively impact immigrants and their families, and discourage legal migration. All names used are aliases.

Jose originally entered the U.S. without inspection in 2000 and has lived and worked in the U.S. since that time. His wife is a U.S. citizen and they have 2 children born in the U.S. His employer is willing to file a labor certification on Jose's behalf.

Jose has never been outside the U.S. since entering in 2000. He has no criminal convictions or prior deportations and has built a good life for his family in the U.S. They even own a home here. The only possible way for Jose to become a permanent resident is if his wife files a family petition on his behalf. Because he entered without inspection, Jose would have to leave the U.S. to apply for a visa and will need to get a waiver of the ten year bar to admissibility.

Jose can apply for a waiver of the ten year bar, but he is not sure whether it will be granted. Furthermore, it could take up to one year before his waiver is processed. The

waiver will be denied if he fails to prove that his wife would suffer extreme hardship (hardship to his U.S. citizen children is not considered under the current waiver.) Even if his waiver is approved, he has to wait for the consulate to interview him again. It could take another year for this interview to be rescheduled. As such, he is likely to be separated from his family for at least two years. If the waiver is not approved, he may have to wait ten years before he will be allowed to re-enter. If he reenters the U.S. illegally while waiting for the decision to be with his family, he then face a permanent bar to reentry to the U.S. In the alternative, his family could accompany him to his home country wherever that may be. In this case, the consequences of the bar go well beyond preventing inadmissibility of those who have violated immigration laws because U.S. citizens and lawful permanent residents are the ones who would suffer greatly. The risks of being barred from the US for ten years are a substantial deterrent even to those immigrants for which a legal channel of migration exists. This punishment is completely out of proportion to the violation.

Suggested Legislative Fix: The Save America Comprehensive Immigration Act of 2007, Section 808 addresses the "fix" to this bizarre, "catch-22" law. The bars created under § 212(a)(9)(B) are extremely harsh and prevent many individuals with extremely strong ties to the United States from becoming permanent residents. The current waiver is extremely limited and fails to consider the human toll suffered by children when separated from their parent or when the breadwinner in a family is forced to leave for an indeterminate period of time. A general waiver, such as that offered in Sec. 808 of the Save America Comprehensive Immigration Act, introduced Congresswoman Jackson Lee, would allow the Secretary of Homeland Secretary to waive the unlawful presence bars for humanitarian purposes, to assure family unity or when it is otherwise in the public interest. Such a waiver would, if approved, alleviate the human suffering suffered by U.S. citizen and lawful permanent resident family members and restore fairness to once again under our immigration laws. Although it does not guarantee that a waiver will be approved, it will certainly allow the Secretary more discretion in making those determinations and will indeed, encourage legal immigration rather than discourage it. We estimate that literally millions of spouses of United States citizen, people who pay taxes, have children and who contributed to America will benefit from such a change. This means that those people would no longer be living in fear, their families will be healed and you will have done what is right for the American family.

FALSE CLAIMS TO U.S. CITIZENSHIP

INA § 212(a)(6)(C)(ii) bars admission (and adjustment of status to lawful permanent residence) to anyone who claims to be a U.S. citizen *for any purpose or benefit under the Act*, or *under any other Federal or State law.* It applies only to false claims to U.S. citizenship made on or after September 30, 1996.

Section 212(a)(6)(C)(ii) of the Act applies not only to false claims to U.S. citizenship to obtain a benefit under the Act, but also to false claims for any purpose or

benefit under any other Federal or State law.[3] It is not necessary for the claim to have been made to a U.S. government official, since the statutory language includes specific mention of 274A of the Act which covers both government and private employers.

Unfortunately there are no waivers for immigrants found inadmissible under this section. Therefore, immigrants found inadmissible under section 212(a)(6)(C)(ii) of the Act are permanently inadmissible regardless of the circumstances or the reason for the claim. Nonimmigrants, however, may seek the exercise of discretion under section 212(d)(3)(A) or (B) of the Act, as applicable.

Unlike fraud or material misrepresentation under the INA for which a waiver is available, (INA § 212(i)), no waiver is authorized for false claims to U.S. citizenship, not even for spouses and children of U.S. citizens and lawful permanent residents. Unlike fraud and material misrepresentation which require a willful intent, a false claim to U.S. citizenship is a strict liability offense with no defenses and requiring no specific intent on the part of the person making the statement.

This per se bar violates fundamental values of fairness, due process and punishment proportional to the offense. As a result, many noncitizens with meritorious claims to status are deemed inadmissible and removed under these provisions. Regardless of the circumstances, they are permanently barred from acquiring any status and have no opportunity to explain the context of their alleged false claims, nor are they able to present humanitarian, family unity or public interest reasons for why they should be allowed to gain status, despite their mistake.

Please understand that I do not minimize the nature of a false claim to citizenship. It should be a bar to entry and admission to the United States. We want to discourage any immigrant from making such a claim. It is the lack of a waiver that causes the harm here, not the actual prohibition itself.

Example: Consider for example the real life case of a returning Cuban lawful permanent resident in Arizona who went to Mexico on vacation. When asked his citizenship at the port of entry, he responded "Miami, Florida" since he misunderstood the question. He was barred reentry by the Department of Homeland Security, detained as an "arriving alien," stripped of his permanent residence, barred from applying for cancellation of removal and permanent residence under the Cuban Adjustment Act, and

[3] **212(a)(6)(C)(ii) Falsely claiming citizenship**.—

(I) In general.—Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law **is inadmissible.**

(II) Exception—In the case of an alien making a representation described in subclause (I), if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making such representation that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such representation.

forced to apply for withholding of removal protection. Fortunately, he was granted withholding of removal status because he came from Cuba, and was released and resides in legal limbo in Miami. Most noncitizens in his situation would not be found eligible for withholding of removal, which is reserved for those who can show they would be tortured if returned to their home countries.

Also consider the plight of the battered immigrant woman whose U.S. citizen abuser forces her to tell border agents as they cross the Mexican border together that she is a U.S. citizen, using his sister's passport. Although the abused spouse is eligible for special status created by Congress in 1994 under the Violence Against Women Act, her "false claim" will make her permanently ineligible to gain lawful permanent residence. Thus, the abuser has successfully used the immigration laws against his victim to continue his power and control over her and his children. These are but two of a myriad of examples that I could cite over how statements of "citizenship" are turned into permanent bars in unjust situations.

Suggested Legislative Fix: Given the multitude of hard-working, tax-paying immigrants who would benefit from legal status, INA § 212(1)(6)(C)(ii) must be modified to be consistent with the fair and just treatment of fraud and misrepresentation under the INA. Under current law, a waiver under Sec. 212(i) of the INA is available for fraud and misrepresentation. Under Congresswoman Jackson-Lee's Save America Comprehensive Immigration Act, Section 806, this waiver would be expanded and would be made available to an immigrant who is the spouse, parent, son or daughter of a U.S. citizen or of an immigrant lawfully admitted for permanent residence if refusal of admission to the U.S. would result in hardship to the lien or to the citizen or lawfully permanent resident parent, spouse, son, or daughter of the immigrant. This waiver is not granted without showing hardship and retains the punitive nature of the law, without making such a claim and "unforgivable sin." Our own Judeo-Christian ethos in the United States would have us make only the most vile actions unforgivable. Everything other action should and must have some level of forgiveness available. It is, simply put, the right thing to do, and this Act does just that.

CANCELLATION OF REMOVAL

In 1996, through IIRAIRA, Congress changes our immigration laws to eliminate a two-tier form of relief from deportation known as "suspension of deportation" and replaced it with a severely limited form of relief known as "cancellation of removal." Suspension of deportation was available to immigrants by application to an immigration judge in deportation proceedings. The first tier required seven years of continuous physical presence, good moral character, and proof that deportation would result in extreme hardship to the immigrant or to his or her U.S. citizen or lawful permanent resident spouse, child, or parent. If the immigrant is subject to deportation for more serious grounds (such as for certain criminal offenses, for security grounds, for failure to register, or for falsification of documents), suspension of deportation relief required 10 years of continuous physical presence and good moral character, and proof that

deportation would result in exceptional and extremely unusual hardship to the immigrant or to his or her U.S. citizen or lawful permanent resident spouse, child, or parent.

This old "suspension of deportation" law provided relief to immigrants who found themselves in deportation proceedings without another form of relief available to do them. It was, for many, a last line of defense prior to being deported from the United States, and allowed the Immigration Judge to exercise his discretion in determining whether that immigrant deserved to remain in the United States.

Under current law, Section 240(A)(b) of the INA replaces "suspension of deportation" with cancellation of removal as it applies to nonpermanent residents who are in removal proceedings. And while the laws appear somewhat the same on their face, such as if the application for cancellation of removal is approved, an immigrant may apply to adjust his or her status to that of a lawful permanent resident, the reality is that the laws are substantially different and this new law is much harsher and more limited in its application.

Specifically to be eligible for cancellation of removal under Section 240(A)(b) of the INA, an immigrant must have been physically and continuously present in the United States for a period of ten or more years; the immigrant must establish exceptional and extremely unusual hardship to a qualifying family member; and must be a person of good moral character. Immigration Judges can only grant 4000 such cases each fiscal year.

Given the extreme level of hardship that must be demonstrated, there are very few cases that rise to this level of hardship, no matter how compelling the case. The cap certainly provides another disincentive to immigration judges to deny cancellation of removal applications, even when there is a meritorious claim. However, the immigration judges of the Executive Office for Immigration Review have never even come close to the annual cap; there are that few cases that meet this incredibly high legal standard. So few in fact, that this law is rendered a virtual nullity for many deserving people.

A very limited number of applicants are eligible for cancellation of removal due to the difficulty of showing "exceptional and extremely unusual hardship" to the immigrant's spouse, parent, or child, who is a U.S. citizen or a legal permanent resident. Hardship to the immigrant is not a consideration, regardless how long the immigrant has lived in the U.S. and regardless of why and how the immigrant entered. Therefore, unmarried, undocumented immigrants who have no qualifying family members are disqualified from demonstrating hardship even if they have lived here most of their lives. Many hardworking individuals, who would be otherwise eligible based on good moral character and continuous physical presence, are precluded from applying for this relief.

Most courts find against worthy applicants because of the elevated level of this standard. Requiring an applicant to show "exceptional and extremely unusual hardship" to a USC or LPR spouse, child or parent is an almost impossible burden. Factors such as family separation, economic hardship, requiring USC/LPR children and/or spouses to leave the US for the sake of family unity or to avoid breaking up the family, and/or losing the immigrant breadwinner of a family are simply sufficient to meet the "exceptional and

extremely unusual hardship" standards. It is of little consequence that an immigrant has not lived in their native country for years or entered when they were babies and have no memory of their native land of the language spoken there.

The fact of this law is this: in order to qualify for relief, the immigrant must have a sick spouse or child, whose disease or disability is virtually untreatable in the home country, and then must still combine other factors of hardship to meet this standard.

Not surprisingly, this standard vastly restricts an immigration judge's ability to utilize his or her discretion in granting cancellation to an otherwise worthy applicant. In 2004, Senator Feinstein herself voiced concern about the apparent lack of sufficient grants of Cancellation of Removal to meet the yearly allowable totals.[4] But apparently did not attribute the reason for the reduced numbers correctly. My conversation with numerous Immigration Judges leads to only one conclusion as to why 4,000 cases are granted each year in this category—the standard is simply too extreme.

Based on the current standard, few cases qualify for this form of relief. [5] One reason is that the applicant must also demonstrate that they have been physically present in the United States for a continuous period of not less than 10 years. Under the suspension of deportation provisions, an applicant only had to prove 7 years of physical, continuous presence. Cancellation of Removal is recognized as an equitable remedy to avoid otherwise unconscionable consequences in compelling cases. There is no apparent or obvious reason for this increase from 7 to 10 years other than to cut this form of relief to otherwise eligible applicants who would be otherwise eligible for this relief. Further, because of the "stop time" provisions in this law, the time period counted toward cancellation of removal eligibility stops running as of the date a disqualifying event, such as issuance of a Notice to Appear occurs, rather than at the time of the hearing. This removes from eligibility many otherwise eligible applicants.

Of great concern currently, the immigration courts are being flooded with these applications because the Asylum Office of the USCIS has finally begun adjudicating asylum cases of Central American asylum seekers filed in the early 1990s. Unfortunately, while many of these individuals, who have now been here for more than 15 years living under the protection of and with the permission of the U.S. government, quietly establishing and living their lives, creating U.S. families, and are "statutorily eligible" for such relief, will now be torn apart because their family's suffering upon their departure will not be "exceptional and extremely unusual." Their suffering will only be typically heartbreaking, emotionally destructive, and financial ruinous--not quite enough to meet this standard. What a horrible trick to play on someone who sought the protection of the U.S. Government.

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[4] See Press Statement of Senator Diane Feinstein, dated June 4, 2004.

[5] It is noteworthy that the House Conference Report regarding this legislation stated that "[t]he managers have deliberately changed the required showing of hardship from 'extreme hardship' to 'exceptional and extremely unusual hardship' to emphasize that the alien must provide evidence of harm to his spouse, parent, or child substantially beyond that which ordinarily would be expected to result from the alien's deportation." H.R. Conf.Rep. No. 104-828.

Even more limiting, Cancellation of Removal requires perfection, and neither offers nor provides any forgiveness to those who may have erred, even in a small way. In order to qualify for cancellation of removal, nonpermanent residents and victims of domestic violence/abuse who qualify for INA §240A(b)(2) (special cancellation of removal under the Violence Against Women Act (VAWA)) must not have a conviction under:

1. INA §212(a)(2) relating to criminal grounds;
2. INA §237(a)(2)(A) relating to multiple moral turpitude offenses, aggravated felonies, controlled substance offenses, firearm offenses, domestic violence convictions after September 30, 1996; or
3. INA §237(a)(3) relating to failure to register and falsification of documents.

A conviction under one of these grounds serves as a statutory bar from receiving this form of important relief. The definition of an "aggravated felony" for immigration purposes was greatly expanded in 1996. In many cases, the definition is unrelated to any criminal definitions and includes non-violent crimes such as shoplifting and writing bad checks. In addition, DHS' aggressive interpretations of the aggravated felony definition have led to overreaching enforcement that have led to two near-unanimous Supreme Court decisions rejecting DHS interpretations that led to the unlawful deportation of thousands of immigrants. [See 8-1 decision in *Lopez v. Gonzales*, 127 S. Ct. 625 (2006)(rejecting broad application of the drug trafficking aggravated felony category to simple possession offenses); 9-0 decision in *Leocal v. Ashcroft*, 543 U.S. a (2004)(rejecting the broad application of the crime of violence aggravated felony category to DWI offenses)]. Moreover, many changes to the law in 1996 and its interpretation have greatly expanded the reach of other deportation law provisions to apply to offenses which are even more minor or to cases where criminal charges have actually been dropped or expunged.

For example, an applicant may be statutorily barred because of a conviction committed more than 10-20 years ago that does not rise to the level of an aggravated felony. Another applicant, who suffered abuse at the hands of his or her U.S. citizen or lawful permanent resident spouse, may have committed a crime flowing from domestic violence, such as shoplifting food for her children when her abusive spouse refuses to give her money. While Congress has deemed that such a conviction may be excepted from the good moral character bars to status, such an applicant will never get her foot in the court door, because of the per se bar to eligibility for a conviction under 212(a)(2).

Prior to the elimination of suspension of deportation as an equitable remedy, there was no limitation on the number of suspension cases that could be granted in one year**.** The law, as it was changed, limited to 4000 the number of immigrants who are permitted to adjust status under INA Section 240A. This limitation applies to the aggregate number of decisions in any fiscal year to cancel the removal of an immigrant. The intent of INA

Section 240A is to permit qualifying applicants to adjust to lawful permanent resident status if they are eligible and meet the statutory requirements. Therefore, once their removal is cancelled, there is no reason to further thwart their efforts to become lawful residents of the U.S. by imposing additional obstacles that have no nexus to their eligibility.

Example There are tens of thousands of compelling cases which demonstrate the inequities in cancellation of removal. Consider the true case of Francisco Monreal, who was a nonpermanent resident in the United States for over 20 years when placed in removal proceedings.[6] He entered the U.S. in 1980 at the age of 14. He was married, and had three children, all of whom were U.S. citizens. At the time of the removal proceeding, one of the children was an infant, the others were 8 and 12 years old. Mr. Monreal's parents were both lawful permanent residents of the U.S. and seven of his siblings were lawful permanent residents, as well. Mr. Monreal had been gainfully employed in the U.S. since he was 14 years old and was the sole financial supporter of his wife and three children.

The government did not dispute the fact that Mr. Monreal met the 10-year physical presence requirement and good moral character requirement. However, his application for cancellation of removal was denied for failure to meet the stringent hardship requirements. The Board of Immigration Appeals upheld the Judge's decision and ordered Mr. Monreal to return to Mexico. Mr. Monreal, who had never committed a crime and had always been an asset to the United States, was deported to Mexico, where he had not lived in 20 years. The decision to deport Mr. Monreal also effectively deported his 12 and 8-year-old U.S. citizen children and also separated them from their cousins, aunts, uncles and grandparents.

This is only one example of many that shows the fundamental unfairness of our current immigration laws. By adopting a one-size fits all approach, we are effectively disrupting millions of families and separating children from their parents and spouses from each other.

Suggested Legislative Fix: Restoring suspension of deportation is the most reasonable and logical legislative fix. This change will allow eligible, long-term immigrants, who have established their lives here, and who have no other legal channel of acquiring legal status, an opportunity to do so. It is a remedy of last resort. Section 811, of the Save America Comprehensive Immigration Act of 2007 offers this logical and easily implemented fix; while at the same time not increasing the workload of the Immigration Judges or requiring additional resources necessary to implement it. There are thousands of long–term immigrants who are being plucked from their jobs and their lives as a result of the stepped-up worksite enforcement raids who are likely eligible for suspension. It would save many children from suffering the trauma of never seeing their parent come home. Suspension of deportation is an equitable remedy of last resort to many long term immigrants who pay taxes, own their own businesses, have their own

[6] In re Francisco Javier Monreal-Aguinaga, 23 I&N Dec. 56 (BIA 2001)

homes, are involved in their communities, their churches, their schools, and of course, their families. They are invested in this country and contribute to the economy. Restoring this relief is simply the right thing to do.

Conclusion

The net result of the enforcement and punitive measures under our current law has been a reduction in the discretion available to the immigration authorities in administering the immigration laws. Thanks to the comprehensive legislation offered by Congresswoman Jackson-Lee in the form of the Save America Comprehensive Immigration Act of 2007, H.R. 750, Congress should and must revisit the question whether restoration of some of that discretion will lead to more efficient use of resources and the ability for DHS to focus its finite enforcement resources on identifying, detaining and removing those people who pose real threats to our national security and the safety of our communities. This legislation must be incorporate into any legislation considered by Congress as it addresses immigration reform. This is, simply put, reform that cannot wait.

A number of lawmakers have become fixated on the notion that border fences and other enforcement measures are the most promising means of stemming undocumented migration into the country, even though the past two decades of escalating border enforcement have witnessed unprecedented growth in the size of the undocumented population. It is clear that the investment by the federal government of billions of dollars in policing the U.S.-Mexico border has had the unintended effect of trapping undocumented immigrants in the United States rather than keeping them out. Undocumented immigrants, prevented from moving back and forth across the border, have either brought their families with them or created families in the United States.

A proper understanding of the causes of international migration suggests that punitive immigration and border policies tend to backfire. U.S. immigration law and border-enforcement policies have actually reduced the apprehension rate to historical lows, rather than to raise the odds that undocumented immigrants will be apprehended.

I encourage Congress to analyze instead, the provisions under current immigration law that are so unforgiving, unfair, unrealistic and onerous and which have the unintended consequence of discouraging legal immigration rather than encouraging it. One key part of the solution to the problems associated with undocumented migration must provide undocumented immigrants currently living in the United States, who may be otherwise eligible for permanent resident status, but for some of the onerous, unforgiving provisions under current law, an opportunity to apply for legal status.