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

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Statement of Jessica M. Vaughan
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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,

[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

[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

[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.

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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.