Does American Society Really Value All Families Or Just The "Legal" Ones?: A Sociological Look At The Effects Of Mandatory Bars And The Families Separated By Them By Penny Aziere

History has taught us that certain laws that fly in the face of reality are repealed, while reality is not.[1]

One of these current laws that fly in the face of reality is the United States' federal policy on immigration.[2] Immigration is one of the hottest topics in the news and political arenas.[3] The debate continues over whether illegal or undocumented workers should be allowed to remain in the country and, if so, at what price to United States citizens and legal immigrants.[4] However, there has been little discussion on the effects of current immigration law on the family, and its underlying support system – marriage.

United States citizens who marry immigrants, legal or illegal, are affected drastically and often negatively by the current immigration laws.[5] Contrary to popular opinion, when married to a United States citizen, an illegal alien is not immediately granted "green card" status or citizenship.[6] Under current federal law, the alien and their spouse must file a visa petition, attend an interview with a consulate abroad, and are then likely to be forced to remain out of the country for up to ten years.[7] The laws in effect lead to involuntary separation of the couple separation of at least one parent and the children that are born into the relationship.[8] This comment examines how immigration laws, when applied to real people, negatively affect families and why they must be changed in order to encourage and promote marriage and strong family relationships.

Introduction

Whether they realize it or not at the time they take those ever important marriage vows, United States citizens who marry illegal aliens are embarking upon a long arduous road.[9] Many will be shocked when they apply for an immigrant visa for their spouses and learn their spouses are "inadmissible" to the United States; regardless of the fact that they are already in the country.[10] Further investigation of the inadmissibility will uncover that the illegal alien spouse is barred from entering the country for up to ten years.[11] Under this policy and these laws, there are a number of options that a United States citizen and an illegal alien spouse have.[12] One option is to do nothing, wait, and hope that the laws change.[13] However, many will choose to continue with the application and deal with the bar to inadmissibility.[14] This comment focuses on those who continue with the visa application, the real effects the law has on them and their families, and the need for a serious change in policies relating to immigration and marriage in order to protect these families.

Essentially, the current law leads to the forced separation of these married couples because often times the entire family cannot make the move to a foreign country.[15] As forced separation from a spouse has been shown to lead to personal unhappiness and depression along with marital discord,[16] the effect of the law is a breakdown in the support spouses can offer each other and eventually in the marriage itself.[17] Further, families who have children are faced with the added effect of separation of the children and at least one of their parents.[18] Legislators and political leaders are constantly working hard to protect and encourage marriage under a belief that families are stronger and children are better off growing up in two parent homes. [19] However, years of separation of husbands and wives can lead to a higher risk of divorce. If parents divorce, their children are likely to suffer increased social, economic, and emotional problems.[20] Thus, the true effect and incongruence of federal immigration policy and federal

marriage policy, can be best realized through a sociological perspective. This realization should be the first step in amending current law in order to continue to promote marriage and the family.

Part I: Immigration and Public Policy in the United States

Current data suggests that approximately thirty million foreign-born persons lived in the United States at the turn of the 21st century.[21] Of these immigrants, approximately 9.3 million were considered "undocumented" or illegal.[22] Public policy has continually turned towards dealing with illegal immigrants, mainly as a result of the negative beliefs associated with this segment of the population.[23] Some of the stereotypes associated with illegal aliens include the assumption that they take good jobs, do not pay taxes, collect government benefits, and create a drain on the economy.[24] The majority of illegal aliens currently present in the United States are of Latin descent, most having emigrated from Mexico.[25] Interestingly, many of the negative beliefs about illegal aliens are shared by not only United States citizens, but also Latinos legally living or born in the United States.[26] In response to these beliefs, Congress has continually modified the current law concerning immigration and enacted new laws to curb illegal immigration.[27] However, in view of the current reality that 9.3 million illegal aliens are estimated to be living in the United States, these efforts appear to have been ineffective.[28]

Current studies estimate that approximately six million illegal aliens work in the United States.[29] These workers make up approximately five percent of the American work force.[30] Researchers estimate that approximately 96% of male illegal aliens work in the United States along with approximately 62% of their female counterparts.[31] Though first generation immigrants generally struggle with assimilation, by the third generation their grandchildren are expected to adapt in society similarly to children who are born to non-immigrant families.[32]

Previously, illegal aliens tended to migrate mainly to the border states of California, Texas, and Arizona.[33] However, in recent years, they have moved more to the north and east and are becoming contributing actors in communities throughout the United States.[34] Regardless of these moves and attempts to assimilate in society, anti-immigrant sentiment remains high.[35]

In an attempt to deal with the reality that illegal immigrants are in our country and are contributing to society, and despite the negative feelings of Americans towards illegal immigrants, in 2004 President Bush proposed a Temporary Worker Program.[36] The program, as suggested by President Bush, would allow illegal aliens currently in the country to remain here and travel legally to and from Mexico.[37] Further, illegal immigrants would be encouraged to become documented as it would be the only way to enjoy the benefits of the law.[38] One added benefit of this change is that it would also be likely to help security measures by increasing knowledge of who enters and leaves the country.[39] However, some federal law makers are opposed to the program believing that it would only encourage larger numbers of illegal immigrants to enter the country.[40]

A. *Background and Current State of Immigration Law and Policy*

There is a common misconception in society that upon marriage to an American citizen an illegal alien's status automatically changes to that of a Legal Permanent Resident (LPR).[41] However, this has not been the case since the passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA).[42] Prior to 1996, illegal aliens who married United States citizens and could prove that the marriage was bona fide, were allowed to remain in the country and eventually receive a green card.[43] The IIRIRA amended portions of the Immigration and Nationality Act (INA) to drastically effect what non-citizens qualify for admission into the United States and for a green card.[44]

The INA, passed in 1952, remains the general Act that covers immigration policy today.[45] The INA was created as a response to increased fear of communism, but was initially vetoed by President Truman.[46] However, this veto was overridden by Congress and the Act became public law.[47] The INA plays an important role in immigration and marriage because it is the leading authority for newlyweds who marry aliens, both legal and illegal.[48] Most importantly, under the INA, immediate relatives are not subject to the general caps placed on immigration. [49] Thus, the waiting period is generally shorter for spouses of American citizens or LPRs.[50] However, for illegal alien spouses the petition process is much more difficult.[51] The reason for the increased difficulty exists due to the amendments made by the passage of the IIRIRA.[52]

Under that Act, aliens who have been unlawfully present in the United States are subject to either a three or ten year bar of inadmissibility.[53] "Unlawfully present" is defined as "presen[ce] in the United States after the expiration of the period of stay authorized by the Attorney General or . . . presen[ce] in the United States without being admitted or paroled."[54] Because Congress realized that there were great numbers of illegal immigrants in the country at the time of passing the Act, they included a very important provision – Section 245(i).[55] This was created to allow illegal spouses, currently in the United States, to adjust their status and avoid any mandatory stay outside of the country.[56] However, the provision was written to be temporary in nature.[57] Section 245(i) has been renewed more than once, but has remained out of date since the year 2000.[58] The renewal of Section 245(i) in 2000 allowed all illegal aliens, married to US citizens or LPRs, who applied for visas before April 30, 2001 to adjust their status in the country, and required only a $1000 fine for the prior violation of immigration policy.[59]

Revival of this section generated high numbers of petitions filed by people wanting to adjust status while it was available along with high revenues for the federal government.[60] Upon receipt of the correct documentation by the U.S. Citizenship and Immigration Services Office (USCIS), status could be adjusted.[61] However, that protection does not exist for couples who married after April 2001, or those who are currently considering marriage.[62]

For those who might be tempted to pretend that the illegal alien was never in the country, this could create greater legal problems.[63] The illegal alien could return to his home country and the United States citizen could apply for either a fiancé visa,[64] or a K-visa if the couple has already married.[65] For this to be successful the United States citizen would likely have to commit fraud in the application because the petition asks if the fiancé or spouse has ever been in the United States and, if they have been in the country, they are required to give an arrival and departure date.[66] It would be impossible to give an arrival/departure number or date if the alien was never legally admitted into the country, but to answer "no" and assert that they were not in the country at all would be a lie. To answer yes and give no number might lead the agency processing the petition to be suspicious that the alien is illegal. If during the visa petitioning process the government suspects that the alien has been in the country illegally the alien bears the burden of proving he or she is not barred from the United States.[67]

The safest approach for a couple is to marry and begin by filing an I-130 family based petition for immigration with the USCIS.[68] In order for this to be approved, the couple must prove that they have a legal and bona fide marriage qualifying the alien for status.[69] Shortly after the petition is accepted, the alien spouse will be notified of a scheduled appointment for an interview at the consulate in his or her home country.[70] Until the appointment the alien is not necessarily required to leave the country, but during this period the alien is not protected from

being deported.[71] Once the alien goes to the interview in her home country, she will be required to prove that she does not fall under any of the categories of inadmissible aliens.[72] As this will be impossible to prove, the alien will be barred from entry.[73] Upon being denied re-entry, it would be a terrible idea for the alien to re-enter illegally to avoid the three or ten year bar.[74] Though this might be appealing to the couple currently separated, if apprehended in the United States or at the border attempting to enter illegally, the alien would be permanently barred from the country.[75]

The only possible relief from this bar is for the United States citizen spouse to file a waiver on the grounds of extreme hardship.[76] Under the INA, the Attorney General may grant a waiver of the bar if the U.S. citizen or LPR spouse can prove that he or she would suffer extreme hardship if the alien spouse is not allowed to return before the bar is removed.[77] Though this is the best chance the couple has of living together without fear of deportation before the three or ten year bar is up, it is highly likely the couple will deal with separation, which will create heightened marital stress.[78] Further, with choosing to take this route, the couple must know that they are not guaranteed a waiver under the current hardship standard.[79]

B. *Extreme Hardship Standard*

Decisions made by the Attorney General under section 1882(a)(9)(B)(v), in regards to extreme hardship are not subject to review.[80] However, the Board of Immigrations Appeals (BIA) does review some decisions to determine whether there has been an abuse of discretion in refusing a waiver for extreme hardship.[81] The extreme hardship requirement is not limited solely to those inadmissible for unauthorized entry into the United States.[82] Though the term is not expressly defined in the INA, the BIA, under their authority to define and interpret federal immigration statutes,[83] has attempted to clear up any ambiguity surrounding the phrase. The

leading case on a workable definition of extreme hardship is *In re Matter of Cervantes*.[84] In that case, the Board of Immigration Appeals Court stated that:

> the factors deemed relevant in determining extreme hardship to a qualifying relative include, but are not limited to, the following: [1] the presence of lawful permanent resident or United States citizen family ties to this country; [2] the qualifying relative's family ties outside the United States; [3] the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties to such countries; [4] the financial impact of departure from this country; and, finally, [5] significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.[85]

Cervantes included issues beyond inadmissibility on grounds of unlawful presence, as the petitioner was inadmissible due to a prior conviction for possession of false identification documents.[86] However, that was the only distinguishing factor, as Cervantes married a naturalized American citizen and was requesting a waiver of his inadmissibility based upon extreme hardship to his spouse.[87] The couple married while Cervantes was in the middle of deportation proceedings.[88] Upon determining the standard for extreme hardship, the court considered the wife's situation and the implications of refusal of the waiver.[89] However, prior to considering these factors, the court specifically noted that the "Attorney General and her delegates have the authority to construe extreme hardship narrowly."[90]

The court considered the fact that the marriage took place while Cervantes was involved in removal proceedings an important factor and noted that this went to the wife's expectations at the time the couple married.[91] The knowledge that her husband could be deported created the knowledge that she could have to choose whether to follow her husband to Mexico or wait for him to be able to return to her in the United States.[92] This prior knowledge of possible future events went to "undermine the respondent's argument that his wife will suffer extreme hardship if he is deported."[93] In order to support this proposition the court cited the case of *Perez v. INS*,

in which the Ninth Circuit Court of Appeals essentially held that the usual hardship felt by deportation is not sufficient to prove *extreme* hardship.[94] This interpretation of the term extreme hardship makes it appear as though anyone who knows they are marrying a deportable illegal alien would not be able to qualify for a waiver of extreme hardship because they expected the hardship at the time they entered into the marriage.

The court went on to consider other factors that might affect Cervantes' wife if the waiver was not granted.[95] This included the possibility of having to leave her family in the United States in order to live with her husband in Mexico.[96] In order to justify not granting the waiver, the court listed all of the factors that would make it less difficult for her to move to Mexico, noting that she spoke Spanish and the majority of her relatives were from Mexico.[97] Finally, the court considered the financial situation of the couple and found that denial of the waiver would not result in a severance of any real financial ties to the United States.[98] Cervantes' was unemployed at the time of the hearing and Cervantes was a musician in a band, but failed to prove to the court that "deportation would cause him to relinquish a lucrative career and, therefore, plunge his wife into unaccustomed poverty."[99] In other words, because the couple was poor in the United States they were less likely to be affected by being poor in Mexico. Interestingly enough, the court did not discuss the difference in economies or ability to find work between the United States and Mexico, a country which is considered a third world country to many.[100] Cervantes' wife did not claim any illness that would fall under the fifth factor the court listed, so her health was not really considered.[101]

In a concurring opinion, BIA Board Member Gustavo D. Villageliu noted that if Cervantes had not been in deportation proceedings at the time of the marriage, the result could have been different.[102] He stated that for example if the "marriage takes place after proceedings

are initiated, but was preceded by a long-term cohabitative relationship," or if the alien spouse was protected from deportation in the foreseeable future then extreme hardship might have occurred.[103] This, along with the majority opinion, suggests that a United States citizen or LPR spouse who knows the law and knows that their fiancé or significant other is in the country illegally should be punished more than the ignorant spouse who knows nothing of their spouse's status until it is too late. However, the court fails to note how an arbitrary classification between knowledge and lack of knowledge aids in the purpose for which the IIRIRA was enacted – to prevent illegal immigration.[104] The court also fails to cite any statistics that would suggest that ignorance in marriage promotes legal entry into the United States.[105]

In her concurring and dissenting opinion, BIA Board Member Lory Diana Rosenberg, proposed a better application of the extreme hardship standard and noted that the discretion that the BIA has to deny or grant relief may not be exercised arbitrarily.[106] Rosenberg listed a number of different factors that had been considered in previous legal cases and should have been considered in the case at hand.[107] These factors included:

> [T]he qualifying relative's family ties within and without the United States and the impact of separation; the economic and other conditions in the country to which she has to accompany her relative; the financial, emotional, cultural, and political conditions in that country; her ability to raise children and other quality of life factors in that country; as well as her age, length of residence in this country, health, technical skills, employability and other factors.[108]

Rosenberg discussed the fact that Cervantes' wife was a naturalized citizen to show how the majority's opinion was arbitrary.[109] Not only was Cervantes' wife a naturalized citizen, but she had been brought to the United States as a baby and had not lived in Mexico since.[110] According to Rosenberg, the failure of the majority to consider these factors in deciding the case diminished the value of acquisition of citizenship through naturalization and belittled the

"hardship [that] would be experienced by the respondent's wife were she forced to accompany her husband to Mexico or face separation from him."[111]

Rosenberg further asserted that the majority opinion belittled the relationship shared between Cervantes and his wife.[112] Though his wife knew that he was in the middle of deportation proceedings, this was not sufficient to prove that she did not expect to have a marriage just like any other person who marries a legal United States citizen.[113] Nor, as Rosenberg noted, did this knowledge prove that she did not believe that there would be some type of relief available to the couple.[114] Essentially, Rosenberg stated that nothing about the knowledge of possible deportation equated to a diminished belief that the marriage was real or decreased expectation that the marriage would be fulfilling for both husband and wife.[115] She then went on to cite a Board decision from 1970 that recognized the difficulty in using restrictive guidelines to determine hardship and emphasized the importance of family ties and marriage to a United States citizen.[116] Failure to consider all of the factors cumulatively, according to Rosenberg was "precisely the type of erroneous and arbitrary evaluation that violates the respondent's due process rights to a fair hearing and a reasoned decision with regard to his waiver application."[117] Though *Cervantes* is cited often in decisions on extreme hardship, it is not the only example of courts consideration of extreme hardship in the context of marriages and families affected by deportation or inadmissibility.[118]

C. *Other Case Law Dealing with Extreme Hardship and Families*

Another common misconception is that when an alien has United States citizen children with his or her spouse they are more likely to be granted a waiver.[119] However, there is currently no waiver available "based on the hardship a parent's absence would cause a U.S. citizen or lawful permanent resident child."[120] In a case similar to *Cervantes* the petitioner was

inadmissible for illegal entry and was applying for a waiver under Section 1182(a)(9)(B)(v), claiming extreme hardship to her United States citizen spouse.[121] The petitioner, a Mexican citizen, had a United States citizen spouse and two United States citizen children.[122] She also had two sisters, two nieces, and one brother, all who were also United States citizens.[123] Petitioner was seeking relief claiming that extreme hardship would result due to financial and emotional factors.[124] First, petitioner argued that the family would not be able to afford to maintain two households and her United States citizen husband would not be able to find gainful employment in Mexico that could provide for the family.[125] Further, the petitioner asserted that the separation her from her children would create heightened emotional stress that was equivalent to extreme hardship for the husband.[126] The Immigration and Naturalization Service Office of Administrative Appeals did not believe this potential detriment rose to the level of extreme hardship and denied the request for the waiver.[127] To support this decision, the agency stated that "Congress did not intend that a waiver be granted in every case where a qualifying relationship exists."[128] To further support its decision the agency cited *In re Matter of Pilch*, which held that "emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship."[129]

Another recent case illustrating the ambivalence of the United States government is that of *In re Dolores Meek Brown*.[130] Brown was inadmissible to the country under section 212(h) of the INA.[131] Brown was married to a United States citizen with whom she had one daughter who had been born in the United States.[132] Brown had lived in the country for thirteen years and though she had committed theft she had made great efforts to pay restitution to her victims.[133] She asserted that to refuse the waiver would force her family to return to the Philippines with her, which would result in her daughter losing the benefits of an education in the United

States.[134] To further support her assertion of extreme hardship to her husband, Brown speculated that her husband would be forced to raise the child alone if she was not allowed back into the country and he could not afford to make the move.[135] Even with these family ties to the United States, the agency held that there was "no evidence that any of the respondent's qualifying relatives would suffer extreme financial, medical, emotional, and/or other relevant hardship if the respondent were deported."[136]

These cases are only a few of many that deny waiver of extreme hardship to aliens who have established families and community ties after years of residency in the United States.[137] The decisions illustrate that even the establishment of a strong family base in the United States, including having United States citizen children does not guarantee a waiver of the inadmissibility bar. Instead, the children and spouses who are United States citizens, who have the most rights of any person in the United States,[138] are given the most severe punishment and are forced to choose between remaining here without their loved ones or moving to foreign countries.[139] What all of these decisions combined illustrate is that the federal lawmakers have yet to accept that separation from a loved one, especially a parent, spouse or child, rises to the level of extreme hardship.

D. ***Extreme Hardship Requirement and its negative Effects in Application to Actual Families***

Based upon these analyses it is clear that no one can be guaranteed that their waiver application will be granted. If the waiver is denied and no relief is found on appeal, the illegal alien must remain out of the country for the remaining three or ten years.[140] At this point of denial, the alien's spouse is faced with the most difficult decision: to leave his or her home country and move to a foreign country, where they may not be able to speak the language or find gainful employment, or to remain separated possibly for years.[141] Those with children are

forced to make this decision on behalf of not only themselves but their children who will be forced to leave their homes, their extended families, friends and schools.[142] If the United States citizen spouse weighs the options, decides that the alien spouse's home country is either too dangerous or the United States is a better country for their children to live in, then he or she is also deciding to live without his or her spouse for up to ten years. Thus, the result is essentially an involuntary separation of spouses and possibly children from at least one parent. This creates a heightened risk for couples where one partner is illegal and wants to apply for legal status.[143] Families who have already been denied waivers are not the only ones who are affected by these laws either.[144] Those who are awaiting approval of family based petitions along with those who are planning on marrying an illegal alien must deal with the stress created by the law.[145]

The Catholic Legal Immigration Network recently released a publication discussing the realistic effects of current immigration policy on American families.[146] In one article the author discusses the changes that have taken place since Congress has refused to reinstate Section 245(i) of the INA. First he notes that approximately $200 million in profits were collected by the United States government in collection of the fees for adjustment of status under 245(i).[147] Thus, refusal to reinstate the section has lead not only to separation of families but also to a loss of any future profit. However, and more importantly, the author goes on to tell the stories of a few families with illegal aliens and the hardships they face.[148]

In order to illustrate that some illegal aliens who marry United States citizens choose to forego appliying for a visa, the author tells the story of "Mr. I", who has lived illegally in the United States since he was fourteen years old[149]; he is now twenty three.[150] With a high school

and degree from a school in the United States[151], he married a United States citizen with whom he now has a child.[152] Mr. I is the sole breadwinner of the family and his wife stays home to raise their child. The author discusses the fears that the couple has when thinking about Mr. I being forced to leave the country, even if only for nine months to a year.[153] The author states that the fear of his family being unable to survive economically along with the fear that a waiver for extreme hardship would not be granted if their situation is not "extreme" enough, has lead Mr. I to decide to remain in the United States without seeking legal documentation.[154] However, the author then goes on to note that Mr. I's decision to stay places his family in constant risk if he is ever arrested or deported from the United States.[155]

The article also tells the story of an illegal alien and his United States citizen spouse who have decided to go through with the petitioning procedure and apply for a waiver of extreme hardship.[156] In order to do this, the author narrates the story of "Mr. and Mrs. C", who are married and currently waiting for Mr. C visa appointment date in Juarez.[157] Mr. C entered the United States illegally in the early 1990s with his parents and has remained since. In anticipation of Mr. C's forced departure to Mexico, the couple gave up jobs where they earned $26/hour combined and moved in with Mrs. C's parents where they now earn $7/hour combined.[158] Under the best case scenario, if Mr. C is granted the waiver for extreme hardship, he will be separated from his wife for at least nine months.[159] These are but a few stories of thousands of husbands and wives who are affected by these laws on a daily basis.[160]

Clearly, these laws affect real individuals and families. As demonstrated through the Catholic Immigration Network's devotion to bringing the realistic effects to light, many of those who feel the harshest repercussions of an illegal immigrant's violation of current laws are United States citizen spouses and children.[161] This is a good example of a law created in the abstract,

that when applied, is much different in reality. Thus, in order for policymakers to develop new laws that are beneficial to us as a society, they must be willing to look at more than the negative implications of illegal immigration, and look farther to the possible effects of the law on human beings and their families.

Part II: Marriage & Family Public Policy in the United States

Turning to the issues of marriage, since the Reagan-era public policy has continued to be centered on slowing rising divorce rates.[162] Just recently President Bush vocalized a strong desire to protect and encourage marriage in the United States.[163] One attempt to "protect" marriage was through his introduction of the Federal Marriage Amendment.[164] To protect and encourage marriage further, Congress recently enacted tax incentives for married couples.[165] These attempts at policy changes are some proof that the federal government is committed to encouraging marriage and preventing divorce.[166] Researchers with the Urban Institute have recently estimated that "two-thirds of all children with undocumented parents (about 3 million) are U.S.-born citizens who live in mixed-status families."[167] In light of these figures and in order for the government to be successful in protecting and encouraging all marriages in reality, the federal government must be willing to examine the actual effect of immigration policy on these families.[168]

The family plays an important role in American society. Families make up the foundations for people to grow, seek financial and emotional support, and learn valuable social skills.[169] The federal government's role or place in regulating issues pertaining to family life has continued to grow "substantially since the nineteenth and twentieth centuries."[170] The Supreme Court has continued to rule that the government may intervene in matters of the family if there is a compelling government interest and the regulation of the family is narrowly tailored to

promote the government interest.[171] As a result, the federal government plays an important role in the lives of families. For example, the federal government grants social security benefits to parents who have children with disabilities.[172] The government also currently encourages education for all children, especially those from low income families.[173] Tax breaks are available for those in the workforce who are the primary caregivers of children.[174] These are only a few examples of the different levels of government involvement in American families.

One recent study published by the Urban Institute addressed whether the federal government should increase spending to encourage marriage as an attempt to combat poverty.[175] Lerman, the author, opens the article by citing census statistics that report "one in three poor families is not headed by a married couple."[176] To prove that marriage does decrease the likelihood that children will grow up poor, he goes on to cite statistics that indicate that if parents who are poor did marry their household income would increase by up to twenty-five percent.[177] He goes on to state that the statistics and facts make any policy "discouraging marriage hard to justify."[178] In conclusion, Lerman suggests that Congress and the presidential administration consider:

> Requiring states to target TANF funds used for marriage promotion programs to low-income families . . . Supporting a range of strategies that integrate marriage initiatives into well established, family-related initiatives . . . [and] Planning an overall strategy and designing well-defined, targeted projects that assess which approaches best promote stable, healthy marriages.[179]

In an attempt to deter the negative effects addressed by sociologists such as Lerman, the current Bush Administration has proposed numerous proactive steps to encourage family unity.[180] These proposals include increased spending for proactive programs that would aide families before crisis sets in and children are removed from the home.[181] Another proposed change is an emphasis on a "pro-fatherhood agenda".[182] All of these changes are premised upon

years of research that have proven the importance of strong family structures in a well functioning society.[183]

A. *Impact of Separation on Marriages*

Sociologists have long been concerned with the intricate inner-workings of marriages and families and what creates satisfaction in these relationships.[184] Perhaps this never ending concern or interest in familial relationships stems from the fact that families make up important subcultures that are constantly changing and affecting our overall society.[185] Extensive research has been done for decades to determine what elements play important roles in family unity and marital satisfaction.[186] Further, extensive research has been conducted to discover the causes and effects of separation of families on the spouses and children who make up the family.[187]

One of the most important conclusions in recent literature is that children who are separated from a parent in divorce or who are never raised by both parents, tend to suffer greater problems in adolescence and young adulthood.[188] This argument is often used in opposition to same-sex marriage, to prove that it would be bad for society because there would be more juvenile criminals and out of wedlock pregnancies.[189] Other researchers have focused on the overall negative effects on the breakdown of the nuclear family on relationships.[190] One would likely find it difficult to find any literature that asserts that single parent homes are more valuable to the development of children's societal beliefs and personal perceptions leading to higher self-esteem.

Beyond the previously discussed Catholic Legal Organization's examination of the effects of these laws in particular, other social researchers have studied the effects of different types of involuntary separation on spouses.[191] Upon studying the effects of war on the family during the post-World War II era, Ernest Burgess noted that lengthy separation of marriages and

families leads to instability and unhappiness in the family.[192] Burgess suggested that one major effect of sending men to war is that they are removed from the social systems that prevent them from committing immoral actions.[193] He went on to discuss the effects of the separation on family members who are left while the man is at war, typically wives.[194] During World War II, historical masses of women entered the workforce.[195] This affected society by changing women's roles, but also affected children who were left without their primary caregivers for extended hours during the day.[196] Interestingly, Burgess cited projections that as a result of war and separation the divorce rate would increase to fifty percent by the year 1965.[197] Later studies have been conducted not only on the effects of war on marriage but also the effects of incarceration, another large cause of involuntary separation of couples.[198]

In one such study, Ronald Rindfuss and Elizabeth Stephen first suggested that non-cohabitation of spouses has become less of a phenomenon in current society.[199] According to the study, as of the year 1980, at least ten percent of who were married lived in different homes than their spouses.[200] The majority of these couples were separated as a result of at least one partner living in a correctional institution.[201] Rindfuss and Stephen discussed statistics that suggested that based upon the separation from a spouse, "those living apart from their spouses in 1976 were nearly twice as likely to experience a marital dissolution within three years, compared with persons cohabiting with their spouses."[202] They went on to cite numerous reasons for this increased likelihood of marital dissolution that included a greater financial burden on maintaining two households and a higher burden for raising children and ensuring that they experience youth with both parents in the home.[203] Another suggestion is that during the time apart from one another they go through changes that the other partner is unaware of.[204] As a result, upon reunification the changes are apparent and can create additional strain.[205] Similar

to those incarcerated for extended periods of time, illegal aliens who have to remain outside of the country for up to ten years are separated from their spouses and experience the changes and financial burdens of maintaining separate homes.[206]

These studies showing that extended periods of separation leads to dissolution of marriages should be sufficient to show that our laws, when carried out in reality, should not create long periods of involuntary separation for couples. However, the laws do not just affect

married couples, but also the children born or raised in the marriage.[207] Extensive research on the effects of divorce on children has been conducted, all of which has suggested that there are more negative effects than positive.[208]

B. ***Impact of Divorce/Separation on Children***

One such study from the 1990s, *Consequences of Marital Dissolution on Children*, discussed how divorce affects children on social, economic, and socialization levels.[209] Judith Seltzer, the author noted that the continually rising divorce rates and out-of-wedlock childbirth have "reduce[d] the centrality of marriage as an institution in which childbearing and childrearing occur."[210] One of the most important aspects of the family is that during marriage "parents nearly always live together with their minor children…[and] provide for children's basic needs,"[211] such as emotional support, income to finance everyday life, and guidance in how to be a functioning citizen in society. When parents divorce, the children still have the same needs, but they have less adults in a household to fulfill those needs.[212] As a result, the children suffer.[213] The same problem arises when an illegal alien has to leave the United States to wait and hope for an approval of the extreme hardship waiver – they are unable to provide their children with these basic needs.[214]

Seltzer went on to discuss some specific areas in which children of divorced parents are likely to suffer more than those who live with both parents.[215] One specific example is high school drop-out rates, where children of divorce are twelve percent more likely to drop out than teenagers living in dual parent households.[216] One purported cause of this increased risk is the economic disadvantages that children of divorce suffer.[217] This is because parents generally do not earn more income upon divorce, but have to maintain two homes to provide for the children.[218] Unfortunately for children, Seltzer cited studies that show that "[t]he longer parents have been separated, the less likely nonresident fathers are to pay any child support, and the smaller their payments are."[219] This of course leads to less income for the home in which the children live and a higher probability that they will live in poverty.[220]

The increased cost for mothers who raise children alone leads to a need to "increase their involvement in the paid labor force."[221] Seltzer noted some possible solutions for these problems, such as living with a new husband or moving in with maternal grandparents, but these are considered "short-term solution[s] to economic needs."[222] However, economic needs are not the only ones that parents must continue to meet after separation. Children continue to need emotional support, and become more vulnerable because as a result of divorce they "experience a tremendous sense of loss and anxiety about who will take care of them."[223] Not only do children experience this sense of loss, but their lives are greatly affected by being forced to move to a new home, change schools, and adapt to a new household routine.[224]

In conclusion, at the very least, children of divorce on average suffer greater economic and social problems than those who live in the same home as both of their parents.[225] Further, these children and spouses who are forced to live in separate countries, as opposed to perhaps just living in different cities or the nearest penal institution, are faced with the added burden and

costs of international travel in order to visit the parent or spouse. One might be compelled to suggest that the hardships suffered by these children and spouses could rise to the level of extreme hardship. Thus, at the least, any family that is torn apart by the underlying laws should be granted a waiver for extreme hardship, regardless of the purpose for the alien's inadmissibility.

Part III: *Similarities of Failed Prohibition Laws and Immigration Laws – Lessons Learned*

In the *Amnesty is Good* comment mentioned in the opening, the author analogizes current immigration laws to previously repealed Prohibition.[226] One important analogy is the dangerous subculture that prohibition laws created and the black market of illegal immigration.[227] The experiment of prohibition,[228] conducted from 1920 to 1933, has been labeled as a "miserable failure on all counts."[229] Though alcohol consumption decreased at the onset of Prohibition, the production and consumption eventually increased.[230] Because alcohol production was not regulated by the government and not taxed by the government two major problems occurred as a result: the federal government lost great revenues that could have been collected from taxes, and it "spawned an organized black market that exists to the present day."[231] Not only was there the lack of revenue and the increase of a black market but also, as a result of prohibition, "[a]lcohol became more dangerous to consume; crime increased and became 'organized'; the court and prison systems were stretched to the breaking point; and corruption of public officials was rampant."[232] As a result of the fact that Prohibition did not work, the 18th Amendment to the Constitution was eventually repealed in 1933 by the ratification of the 21st Amendment.[233] Of course, it took American government thirteen years to realize that the law did not work in reality and to repeal it.[234]

A. *Refusal or Inability of American Companies to Enforce Immigration Laws*

Much like prohibition laws that were followed by few and were unrealistic in application, current immigration laws mean much less to individuals and businesses and they are often unworkable in American society.[235] Immigrants, legal or illegal, have become necessary and important parts of our communities and economic markets.[236] A good example of this comes from the housing market. Though most illegal immigrants have no government issued social security numbers, which are often required to borrow money, current business practice allows these immigrants to take out loans to purchase homes.[237] This practice is made possible in part by the Internal Revenue Service.[238] In order to ensure that they collect taxes for everyone working in the country, the IRS issues ITIN numbers to "individuals who are required to have a U.S. taxpayer identification number but who don't have, and aren't eligible to obtain, a social security number."[239] The ITIN numbers are nine-digit numbers similar to a social security number except that legal residency or entry is not required to obtain one.[240] Therefore, aliens who are not legally allowed to work or even remain in the country are regularly allowed to take out substantial loans to purchase homes.

Another example of unworkable immigration laws are the fact that though it is illegal for an employer to knowingly hire and employ an illegal alien,[241] there are approximately six million illegal aliens currently in the American workforce.[242] Often times the reason that these illegal aliens are able to work is because they use false documentation and employers are unable to detect if the social security number given by an employee is being used by anyone else or is even a valid working number.[243] Even government agencies are not immune from being fooled by false documentation. Just recently the U.S. Border Patrol discovered that they had hired an illegal Mexican national, who produced false documentation at the time he was hired.[244] Also, many employers continue to knowingly hire illegal aliens as long as they have some type of

documentation because the employers realize that there is a low probability they will be punished for their behavior and the benefits greatly outweigh the costs.[245]

B. ***Dangerous Effects of the Underground Illegal Immigration Network***

Another similarity between immigration and Prohibition laws is the ill-effects that result in application of the laws. Prohibition created a dangerous black market of alcohol production and consumption in from the 1920s through the 1930s.[246] Similarly, there is a dark and dangerous subculture that has grown in American society on profits gained from smuggling illegal aliens.[247] People regularly die in the trek from Mexico to the United States or are taken advantage of by those they have paid to help them cross the border.[248] Also like Prohibition, a federal mandate that created heightened costs on enforcement on local levels and filled city and county jails and state prisons with Prohibition violators,[249] the majority of immigration law violators are housed in local, as opposed to federal, facilities.[250] Because of this states and cities pay the price for failure to enforce the laws, while the power to write and enforce rational and realistic laws lies in the hands of the federal government.[251]

And not to be forgotten in the ill-effects of immigration law are the families torn apart by inadmissibility bars. Based upon all of these realizations along with numerous other costs to America, it seems clear that there is no choice but to amend or repeal current immigration policies and laws that have become unmanageable. Based upon the Plenary Power Doctrine, which confers complete power over immigration law to Congress, the duty to make these much needed changes lies solely with our federal legislative bodies.[252]

Part IV: ***Why Congress Must Repeal or Rewrite the Laws – The Plenary Power Doctrine***

The Plenary Power doctrine is based on the premise that Congress in the only governmental branch that can establish or repeal laws that affect entry and deportation of all non-citizens.[253] This power was first expressed by the Supreme Court in the *Chinese Exclusion Case*.[254] Ping, the petitioner, was a Chinese citizen who had lived in the United States for over two years and worked as a laborer.[255] He left the country for a short period to visit China and prior to his departure received a certificate granting him permission to return to the United States.[256] However, while he was in China, Congress passed an act that voided all certificates that had been issued, and upon Ping's return he was denied entry into the country.[257] He argued to the Supreme Court that the certificate he was given should continue to be honored and the act passed by Congress was invalid because of a treaty between the United States and China.[258] The Supreme Court did consider the issue of whether a treaty voided the act, but found that there was "nothing in the treaties between China and the United States to impair the validity of the act."[259] Thus, the only alternative for relief to the petitioner was for the Court to determine that the passage of the act was outside of the scope of the authority of Congress.

This alternative was not an option to the court.[260] Turning to the issue of whether Congress could exclude aliens from the United States, the court stated this proposition was "not open to controversy."[261] The court went on to cite the case of *The Exchange* and Justice Marshall's opinion where he stated:

> The jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitation not imposed by itself. Any restriction upon it, deriving validity from an external source, would imply a diminution of its sovereignty to the extent of the restriction, and an investment of that sovereignty to the same extent in that power which could impose such restriction. All exceptions, therefore, to the full and complete power of a nation within its own territories, must be traced up to the consent of the nation itself. They can flow from no other legitimate source.[262]

Because of the plenary power doctrine the Supreme Court is not likely to review any cases dealing with the inadmissibility of the aliens affected by the current statute, unless they decide to overturn over 100 years of precedent.[263] Thus, aliens and their United States citizen spouses are to have no relief from this injustice to their families unless the legislature goes back to the drawing board. This is why there should be an immediate change in both immigration and family law policy that prohibits the government from playing a role in the involuntary separation of families, even those that include otherwise law-abiding undocumented aliens.

Part V: Proposed Legislation to Benefit Families with Illegal Immigrants

There are several propositions before the House of Representatives and Senate to amend the immigration laws to place more emphasis on families.[264] These laws, in effect, would protect mixed families that include at least one illegal immigrant spouse or parent. One proposal is entitled the "Comprehensive Immigration Fairness Act," which was introduced into the House of Representatives in January of 2005.[265] If passed, this proposal would amend the INA in a variety of ways. One particular change important to families with illegal immigrants is that it would allow for a waiver of the inadmissibility bar:

> in the case of an immigrant who is the parent, spouse, son, or daughter of a United States citizen or of an alien lawfully admitted to the United States for permanent residence, if it is established to the satisfaction of the Secretary that the refusal of admission to the United States of such immigrant would result in hardship to the immigrant or to such citizen or lawful permanent resident parent, spouse, *son, or daughter*.[266]

Thus, not only would the high level of extreme hardship currently required for waiver of the bar be lowered, but more family members would be included in the consideration of whether hardship would actually be experienced. Based upon this, the entire family structure would be more important in the determination and it is likely that more children would benefit from the continued presence of both parents in the home.

In October of 2005, Republican Senator Chuck Hagel of Nebraska proposed a bill that, if passed, would allow for earned access to adjustment of status for illegal aliens.[267] The proposed bill is entitled "To Amend the Immigration and Nationality Act in order to reunify families, to provide for earned adjustment of status, and for other purposes." If passed, adjustment of status would be available to any alien who could establish that they (i) entered the country illegally on or before the year of 2000, (ii) did not leave the country during the five year period prior to 2000, and (iii) remained employed for at least three years after entering the country.[268] Thus, illegal aliens who have been in the country and have continued to work and contribute to society, along with establishing family ties here, would be able to adjust their status to that of an LPR without being forced to leave the United States and their spouse or children.[269] As this bill was proposed just months ago, projecting the likelihood of its passage would be mere speculation; however, it will be interesting to see what developments, if any, come of it.

Though President Bush introduced his plan for a Temporary Worker Program, there has yet to be a bill introduced in either house of Congress that, if passed, would include all of the changes suggested by President Bush. However, President Bush has proposed some very viable solutions to the problem, including the first step of admitting that illegal aliens are in our country in large numbers and employers continue to hire them, regardless of the laws.[270] Under his proposal, aliens would only be required to pay a fee for enrolling in the program, to continue to be employed, and to remain out of the criminal justice system.[271] Failure to follow these regulations would result in possibility of deportation. In application, this type of reform could help to increase revenue, secure the job market by ensuring that employers pay fair wages to all employees and decrease criminal activity.

These examples are only a sampling of possible alternatives to the current law. For example, the government could require illegal aliens who are truly interested in remaining in the country to pay fines higher than $1000. All revenue generated by the fines could be used solely for increased spending on protecting our borders. Or aliens could be required to complete a set number of community service hours with any specific set of goals in mind. They could also be required to learn the English language, maintain proper documentation on a regular basis, and remain drug and crime free. Failure to comply with these regulations could lead to immediate deportation. These might be considered harsh or extreme measures by some, but the benefits of legal residency would likely outweigh the costs to most aliens currently here.[272]

It is impossible to accurately predict what will come of any of the current proposals for a number of reasons. A few of these being that public opinion is always changing and affecting how our elected officials vote on important matters, along with the fact that the pendulum of power is always shifting in our legislative bodies. Regardless of the inability to predict outcomes, these proposals should be viewed as evidence that legislators are willing to start taking the unpopular steps toward being realistic about immigration law. One can only hope that they are followed by many more to come.

Conclusion

Clearly immigration law affects American citizens on a daily basis and on a variety of levels, from economic to sociological. In theory, the previous laws established were aimed at preventing illegal immigration and protecting American society from the dangers of such practice. However, after years of witnessing the application of these laws, it can be agreed that the laws are not serving their purpose. Approximately 9.5 million illegal aliens currently live in the United States, and estimates are that 3 million new aliens enter illegally on a yearly basis.[273]

All the while, otherwise law-abiding husbands, wives and children continue to be separated and forced to deal with heightened levels of stress because of these laws. Though protecting our borders is a necessary goal for society, we must not forget that behind the law is an underlying desire to keep some out in order to protect real live human beings, not just numbers. Those who enter our country illegally and willingly violate federal law and their infractions should not be ignored, but the family members who come to depend on them economically and emotionally should not also be punished for these violations. Spouses should not be forced to choose between life in a third world country or life without their spouse, and children should not be forced to live in poverty and experience all of the negative aspects of broken homes.

Much like Prohibition, which in principle was aimed at protecting society from the "evils" of alcohol, current immigration laws are aimed at keeping the dangers, such as terrorism and further harm to citizens, out of our society. However, beyond principle and into practicality, Prohibition was impossible to enforce in a nation so large and failed because people it was unworkable. Similarly, when looking at our immigration laws in a practical manner it is clear that they are not working and it is time that they be revised. As the power to do this lies solely with Congress, the best place to start would be with our legislature. Only then can they address the fact that the current law is not concerned with family unity. After that, they must begin to amend or repeal the sections of the INA that hold an illegal alien inadmissible. In doing so, at the very least, they must place more emphasis on the family when granting relief to inadmissibility or other types of punishment for violation of immigration law.

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[1] *Amnesty Is Good*, comment, http://www.ilw.com (Oct. 21, 2005).

[2] *Id.*

[3] Donald L. Bartlett & James B. Steele, *Who Left the Door Open?* Time Magazine vol. 14, no. 12 (Sept. 20, 2005).

[4] White House Press Release, *Fair and Secure Immigration Reform* (Oct. 24, 2005) at http://www.whitehouse.gov/infocus/immigration/; *see also* David Simcox, *Ending Illegal Immigration: Make It Unprofitable* (Negative Population Growth 1999).

[5] Peggy Gleason et al., *The Impact of our Laws on American Families* (Catholic Leg. Immig. Network 2005).

[6] Christine Flowers, *Immigrant Spouse's Permanent Residence: First Comes Love, Then Comes Marriage, Then Comes . . . A Visa?*, Legal Intelligencer vol. 227, no. 25 (Am. Law. Media Aug. 5, 2002); *see also* Mary L. Field, *The Quest for the Green Card: Eligibility and Obstacles* 17 DCBABR 18 (West 2005).

[7] Jessica M. Boell & Stephen W. Manningn, *The Impermanence of the Permanent Bar: Exemption and Waivers of INA § 212(a)(9)(C)(i)(I),* 8 Bender's Immigration Bulletin 670 (LexixNexis Apr. 15, 2003).

[8] Peggy Gleason & Charles Wheeler, *American Families with Undocumented and Other Members Who Are Subject to Bars on Admission* in *The Impact of Our Laws on American Families supra* n. 4 at 17-30.

[9] Ilona Bray, *Fiancé & Marriage Visas*: *A Couple's Guide to U.S. Immigration* (Janet Portman, 2d ed., Nolo Publg. 2004).

[10] 8 U.S.C. § 1182(a)(9) (2000). Inadmissible refers to when the alien is out of the country and wants to return to the country lawfully. This will be discussed in greater detail later.

[11] *Id.* The length of time an alien will be inadmissible depends upon the length of time the alien was unlawfully present in the United States. A stay under six months will not trigger the bar, but a stay over six months is immediately punished by a three year bar. Any unlawful presence over one year is punished by a ten year bar. Thus, it depends greatly upon how long the alien has remained in the country in unlawful status.

[12] Gleason & Wheeler, *supra* n. 8.

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] Ronald R. Rindfuss & Elizabeth Hervey Stephen, *Marital Noncohabitation: Separation Does Not Make the Heart Grow Fonder,* Journal of Marriage and the Family vol. 52, no. 1 259-270 (Natl. Council on Fam. Rel. 1990).

[17] Gleason & Wheeler, *supra* n. 8.

[18] *Id.*

[19] *A Blueprint for New Beginnings: A Responsible Budget for America's Priorities* (U.S. Govt. 2001) at http://www.whitehouse.gov/news/usbudget/blueprint/blueprint.pdf.

[20] Judith A. Seltzer, *Consequences of Marital Dissolution for Children*, Annual Review of Sociology, vol. 20 235, 238 (Annual Rev. 1994).

[21] Michael E. Fix & Jeffrey S. Passel, *U.S. Immigration at the Beginning of the 21st Century: Testimony before the Subcommittee on Immigration and Claims Hearing on "The U.S. Population and Immigration" Committee on the Judiciary U.S. House of Representatives* ¶ 7 (Urban Inst. 2001) (presenting a chart that speculates based upon current data that 30% of foreign-born immigrants are legal aliens, 30% are naturalized citizens, 28% are undocumented aliens, 3% are legal nonimmigrants, 5% are refugee aliens, and 2% are naturalized refugees).

[22] *Id.* at fig. 4. Undocumented or illegal aliens are generally considered to be those who enter the country without inspection or whose status lapses while they are in the United States and they fail to return home.

[23] Fedn. for Am. Immig. Reform, *What's Wrong with Illegal Immigration?* at www.fairus.org (Updated Mar. 2005) (stating that "By draining public funds, creating unfair competition for jobs with America's least prepared workers and thereby lowering wages and working conditions, and by imposing unwanted strains on services designed to provide assistance to Americans, illegal immigration causes harm to Americans and legal residents.") *see also* Federation for American Immigration Reform *Why Amnesty Isn't the Solution* at www.fairus.org/site/PageServer?pagemane=iic_immigrationissuecenters6ce3 (updated March 2005) (discussing the possible negative implications of granting amnesty to illegal aliens). These are only a few examples of the thousands of websites aimed at fueling fear and hatred of illegal immigrants.

[24] *Id.*

[25] Fix & Passel, *U.S. Immigration at the Beginning of the 21st Century* at ¶ 25.

[26] Alexis Grant & Lori Rodriguez, *Immigration splits Latinos,* Houston Chronicle in ContraCostaTimes.com (posted Aug. 17, 2005) at http://www.contracostatimes.com/mld/cctimes/news/1240331.htm; *see also* Robert Suro, *Attitudes Towards Immigrants and Immigration Policy: Surveys Among Latinos in the U.S. and in Mexico*, Pew Hispanic Center (posted Aug. 16, 2005) at http://pewhispanic.org/reports/report.php?ReportID=52

[27] Bill Ong Hing, *Defining America Through Immigration Policy* (Temple University Press 2004).

[28] Fix & Passel, *U.S. Immigration at the Beginning of the 21st Century* at ¶ 7; *see also* Shaheen Pasha, *Banking on Illegal Immigrants* (CNN Money Aug. 8, 2005) (discussing the rising trend of banks to grant mortgages to the illegal population); Katherine Reynolds Lewis *Shadow Market*, San Diego Union Tribune (Apr. 3, 2005).

[29] Jeffrey S. Passel, Randolph Capps & Michael E. Fix, *Undocumented Immigrants: Facts and Figures* at ¶ 6 (Urban Institute Jan. 12, 2004).

[30] *Id.* at ¶ 6.

[31] *Id.* at ¶ 7-8.

[32] *Id.* at ¶ 31-33. 38-39.

[33] *Id.* at ¶ 8-9.

[34] Fix, Capps & Passel, *Undocumented Immigrants: Facts and Figures* at ¶ 8-9.

[35] William Dipini, *Our Battle Against Illegal Immigration Must Continue* (The Rant May 7, 2005).

[36] President George W. Bush, Remarks, *President Bush Proposes New Temporary Worker Program* (White House East Room, Jan. 7, 2004) , in http://www.whitehouse.gov/news/releases/2004/01/20040107-3.html In this speech the President discussed the immigration history of the United States and stated:

> Reform must begin by confronting a basic fact of life: some of the jobs being generated in America's growing economy are jobs American citizens are not filling. Yet these jobs represent a tremendous opportunity for workers from abroad who want to work and fulfill their duties as a husband or a wife, a son or a daughter . . . If an American employer is offering a job that American citizens are not willing to take, we ought to welcome into our country a person who will fill that job.

[37] *Id.*

[38] *Id.*

[39] *Id.*

[40] Mark Alexander, *Give Me Your Tired, Your Poor, Your Huddled Masses . . .* (The Federalist Jan. 1, 2004) at http://www.federalist.com/alexander/edition.asp?id=237; s*ee also* Tamar Jacoby, *The GOP's Border War* at http://www.ilw.com/articles/2005, 1102-jacoby.shtm (Nov. 1, 2005) (asserting that the Republican party in Congress is divided down the middle on how to deal with illegal immigration).

[41] Flowers, *Immigrant Spouse's Permanent Residence: First Comes Love, Then Comes Marriage, Then Comes . . . A Visa?*

[42] *Id.*

[43] Stephen H. Legomsky & Charles F. Nagel, *Immigration and Refugee Law and Policy* 251, 491-93 (Robert C. Clark ed., 4th ed. Found. Press 2005).

[44] Flowers, *Immigrant Spouse's Permanent Residence: First Comes Love, Then Comes Marriage, Then Comes . . . A Visa?*

[45] Hing, *Defining America Through Immigration Policy* at 90-92.

[46] 8 U.S.C. §§ 1101 et seq; *see also* Hing, *Defining America Through Immigration Policy*.

[47] Hing, *Defining America Through Immigration Policy* at 75.

[48] 8 U.S.C. §§ 1101 et seq. (2000).

[49] "Immediate relatives" are defined under the INA as "children, spouses, and parents of a citizen of the United States, except that, in the case of parents, such citizens shall be at least 21 years of age." 8 U.S.C. § 1151(b) (2000).

[50] Legomsky & Nagel, *Immigration and Refugee Law and Policy* at 251; *see also* U.S. Department of State website at http://travel.state.gov/visa/frvi.bulletin/bulletin_1770.html. Because there are no caps for family based immigrants, those who file visa petitions do not have to wait for a priority date. They must only wait for the agency processing their paperwork to get to it. Family members who are not immediate family can wait up to 20 years before their petitions are even processed and a visa issued. These waiting times can be found in the monthly visa bulletin issued by the Department of State.

[51] Bray, *Fiance & Marriage Visas* at 11/5-11/8 (suggesting that: "Time bar waivers are new. Look for an attorney who has had experience preparing and arguing for them.").

[52] Flowers, *Immigrant Spouse's Permanent Residence: First Comes Love, Then Comes Marriage, Then Comes . . . A Visa?*

[53] 8 U.S.C. § 1182(a)(9)(B).

[54] *Id.* at § 1182(a)(9)(B)(ii).

[55] Romulo E. Guevara, *Grandfathering Under INA § 245(i) is Clarified: A Broad and Narrow Simultaneous Effect*, Bender's Immigration Bulletin, vol. 10, no. 15 (LexisNexis 2005).

[56] Legomsky & Nagel, *Immigration and Refugee Law and Policy* at 490-95.

[57] *Id.*

[58] *Id.* 245(i) was renewed in 2000 under the LIFE Act and allowed for adjustment for a restricted period of time; *see also* Jessica M. Boell & Stephen M. Manning, *The Impermanence of the Permanent Bar: Exemption and Waivers of INA § 212(a)(9)(C)(i)(I)*, Bender's Immigration Bulletin vol. 8, no. 8 (LexisNexis 2003) (stating that to qualify for adjustment under the LIFE Act the applicant "must have been physically present in the on December 21, 2001 and have a qualifying petition filed on or April 30, 2001.").

[59] 8 U.S.C. § 1255(i) (2000).

[60] Christopher Marquis, *Bush Considers Giving Immigrants More Time to Make Legal Status*, New York Times sec. A, col. 4, p. 12 (May 2, 2001) (discussing the thousands of immigrants who waited in lines to adjust their status due to the short period of time given for adjustment ability).

[61] Guevara, *Grandfathering Under INA § 245(i) is Clarified: A Broad and Narrow Simultaneous Effect* (clarifying exactly how aliens are grandfathered in under the section).

[62] 8 U.S.C. § 1225(i).

[63] Flowers, *Immigrant Spouse's Permanent Residence: First Comes Love, Then Comes Marriage, Then Comes . . . A Visa, http://www.ilw.com.*

[64] Fiancé visas are available to immigrants outside of the country who plan on marrying a United States citizen within ninety days of entry. In order to obtain this visa the petitioner must prove that he has met his fiancé within the past two years and that they have visited in person. Failure to marry within the ninety day period will result in a loss of the status and the alien will be required to leave the country. 8 U.S.C. at § 1101(a)(K)(i).

[65] *Id.* at § 1101(a)(15)(K)(ii) (allowing an alien who has "concluded a marriage with a citizen of the United States who is the petitioner . . . and seeks to enter the United States" while awaiting approval of a visa petition).

[66] USCIS, Form I-129F Petition for an Alien Fiancé at http://uscis.gov/graphics/formsfee/forms/i-129f.htm.

[67] 8 U.S.C. § 1229(a)(2)(B) (2000); s*ee also* Bray, *Fiance & Marriage Visas* at 2/9 (suggesting that aliens who entered the country legally and claim they did not overstay their visa should present "copies of their plane tickets, rent receipts, credit card statements, pay stubs, medical records, school transcripts, and more all to prove that they were in the United States until a certain date and then left.")

[68] Austin T. Fragomen & Stephen C. Bell, *Family Sponsored Immigration* in *Immigration Fundamentals* § 3:3 (P.L.I. 2005). The petition is an I-130 Petition for Alien Relative and it must be filled out and submitted by the petitioning spouse, not the alien. Bray, *Fiance & Marriage*

Visas at 11/5-13/15. USCIS, Form I-130 Petition for Alien Relative at http://uscis.gov/graphics/formsfee/forms/i-130.htm.

[69] The couple must prove that they meet the requirements for the family based petition. To do this they should offer evidence of a marriage certificate. This is not the point at which the USCIS will be concerned with a "sham" marriage so they do not need to send wedding photos or anything else with the initial petition. The necessity to prove a bona fide marriage will come later in the process, most likely at the scheduled consular interview. Laura L. Lichter, *Nuts and Bolts of Family-Based Immigration,* in *Immigration Law: Basics and More* 159 (ALI 2004).

[70] Robert C. Divine, *Immigration Practice* 8-68, 8-70 (R. Blake Chisam, 2005-2006 ed., Juris Publg., Inc. 2005).

[71] Lack of protection from deportation comes from the fact that the alien's status has not changed just upon the filing of the petition. The alien will only be protected from deportation when she is granted a green card giving the LPR status. *Id.* at 10-8.

[72] 8 U.S.C. § 1229a(c)(2)(A) (2000).

[73] The alien is not automatically required to prove that she is inadmissible unless the consular has reason to believe that she falls into this category. However, to run the risk of being dishonest and then being caught in that false statement or omission creates a higher likelihood of being turned down for the waiver if the consular eventually discovers that the alien was in fact inadmissible and dishonest about this. Bray, *Fiance & Marriage Visas* at 12/15.

[74] *Id.*

[75] 8 U.S.C. at § 1182(a)(9)(C). *See also In re Vasquez-Centeno,* 2004 WL 2374674 (BIA 2004) (holding that the petitioner who had been in the country without inspection was inadmissible and did not qualify for adjustment of status under 245(i)); *see also* Gleason & Wheeler, *supra* n. 8, at 17, 21 (citing a case in which an illegal alien from Mexico left the United States for five days to plan her father's funeral and upon her return she was charged with "a permanent bar for having on year of unlawful presence and then reentering illegally.")

[76] 8 U.S.C. at § 1182(a)(9)(B)(v).

[77] *Id.*

[78] Thomas Holmes & Richard Rahe, *Social Readjustment Rating Scale*, Journal of Psychosomatic Research vol. II p. 214 (Elsevier Science 1967) (asserting that certain events in life, such as

separation from a spouse, can lead to increased levels of stress that contribute to an increased probability of contracting a physical illness in the following two years). This scale is often used in actual extreme hardship letters written by United States citizen spouses. To see examples go to *Examples of Approved Waivers (Hardship Letters)* (Immigrate2us, posted Aug. 16, 2005) at www.immigrate2us.net/forum/viewforum.php?f=26&sid=2324395f3467a6b8a0fe682cce35da38.

[79] 8 U.S.C. § 1182(a)(9)(B)(v) ("The Attorney General has sole discretion to waive clause (i) . . .").

[80] *Id.* (stating that "[n]o court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.").

[81] *Watkins v. INS*, 63 F.3d 844, 847 (9th cir. 1993) (applying an abuse of discretion standard to a BIA decision that denied suspension of deportation to a petitioner who lived in the United States for 16 years, had been married to a United States citizen for 11 years and had two United States citizen children, was a law-abiding citizen and her family feared "retributive violence" if returned to the Philippines. The court stated that "abuse of discretion will be found when the denial was arbitrary, irrational or contrary to law.").

[82] 8 U.S.C. § 1182(h)(1)(B) (allowing for waiver of inadmissibility for criminal grounds, multiple criminal convictions, prostitution and commercialized vice, and certain aliens involved in serious criminal activity who have asserted immunity from prosecution for an alien who is the "spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence in the" if they can prove that "denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse . . ."); 8 U.S.C. § 1186a(c)(4)(A) (allowing an alien who has married a United States citizen to remain in the country if the marriage is terminated before the two year conditional period ends if the alien can prove extreme hardship would befall him if he was not allowed to stay); 8 U.S.C. § 1229b(b)(2)(v) (allowing for cancellation of removal and adjustment of status for a spouse who has been battered and can prove that removal would result in "extreme hardship to the alien, alien's child, or alien's parent."); 8 U.S.C. § 1255(i)(1) (allowing for adjustment of status as opposed to removal for victims of trafficking if "the alien would suffer extreme hardship involving unusual and severe harm upon removal from the United States.");

[83] *INS v. Jong Ha Wang*, 450 U.S. 139, 45 (1981) (holding that as the Board of Immigration Appeals is a delegate or agent of the Attorney General they have the authority to construe "extreme hardship" narrowly).

[84] 22 I&N Dec. 560, 565 (BIA 1999) [hereinafter *Cervantes*].

[85] *Id.* at 565-66.

[86] *Id.* at 561.

[87] *Id.* at 566.

[88] *Id.* at 566.

[89] *Cervantes*, 22 I&N Dec. at 565-69.

[90] *Id.* at 566.

[91] *Id.* at 566-67.

[92] *Id.* at 566-67; s*ee also In re Khan*, 2005 WL 698442 (BIA 2005) (citing *Cervantes* and holding that the "Immigration Judge correctly considered the short duration of the marriage, the education and family ties and work history of the respondent's wife, and the fact that the respondent's wife was aware of the possibility of his deportation at the time she married him.").

[93] *Cervantes*, 22 I&N Dec. at 567.

[94] *Perez v. INS*, 96 F.3d 390, 93 (9th cir. 1996) (holding that to qualify for a waiver of "extreme hardship" one must prove hardship that is unusual or greater than would be normally be expected with deportation proceedings).

[95] *Cervantes*, 22 I&N Dec. at 566-68.

[96] *Id.* at 567.

[97] *Id.*

[98] *Id.* at 568.

[99] *Id.*

[100] Gerard Chaliand, *Third World: definitions and descriptions*, The Third World Traveler at http://www.thirdworldtraveler.com/General/ThirdWorld_def.html (Posted Oct. 27, 2005).

[101] *Cervantes*, 22 I&N Dec. at 568.

[102] *Id.* at 570.

[103] *Id.*

[104] Lisa Magaña, *Straddling the Border: Immigration Policy and the INS* 19-22 (1st ed., University of Texas Press 2003).

[105] *Cervantes*, 22 I&N Dec. at 560-89.

[106] *Id.* at 585. *See also Planned Parenthood of S.E. Pa. v. Casey*, 505 U.S. 833, 48 (1992) (discussing the right conferred by the Due Process Clause which "includes a freedom from all substantial arbitrary impositions and restraints. . . .").

[107] *Cervantes*, 22 I&N Dec. at 582.

[108] *Id.*. at 586.

[109] *Id.* at 585-89.

[110] *Id.* at 584.

[111] *Id.* at 586.

[112] *Cervantes,* 22 I&N Dec. at 586.

[113] *Id.*

[114] *Id.*

[115] *Id.* 586.

[116] *Id.* at 586 (citing "the recognition that '(i)t is difficult and probably inadvisable to set up restrictive guide lines for the exercise of discretion,' because '(p)roblems which may arise in applications for adjustment must of necessity be resolved on an individual basis.'" *In Matter of Arai*, 13 I&N Dec. 494, 495-96 (BIA 1970)).

[117] *Cervantes*, 22 I&N Dec. at 587 (citing to *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 491 (1951), that required complete assessment of both positive and negative factors in determining whether a petitioner qualified for a waiver).

[118] *In re Andazola-Rivas*, 23 I&N Dec. 319, 324 (BIA 2004) (vacating an order from a lower court granting a Mexican immigrant a waiver for extreme hardship based upon the presence of her two United States Citizen children and the effects that would be felt if she were not allowed to return. The court stated that the hardships of worse schools and no employment in Mexico were "simply not substantially from those that would normally be expected upon removal to a less developed country."); *In re Pilch*, 21 I&N Dec. 627, 632 (BIA 1996) (holding that hardship to children upon their parent's deportation does not rise to the level of extreme hardship and stating that an "alien illegally in the United States does not gain a favored status by the birth of a child in this country."); *In re Martinez-Zambrano*, 2005 WL 2375143 (BIA 2004) (holding that the effects of removal upon a petitioners United States citizen wife and two children did not rise to the level of extreme hardship).

[119] Immigrate2Us., www.immigrate2us.net/forum/portal.php (last viewed Nov. 22, 2005). Often United States citizen spouses believe that they should not apply for the waiver until they have been married a while, established a home, and started a family. This is based upon the idea that the removal from the country for the alien would be greater hardship on the spouse and the family along with the belief that the government would never separate a family.

[120] Gleason & Wheeler, *supra* n. 8, at 17, 19.

[121] *In re: [Identifying Information Redacted by Agency]*, 2004 WL 3480615 (INS) (hereinafter *Unknown Petitioner*)

[122] *Id.* at ¶ 2.

[123] *Id.* at ¶ 3.

[124] *Id.* at ¶ 2.

[125] *Id.* at ¶ 8.

[126] *Unknown Petitioner*, 2004 WL 3480615 at ¶ 8.

[127] *Id.* at ¶ 11.

[128] *Id.* at ¶ 9 (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th cir. 1991); *Perez v. INS*, 96 F.3d 390 (9th cir. 1996); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968); *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984)).

[129] 21 I&N Dec. 627 (BIA 1996).

[130] 2005 WL 698300 (BIA) (hereinafter *Brown*).

[131] *Id.* at ¶ 2.

[132] *Id.* at ¶ 2.

[133] *Id.* at ¶ 2.

[134] *Id.* at ¶ 2.

[135] *Brown*, 2005 WL 698300 at ¶ 2.

[136] *Id.* at ¶ 3.

[137] USCIS, Administrative Decisions at http://uscis.gov/graphics/lawregs/admindec3/a2/index.htm (last viewed Nov. 1, 2005).

[138] United States citizens have more rights than any other individual while on United States soil. These protections along with many protections of rights that all individuals in the United States have are generated from the 14th Amendment to the Constitution which states that, "No State shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any State deprive any *person* of life, liberty, or property, without due process of law; nor deny to any *person* within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, sec. 1 (emphasis added). Courts have interpreted this provision to mean that all persons in the United States (this does not include those outside the borders who were previously here) cannot be deprived of life, freedom or property without due process by the states, and states cannot pass laws the impose upon the rights of its citizens (this particularly does not mean all persons). *See also* Peter H. Schuck, *The Re-Evaluation of American Citizenship* 12 Geo. Immigr. L.J. 1, 13 (1997) (nothing three important differences in the rights of citizens and LPRs that are "political in nature: the right to vote, the right to serve on federal and many state juries, and the right to run for certain high elective offices and to be appointed to some high (and not-so-high) appointive offices."); Stephen H. Legomsky, *Ten More Years of Plenary Power:*

Immigration, Congress, and the Courts 22 Hastings Const. L.Q. 925 (1995) (discussion of the recent case law on courts deference to the legislative branch in determining what rights aliens should have as opposed to those afforded to United States citizens).

[139] Gleason & Wheeler, *supra* n. 8.

[140] 8 USC § 1182(a)(9)(B).

[141] *Watkins v. INS*, 63 F.3d 844, 49 (9th Cir. 1995); *In re Pilch*, 21 I&N Dec. at 627-28.

[142] *In re Andazola-Rivas*, 23 I&N Dec. 319 (BIA 2002).

[143] Bray, *Fiance & Marriage Visas* at 11/2-11/8.

[144] Charles Wheeler, *Family Reunification But not for the Poor* in *The Impact of Our Laws on American Families*, *supra* n. 2, at 10-17 (discussing the difficulty for many families to meet the "public charge" requirements of a certain income for a visa to be issued); Donald Kerwin, *How Detention Divides Families* in *The Impact of Our Laws on American Families*, *supra* n. 2, at 49-53 (discussing the negative effects of detention for immigration violations on immigrant families).

[145] Bray, *Fiance and Marriage Visas* at 11/2-11/8.

[146] Gleason et al., *supra* n. 2.

[147] Gleason & Wheeler, *supra* n. 8, at 17.

[148] *Id.* at 17-30.

[149] *Id.*; *see also* Jeffrey S. Passel, Michael Fix & Randolph Capps, *Undocumented Immigrants, Facts and Figures* (Urban Inst. Jan. 12, 2004) (citing that there are approximately 1.6 million children under the age of 18 who are undocumented immigrants).

[150] Gleason & Wheeler, *supra* n. 8, at 19-20.

[151] Jack Martin, *Breaking the Piggy Bank: How Illegal Immigration is Sending Schools Into the Red* in Federation For American Immigration Reform (June 2005) at www.fair.com, (last viewed Nov. 1, 2005) (discussing the current high levels of illegal immigrant children who attend American schools).

[152] Gleason & Wheeler, *supra* n. 8, at 19.

[153] *Id.* at 20. The fear of nine months to a year comes from the fact that in Juarez, where Mr. I would have to apply for his waiver, they take about nine months just to process an application for waiver due to extreme hardship. *Id.* at 19.

[154] *Id.*

[155] *Id.*

[156] *Id.*

[157] *Id.*

[158] *Id.*

[159] *Id.* at 20.

[160] USCIS, Administrative Decisions at http://uscis.gov/graphics/lawregs/admindec3/a2/index.htm (last viewed Nov. 1, 2005). Posted on the site are all of the agency decisions concerning families, especially husbands and wives, who have applied for a waiver of inadmissibility based upon extreme hardship to a U.S. spouse.

[161] Gleason et al., *supra* n. 5.

[162] In 2003, 3.8 divorces occurred per every 1000 persons in the population. Martha L. Munson & Paul D. Sutton, *Births, Marriages, Divorces, and deaths: Provisional Data for 2003, National vital statistics reports* vol. 52 no. 22 (Natl. Ctr. for Health Statistics 2004).

[163] President George W. Bush, Proclamation, *Marriage Protection Week, 2003: By the President of the United States of America*, (White House, Oct. 3, 2003) , in http://www.whitehouse.gov/news/releases/2003/10/20031003=12.html. The President stated that the goal is:

> To encourage marriage and promote the well-being of children, I have proposed a healthy marriage initiative to help couples develop the skills and knowledge to form and sustain healthy marriages. . . We must support the institution of marriage and help parents build stronger families. And we must continue our work to create a compassionate, welcoming society, where all people are treated with dignity and respect.

[164] President George W. Bush, Remarks, *President Calls for Constitutional Amendment Protecting Marriage*, (White House Roosevelt Room, Feb. 24, 2004), in http://www.whitehouse.gov/news/releases/2004/02/20040224-2.html. In promoting the Amendment the President stated:

> Ages of experience have taught humanity that the commitment of a husband and wife to love and serve one another promotes the welfare of children and the stability of society. Marriage cannot be severed from its cultural, religious and natural roots without weakening the good influence of society. Government, by recognizing and protecting marriage, serves the interests of all.

[165] Jim Vandehei, *Bush Enacts Fourth Tax Cut: Law Will Benefit Married Couples, Parents and Businesses*, Washington Post A08 (Oct. 5, 2004).

[166] *A Blueprint for New Beginnings: A Responsible Budget for America's Priorities*.

[167] Randolph Capps & Michael E. Fix, *Undocumented Immigrants: Myths and Reality* (Urban Inst. Nov. 1, 2005).

[168] Gleason, et al., *supra* n. 5.

[169] Ariel Halpern, Leticia Fernandez & Rebecca Clark, *Children's Environment and Behavior: Family Structure* (Urban Inst. Jan. 1, 1999) at http://www.urban.org/publications/900865.html.

[170] Lee E. Teitelbaum, *Family History and Family Law* 1985 Wisc. L. Rev. 1135, 1138.

[171] *Id.* at 1145 et seq.

[172] Social Security Online, *Benefits for Children with Disabilities* at www.socialsecurity.gov (last viewed Nov. 1, 2005).

[173] Randolph Capps, et al., *The New Demography of America's Schools* (Urban Inst. Sept. 30, 2005) at http://www.urban.org/url.cfm?ID=311230.

[174] C. Eugene Steuerle, *Systematic Thinking About Subsidies for Child Care* (Urban Institute, Brookings Institution Feb. 2, 1998).

[175] Robert I. Lerman, *Should Government Promote Healthy Marriages* (Urban Inst., May 31, 2002) at http://www.urban.org/url.cfm?ID=310499.

[176] *Id.* at ¶ 1.

[177] *Id.* at ¶ 5.

[178] *Id.* at ¶ 7.

[179] *Id.* at ¶ 10-13.

[180] President George W. Bush, Proclamation, *National Family Week Proclamation* (White House Nov. 21, 2001) at http://www.whitehouse.gov/news/releases/2001/11/20011121.html. In this proclamation the President stated:

> American families are the bedrock of our society . . . Many one parent families are also a source of comfort and reassurance, yet a family with a mom and dad who are committed to marriage and who devote themselves to their children helps provide children a sound foundation for success. Government can support families by promoting policies that help strengthen the institution of marriage and help parents rear their children in positive and healthy environments.

[181] *Blueprint for New Beginnings: A Responsible Budget for America's Priorities* at 75-77. In this 2001 budget proposal the President stated:

> To strengthen States' ability to promote child safety, permanency, and well being, the budget proposes funding the Promoting Safe and Stable Families Program . . . [to] help States keep children with their biological families . . . By undertaking more preventative efforts to help families in crisis, the prospects for children to live in a permanent home are enhanced.

[182] *Id.* at 75. Under this agenda, the government would increase spending on programs that would aide low-income fathers in continuing to play an emotional role in their children's lives even if they are unable to financially support them one hundred percent. The foundation for a need for this type of agenda was offered by the President in saying:

> Experts agree that the lack of a father in the home has a negative impact on children. Research shows that nearly 75 percent of children in single parent homes will experience poverty before they are 11 years old, compared with only 20 percent of children in two-parent families. Violent criminals are overwhelmingly criminals who grew up without fathers.

[183] *Id.*

[184] Clifford L. Broman, Melissa L. Riba & Merideth R. Trahan, *Traumatic Events and Marital Well-Being* Journal of Marriage and the Family vol. 58, 908 (Mich. St. U. 1996) (discussing the effects of stress caused by certain events on marital relationships throughout the "life course"); Ernest W. Burgess, *The Effect of War on the Family*, The American Journal of Sociology, vol. 48, no.3, 343 (Univ. of Chicago Press 1942) (discussing the effects of separation and trauma experienced during war time on marriage and family relationships); Rindfuss & Stephen, *Marital Noncohabitation: Separation Does Not Make the Heart Grow Fonder* (discussing statistics of partners separated from one another for extended period of time, especially as a result of incarceration, and theorizing that this leads to higher dissolution of marriages).

[185] Lerman, *Marriage and the Economic Well-Being of Families with Children: A Review of the Literature* (Urban Inst. 2002) at http://www.urban.org/urlprint.cfm?ID=7823 (last viewed 8/27/2005) (examining literature written for and against government encouragement of healthy marriages); Lerman, *Should Government Promote Healthy Marriages?* (discussing benefits of marriage and possible benefits from government involvement).

[186] Boyd C. Rollins & Kenneth L. Cannon, *Marital Satisfaction Over the Family Life Cycle: A Reevaluation*, Journal of Marriage and the Family 271-72 (Natl. Council on Fam. Rel. May 1974); James L. Hawkins, *Associations Between Companionship, Hostility and Marital Satisfaction*, Journal of Marriage and the Family 647-50 (Natl. Council on Fam. Rel. 1968); Lee G. Burchinal, *Marital Satisfaction and Religious Behavior*, American Sociological Review (Am.

Sociological Assn. 1957). These and hundreds of other research findings can be found at Journal Storage: The Scholarly Journal Archive online at www.jstor.com (last viewed 10/5/2005).

[187] Seltzer, *Consequences of Marital Dissolution for Children* at 238.

[188] Charles Colson & Anne Morse, *Societal Suicide: Legalizing Gay Marriage Will Lead to More Family Breakdown and Crime,* Christianity Today vol. 48, no. 6, 72 (Christian Sci. Monitor, May 24, 2004) (citing studies that show that children who do not live in homes with both a mother and father are more likely to become either unwed parents or violent criminals, or both).

[189] *Id.*

[190] Burgess, *The Effect of War on the American Family*; Seltzer, *Consequences of Marital Dissolution for Children.*

[191] Rindfuss & Stephen, *Marital Noncohabitation: Separation Does Not Make the Heart Grow Fonder*.

[192] Burgess, *The Effect of War on the American Family*.

[193] Some examples of these immoral acts are drinking, gambling, and paying prostitutes for sexual favors. *Id.* at 343.

[194] *Id.* at 344.

[195] *Id.*

[196] *Id.*

[197] Burgess, *The Effect of War on the American Family* at 151.

[198] Jeremy Travis, Elizabeth M. Cincotta & Amy L. Solomon, *Families Left Behind: The Hidden Costs of Incarceration and Reentry* (Urban Inst., Oct. 2003).

[199] Rindfuss & Stephen, *Marital Noncohabitation: Separation Does Not Make the Heart Grow Fonder* at 261 (stating that "in 1980 there were over one million married individuals aged 18-44 who were not living with their spouses."). The authors made a distinction between white and black couples separated from their spouses, noting that 5% of whites were separated and 10% of blacks were separated on account of incarceration; however, this distinction plays no significant role in the topic at hand.

[200] *Id.* at 260-261.

[201] *Id.* at 263.

[202] *Id*. at 259.

[203] *Id.* at 267.

[204] Rindfuss & Stephen, *Marital Noncohabitation: Separation Does Not Make the Heart Grow Fonder* at 265.

[205] *Id.*

[206] Gleason & Wheeler, *supra* n. 8, at 17-30.

[207] Kerwin, *supra* n. 146.

[208] Seltzer, *Consequences of Marital Dissolution for Children*, at 235-266.

[209] *Id.*

[210] *Id.* at 235 (citing that "parents have become more likely to divorce even when they think divorce may not be in the children's best interests.")

[211] *Id.* at 236.

[212] *Id.*

[213] Seltzer, *Consequences of Marital Dissolution for Children* at 236..

[214] Gleason et al., *supra* n. 2.

[215] Seltzer, *Consequences of Marital Dissolution for Children* at 238-39. The author suggests:

> Children whose parents separate typically suffer disadvantages compared to children whose parents live together . . . children are emotionally distressed by parents' separation . . . [c]hildren's school behavior and achievement also suffer, and these disadvantages may have long-term effects, reducing rates of high school graduation and years of schooling completed . . . [these children] are also more likely to be delinquent than their peers whose parents stay together . . . some evidence suggests that girls from disrupted families are more likely to
>
> become single mothers themselves, compared to girls from families that have not been disrupted.

[216] *Id.*

[217] *Id.* at 243; s*ee also* Ariel Halpern, Leticia Fernandez & Rebecca Clark, *Children's Environment and Behavior: Family Structure* at http://www.urban.org/url.cfm?ID=900865 (Urban Inst. Jan. 1, 1999) (citing that children who live in "one-parent" families are twice as likely to live in low-income households than children living in "two-parent" families).

[218] Seltzer, *Consequences of Marital Dissolution for Children* at 244.

[219] *Id.* at 246 (citing AH Beller & JW Graham, *The Effect of child support enforcement on child support payments* (Yale Univ. Press 1991) & *The Economics of Child Support* (Yale Univ. Press 1993)).

[220] *Seltzer* at 246.

[221] *Id.* at 250.

[222] *Id.*

[223] *Id.* at 253.

[224] *Id.* at 253, 257. Seltzer goes on to cite that:

> Children whose parents separate receive less support, supervision, and encouragement about educational activities than do children whose parents stay together, and this difference explains, in part, the lower educational attainment of children from separated families.

[225] The Urban Institute, *Wedding Bells Ring in Stability and Economic Gains for Mothers and Children* (2002) at http://www.urban.org/url.cfm?ID=900554.

[226] ILW.COM, *Amnesty Is Good*, *supra* n. 1.

[227] *Id.*

[228] Mark Thornton, *Policy Analysis: Alcohol Prohibition was a Failure* (Cato Inst. 1991) (citing the desire to "reduce crime and corruption, solve social problems, reduce the tax burden created by prisons and poorhouses and improve health and hygiene in society," as the background for passing Prohibition laws).

[229] *Id.*

[230] *Id.* at ¶ 7.

[231] Charles H. Whitebread, *Freeing Ourselves from the Prohibition Idea in the Twenty-First Century* 33 Suffolk U. L. Rev. 235, 39 (2000) (discussing the economic costs of prohibition on the nation as a whole).

[232] Thornton, *Alcohol Prohibition Was A Failure* at ¶ 3.

[233] U.S. Const. amend XXI.

[234] *Id.*

[235] Simcox, *Ending Illegal Immigration: Make It Unprofitable*.

[236] Fix & Passel, *U.S. Immigration at the Beginning of the 21st Century*.

[237] Pasha, *Banking on Illegal Immigrants*, *supra* n. 28; Lewis, *Shadow Market*, *supra* n. 28.

[238] *Id.*

[239] *Id.*

[240] *Id.*

[241] Paul L. Frantz, Undocumented Workers: State Issuance of Driver Licenses Would Create a Constitutional Conundrum 18 Geo. Immig. L.J. 505, 519 (2004).

[242] Passel, *supra* n. 21.

[243] Michael Tripulsky, *How Undocumented Immigrants Can Comfortably Pay Taxes*, Russian Bazaar in Voices That Must Be Heard (162 ed., Independent Press Assoc. 2004).

[244] Jerry Seper, *Border Patrol tightens screening for agents*, Washington Times (Nov. 18, 2005). Not only was the illegal Mexican national employed for the Border Patrol, but he was also accused of smuggling "several dozen persons into the country and had been paid fees ranging from $300 to $2,000 a person." *Id*.

[245] Jim Kouri, *Illegal Immigration: Going After Employers a Low Priority* (Lincoln Trib. Oct. 13, 2005).

[246] Thornton, *Policy Analysis: Prohibition Was a Failure*.

[247] Peter K. Nunez, *The Deadly Consequences of Illegal Alien Smuggling*, Testimony prepared for the U.S. House of Representatives Committee on the Judiciary, 2003 WL 21456804 (F.D.C.H. June 24, 2003) (discussing various dangers in illegal immigration along with various factors that entice many willing to face the risks).

[248] Terry Frieden, *18 human cargo deaths in Texas: Truck owner arrested*, http://www.cnn.com/2003/US/Southwest/05/14/truck.bodies/index.html (May 14, 2003); Jerry Seper, *How rapists prey on vulnerable border crossers*, Washington Times (Nov. 21, 2005).

[249] Thornton, *Policy Analysis: Alcohol Prohibition Was A Failure* at ¶ 35.

[250] Jim Kouri, *Illegal Immigration: Feds Profit; Cities and States Lose*, http://www.americanchronicle.com/articles/viewArticle.asp?articleID (American Chronicle Oct. 7, 2005); Heather MacDonald, *Crime and the Illegal Alien: The Fallout from Crippled Immigration Enforcement* (Center for Immigration Studies 2004).

[251] Louis Henkin, *The Constitution and United States Sovereignty: A Century of Chinese Exclusion and its Progeny* 100 Har. L. Rev. 853 (1987).

[252] *Id.*

[253] *Id.* at 863.

[254] 130 U.S. 581 (1889).

[255] *Chinese Exclusion Case*, 130 U.S. at 582.

[256] *Id.*

[257] *Id.*

[258] *Id.*

[259] *Id.* at 603.

[260] *Id.*

[261] *Id.*

[262] 11 U.S. 116, 136 (1812).

[263] Henkin, *The Constitution and United States Sovereignty* at 853 (stating that, "One hundred years later, *Chinese Exclusion* is still very much with us. The Supreme Court has never reexamined the two doctrines for which the case stands, and it has shown no disposition to do so.")

[264] All of the proposed bills or resolutions can be found by searching the Library of Congress through the Thomas section. The database can be found at http://thomas.loc.gov/ (last viewed Nov. 22, 2005).

[265] H.R.257, 109th Cong., 1st Sess. (Jan. 6, 2005).

[266] *Id*. at § 101(a)(i) (emphasis added).

[267] Sen. 1919, 109th Cong., 1st Sess. (Oct. 25, 2005).

[268] Sen. 1919, 109th Cong., 1st Sess. at § 101(a)(1).

[269] *Id.*

[270] Bush, *President Bush Proposes New Temporary Worker Program.*

[271] *Id.*

[272] Simcox, *Ending Illegal Immigration: Make It Unprofitable*.

[273] Bartlett & Steele, *supra* n. 3.

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