

**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.<sup>[1]</sup> 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.<sup>[2]</sup>

- 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

---

<sup>[1]</sup> 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.

<sup>[2]</sup> 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.<sup>[3]</sup>

- 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

---

<sup>[3]</sup> 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](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).<sup>[4]</sup>

- 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

---

<sup>[4]</sup> 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.<sup>[5]</sup> 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

---

<sup>[5]</sup> 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.”<sup>[6]</sup> 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

---

<sup>[6]</sup> 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.<sup>[7]</sup> 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 Folasade 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.

---

<sup>[7]</sup> S. 1188, 109<sup>th</sup> Congress, 1<sup>st</sup> 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.<sup>[8]</sup>

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

---

<sup>[8]</sup> 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.<sup>[9]</sup> 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

---

<sup>[9]</sup> 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.<sup>[10]</sup> This is almost 10% more than the number of deportations in 2008, the last full year of the Bush administration.<sup>[11]</sup>

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.

---

<sup>[10]</sup> 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](http://www.usatoday.com/news/washington/2011-07-22-criminal-immigrants_n.htm?csp=34news).

<sup>[11]</sup> 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.

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

[REDACTED]

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).

A handwritten signature in black ink, appearing to be 'C. M. O. P.', written over a horizontal line.

FOR THE BOARD

# 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

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,



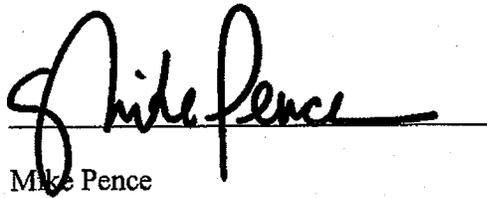
Zoe Lofgren



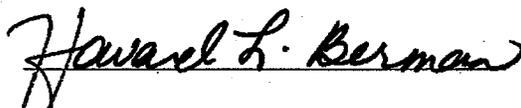
Mac Thornberry



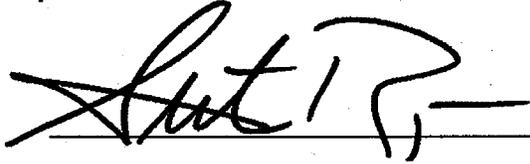
John Conyers, Jr.

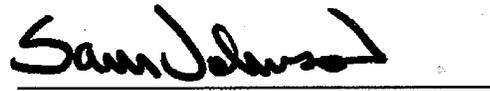


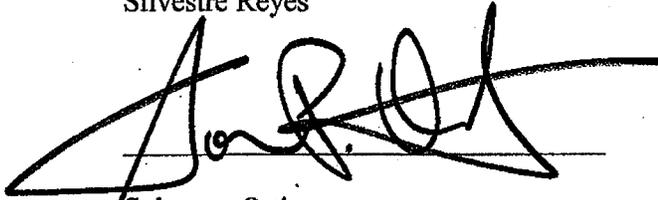
Mike Pence

  
Howard Berman

  
Ileana Ros-Lehtinen

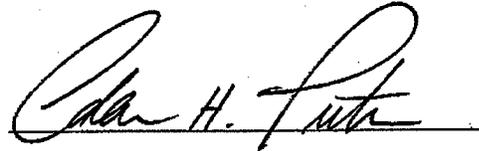
  
Silvestre Reyes

  
Sam Johnson

  
Solomon Ortiz

  
Michael Turner

  
David Price

  
Adam Putnam

David Price

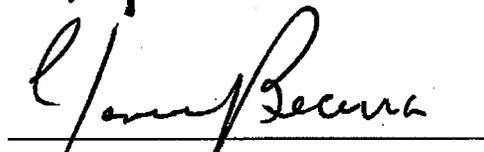
Adam Putnam

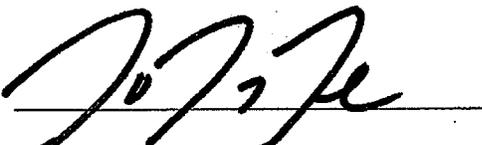
  
Henry Cuellar

  
Lincoln Diaz-Balart

Henry Cuellar

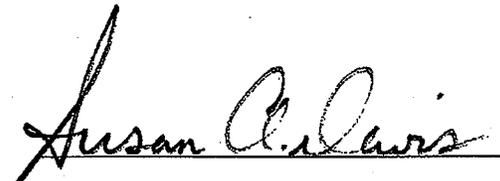
Lincoln Diaz-Balart

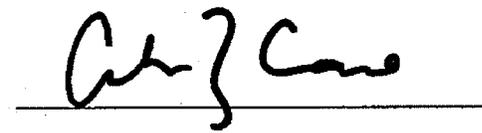
  
Xavier Becerra

  
Mario Diaz-Balart

Xavier Becerra

Mario Diaz-Balart

  
Susan Davis

  
Anh "Joseph" Cao

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,

A handwritten signature in black ink, appearing to read "Janet Napolitano", written over a horizontal line.

Janet Napolitano