The Scholar: St. Mary's Law Review on Race and Social Justice

Volume 10 | Number 2 Article 3

12-1-2008

Separation Anxiety: Uniting the Families of Lawful Permanent Residents.

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COMMENTS

SEPARATION ANXIETY: UNITING THE FAMILIES OF LAWFUL PERMANENT RESIDENTS

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I. INTRODUCTION

A. *The Contradiction*

Any law student, current or past, knows that during the first year of law school, the law seems more philosophical than realistic. After all, the cases discussed involve seemingly fictitious characters in a long series of narratives. While the philosophy of the law is imperative to studying law, a more realistic and practical approach must be utilized in making law. Unfortunately, lawmakers often opt to draft laws from a theoretical standpoint rather than a perspective centered on practical application.[1] This theoretical approach tends to complicate matters and forces lawmakers to pass laws that may not provide what is needed by their constituents.[2] While a theoretical approach to the law serves to construct

1. *See* Editorial, *Rational Change: Texas Legislature Should Rewrite Insanity Defense Law to Recognize the Reality of Mental Illness*, HOUS. CHRON., Jan. 1, 2007, *available at* http://www.chron.com/disp/story.mpl/editorial/4436897.html (commenting on the necessity for lawmakers to focus more on the reality or practical effects of the law).

2. *See* Ryan Alessi, *New Legislators Go Back to School: Frankfort ABCs: Alliances, Bills, Choices*, LEXINGTON HERALD-LEADER, Jan. 1, 2007, *available at* http://www.kentucky.com/mld/kentucky/news/16360479.htm ("Navigating the political landscape . . . can

a nation's moral framework in many instances, the approach may also serve to interrupt certain values, such as unity within the family, particularly for foreigners seeking residency in the United States.[3] As such, it is fundamentally essential to deal with the flesh and blood of the law rather than the theory of it.

This is evidenced in the case of Mr. Jeevan Kumar and his wife, Sumathi.[4] Mr. Kumar is a physician in India who is part of a World Health Organization project intended to eliminate polio in India.[5] During the course of the project, Jeevan met the love of his life, Sumathi, a software engineer visiting India. In February 2002, Sumathi adjusted her status to that of a lawful permanent resident[6] of the United States.[7] Jeevan and Sumathi married in August 2002, three months before Sumathi needed to return to the United States.[8] Unfortunately, due to the immigration laws of the United States, Sumathi returned home to the United States, where her husband could not join her.[9] Furthermore, the immigration laws create circumstances that will keep Sumathi and Jeevan

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be daunting, as alliances form and political pitfalls await at nearly every turn. Lawmakers will be forced to make tough decisions, sometimes having to choose between what their constituents want, what their party leaders demand or what they personally believe.").

3. *See, e.g.,* Martha Quillin, *Weighing Family Unity Against Comfort*, NEWS & OBSERVER, Aug. 20, 2006, http://www.newsobserver.com/1154/story/476996.html (discussing the struggles of immigrant families who are separated as a result of immigration law concerns).

4. Jeff Jacoby, Op-Ed., *Families Pay Price of Faulty Policies*, BOSTON GLOBE, Apr. 12, 2006, at A13, *available at* http://www.boston.com/news/globe/editorial_opinion/oped/articles/2006/04/12/families_pay_price_of_faulty_policies/ (describing how the "anti-family, anti-marriage, anti-immigrant aspect of American law" prevents a family from uniting).

5. *Id.* (adding the more Sumathi learned about Jeevan, the more she fell in love with him).

6. *See generally* U.S. Citizenship and Immig. Svcs., Lawful Permanent Residence ("Green Card"), http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=4f719c7755cb9010VgnVCM10000045f3d6a1RCRD&vgnextchannel=4f719c7755cb9010VgnVCM10000045f3d6a1RCRD (last visited Dec. 11, 2007) (outlining the steps for an LPR to obtain a green card).

7. Jeff Jacoby, Op-Ed., *Families Pay Price of Faulty Policies*, BOSTON GLOBE, Apr. 12, 2006, at A13, *available at* http://www.boston.com/news/globe/editorial_opinion/oped/articles/2006/04/12/families_pay_price_of_faulty_policies/ ("When Sumathi Athluri met the man she was destined to marry, it was love at first sight. She sensed at once that Jeevan Kumar, a young physician working on a World Health Organization project to eradicate polio in India, was someone special.").

8. *Id.* ("The couple was married in India in August 2002, and for the first three months of their marriage they were virtually inseparable. But green-card holders are not permitted to remain abroad indefinitely, and when the time came for Sumathi to return to the United States, she was a wreck.").

9. *Id.* ("'It was so painful to leave him,' [Sumathi] says. 'I was crying in the plane all the way to the U[nited]S[tates].'").

separated for as long as five years.[10] Sumathi and Jeevan's circumstances prove that case law and statutes regarding constitutional rights and immigration law are more than words or theoretical principles in a textbook. To that end, when Congress passed the immigration laws concerning spouses, family unity, and permanent residency, it seemed to focus on the theoretical implications of the laws rather than their realistic effects.[11] Consequently, the residents of this country are left to deal with the overwhelming emotions of separation and sadness due to the ineffective procedures created by lower level agencies.[12] Ironically, Sumathi, on a road to citizenship, offers her loyalty and allegiance to a nation whose laws convey indifference towards Sumathi being unified with her husband.

This is a contradiction on the part of the United States. The nation boasts of a system of government that encourages liberty in every major sense including: economic, educational, political, religious, and personal.[13] The legislature, the executive branch, and the judiciary have all, on different occasions, championed the personal freedom to have a family and allow families to live as a unit.[14] For example, several monumen-

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10. *Id.* ("Sumathi's I-130 application for Jeevan was submitted more than three years ago; unless the law changes, it is likely to take at least two more years before his immigrant visa is finally approved. In the meantime, he is barred from entering the United States to visit his wife, even briefly."). "Congress [did not] set out deliberately to put Sumathi and Jeevan and others like them through emotional torment. But by holding down the annual number of immigrant visas available to the spouses and kids of green-card holders, it unwittingly created a giant backlog." *Id.*

11. DAVID WEISSBRODT & LAURA DANIELSON, IMMIGRATION LAW AND PROCEDURE IN A NUTSHELL 81 (5th ed. 2005) ("Congress need not give the [administrative] agencies detailed direction. . . . In general, Congress need only delineate basic policy. Agencies then have relatively free rein in creating procedures to implement, administer, and enforce immigration laws.").

12. Wendy Koch, *"Mixed Status" Tears Apart Families*, USA TODAY, Apr. 26, 2006, at 03A, *available at* http://www.usatoday.com/news/nation/2006-04-25-mixed-status_x.htm ("Deportation split Julie Santos' family in 2001, forcing her husband, an illegal immigrant, to return to Mexico while she and their two U.S.-born children remained in her hometown of Chicago."). "They considered moving the family to Mexico, but economic conditions are too tough. She tries to keep him connected to the family, but it's difficult. 'Now sometimes it feels I'm talking about a ghost,' Julie Santos says." *Id.*

13. *See* 4 U.S.C.S. § 4 (2007) ("I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all."). The Pledge of Allegiance provides, perhaps, one of the simplest examples of the government encouraging liberty. *See id.*

14. With regard to the executive branch, the Department of Health and Human Services is an agency that provides essential human services, including services for families. *See* ADMINISTRATION FOR CHILDREN AND FAMILIES, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, A CELEBRATION OF FAMILY (2004), *available at* http://www.acf.dhhs.gov/programs/family_celebration.htm#1 (reporting on the importance of the family and the relationship between the family and the state, particularly on how the current executive administration is attempting to strengthen the family unit within the country). Moreover,

tal Supreme Court cases prescribe that the Constitution encompasses substantive due process rights to protect families and the personal decisions relating to one's familial relationships.[15]

Ironically, while the United States grants the right to familial relationships to permanent residents, permanent residents like Sumathi are at a loss.[16] If Sumathi were a United States citizen, then she could live together with her husband in the United States relatively quickly.[17] In other words, while the United States government assures its constituents that permanent residents and United States citizens share many of the same rights, permanent residents find that they cannot exercise these rights.[18] In the case of Sumathi and Jeevan, although they hold the right to live as a family in theory, in reality, immigration laws will not allow

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the Legislature's affinity for family unity is apparent from the law that is created. *See, e.g.*, TEX. FAM. CODE ANN. § 1.101 (Vernon 2002) ("[I]n order to provide stability for those entering into the marriage relationship in good faith and to provide for an orderly determination of parentage and security for the children of the relationship, it is the policy of this state to preserve and uphold each marriage against claims of invalidity. . . . "). The Section refers to the policy of the Texas Legislature, in particular, to promote strength of the family unit. *Id.* As for the judiciary, there are several Supreme Court decisions that emphasized the importance of protecting the family unit. *See, e.g.*, Lawrence v. Texas, 539 U.S. 558 (2003); Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833 (1992); Prince v. Massachusetts, 321 U.S. 158 (1944).

15. *See, e.g., Lawrence*, 539 U.S. at 574 (2003) ("Our [laws and tradition afford] constitutional protection to personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education." (citing Casey); *Casey*, 505 U.S. at 851 ("[Our cases recognize] the right of the *individual*, married or single, [regardless of immigration status,] to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child." (quoting Eisenstadt v. Baird, 405 U.S. 438, 453 (1972) (emphasis in original))); *Prince*, 321 U.S. at 166 ("[Our precedents] have respected the private realm of family life which the state cannot enter."). "These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State." *Lawrence*, 539 U.S. at 574.

16. *See generally* Jeff Jacoby, Op-Ed., *Families Pay Price of Faulty Policies*, BOSTON GLOBE, Apr. 12, 2006, at A13, *available at* http://www.boston.com/news/globe/editorial_opinion/oped/articles/2006/04/12/families_pay_price_of_faulty_policies/ (distinguishing the rights afforded to United States citizens versus permanent residents of the United States).

17. *See id.* ("If Sumathi had first gotten married and then applied for her green card, her husband would have been able to move here right away. Same thing if she had been here on a student visa, or had simply made no change in her status as the holder of a work visa. But becoming a legal permanent resident meant that anyone she subsequently married (and any child she gave birth to) outside the United States would have to languish on a waiting list for five or more years before being allowed to enter the country.").

18. *See, e.g., id.* ("Congress didn't set out deliberately to put Sumathi and Jeevan and others like them through emotional torment. But by holding down the annual number of

them to exercise this right.[19] The laws behind this situation present a logical fallacy. Since permanent residents cannot, in reality, exercise certain rights, it is not valid to state that these rights are granted to both citizens and permanent residents.

Consequently, lawmakers must decide whether to allow permanent residents the ability to exercise their rights or to admit that permanent residents do not carry a right to live with their families. To make the decision, lawmakers should look to the source from which their authority is derived—the United States Constitution. The writers of our esteemed Constitution passionately asserted that it is a self-evident truth "that all men are created equal."[20] It follows that the rights of one man residing in this country shall be equal to the rights of another man who is deemed a "citizen." But this is not the case. Instead, the "theoretical" propositions that allow for such a contradiction must be flawed, causing the immigration laws and policies regarding family unity to be flawed.

B. *The Basics and the Problem*

People from all around the world try to immigrate to the United States virtually everyday. To be successful, they must follow the laws and the proper protocols, which could require them to wait years before entering the United States lawfully. In some situations, the potential immigrant can apply for a nonimmigrant (temporary) visa while he or she waits.[21] For example, people abroad who are spouses and children of United States citizens can apply for a K Visa, allowing them to bypass some of the processing and enter the United States to be with their citizen family member sooner.[22]

There is also a similar type of visa for the spouse and children of a lawful permanent resident (LPR) called a V Visa.[23] The V Visa autho-

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immigrant visas available to the spouses and kids of green-card holders, it unwittingly created a giant backlog.").

19. *Id.* ("She observes tartly that the United States lectures other countries about the importance of marriage and family. Yet [Sumathi says,] 'U.S. immigration law is destroying my family life. I live alone, eat alone, sleep alone, cry alone, and suffer alone. . . . The only thing that keeps me going is my husband's photograph sitting next to me.'").

20. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

21. *See* LAURENCE A. CANTER & MARTHA S. SIEGEL, U.S. IMMIGRATION MADE EASY (Ilona M. Bray ed., 11th ed. 2004).

22. *See* Press Release, U.S. Dep't of Just. Immig. and Naturalization Svcs., INS Implements the "K" Nonimmigrant Visa Provision of the LIFE Act (Aug. 14, 2001), *available at* http://www.uscis.gov/files/pressrelease/KNonimmigrantVisa_081401.pdf; *see also* DAVID WEISSBRODT & LAURA DANIELSON, IMMIGRATION LAW AND PROCEDURE IN A NUTSHELL 165–66 (5th ed. 2005).

23. *See generally* U.S. Citizenship and Immig. Svcs., How Do I Become a V-Nonimmigrant as the Spouse or Child of a U.S. Permanent Resident? (V-1, V-2 and V-3 Visa Classi-

rizes the spouse and children to live and work in the United States while they wait for a permanent visa, so as not to split families apart. The V Visa still exists, but a family member can only apply if the LPR filed for the family member before December 21, 2000, and the visa petition (I-130) pended at least three years.[24] Furthermore, United States consulates abroad generally will not issue tourist visas to people who have I-130s filed on their behalf.[25] Thus, the spouses and children have a hard time coming to visit. Consequently, LPRs who filed for their spouses and children since December 21, 2000 have no choice but to wait apart until the permanent visa process for their family members is complete. Today, the process can, and usually does, take up to five years.[26] In the meantime, spouses and children will often attempt extreme measures to unite their families, the result of which will often have irrevocable and undesirable repercussions.[27]

The current laws are very difficult on families of LPRs, who must wait years to be reunited due to backlogged visa categories. As a result, Congress should eliminate the requirement that only visa petition filed prior to December 21, 2001 are eligible for V Visas and eliminate the three year pending requirement. The eliminations will provide a way for LPRs not to be split from their families for longer than the time it takes to process the applicant's paperwork, and for those members who became spouses or children of LPRs after December 21, 2000, they too will have an opportunity to unite their families. Currently, there is a bill proposing

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fication), http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=51f2194d3e88d010VgnVCM10000048f3d6a1RCRD&vgnextchannel=48819c7755cb9010VgnVCM10000045f3d6a1RCRD (last visited Dec. 11, 2007) (providing a series of common questions and answers regarding V visas).

24. *See generally id.*

25. RAMON CARRION, U.S.A. IMMIGRATION GUIDE 84 (5th ed. 2004) ("Once an individual demonstrates an intention to accomplish a particular end, [such as demonstrating that the applicant intends on traveling to the U.S. to remain there indefinitely by filing an I-130] a governmental official will often find it outside his or her point of reference to imagine that an applicant can sincerely modify his or her goals so as to remain in conformity with the law.").

26. *See* U.S. Dep't of State, Visa Bulletin for January 2007, http://travel.state.gov/visa/frvi/bulletin/bulletin_3100.html (last visited Dec. 11, 2007).

27. See, e.g., Martha Quillin, *Weighing Family Unity Against Comfort*, NEWS & OBSERVER, Aug. 20, 2006, http://www.newsobserver.com/1154/story/476996.html (discussing the struggles of immigrant families who are separated as a result of immigration law concerns). "The workers live under false names, surrendering their identities, sometimes severing family ties to avoid the notice of immigration officials. 'To live without your name – it's demoralizing,' Zavala says. 'I think that's why there is so much depression within our community. You come here, and you never really know who you should act like or who you should be.'" *Id.*

to extend the limit of the V Visa and shorten the eligibility time requirement.[28]

II. Legal Background

This comment involves the issue of family unity with respect to lawful permanent residents. To understand the issue fully, it is essential to explore the legal background and the evolution of the issue. The legal background involves a description of the process to acquire a permanent visa for the relative of a LPR and the repercussions that a family or other immigrants may face when attempting to defy the process as prescribed by Congress. The evolution of the issue developed from a deep history that stems mainly from immigration law and also a bit of family law.

A. *The Process to Acquire a Permanent Visa for the Spouse or Child of a Lawful Permanent Resident*

To acquire a permanent visa, the beneficiary of the visa must be sponsored by an employer in the United States or a family member who is a United States citizen or lawful permanent resident.[29] Under either scheme, the employment-based visa or the family-based visa, preference categories dictate when a permanent visa will be available.[30] The category in which the beneficiary falls will determine when a permanent visa will ultimately be available for said beneficiary. To determine whether a visa becomes available, a beneficiary must check the monthly bulletin issued by the United States Department of State.[31] The beneficiary must compare his or her priority date, which is established when the host relative submits the visa petition (usually a Form I-130) on behalf of the beneficiary, to the date prescribed within the bulletin for the specific category. If the beneficiary's priority date falls on or before the date prescribed by the bulletin, then his or her priority is considered "current."

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28. H.R. 1823, 109th Cong. (2005).

29. David Weissbrodt & Laura Danielson, Immigration Law and Procedure in a Nutshell 122 (5th ed. 2005).

30. *See generally* Stephen H. Legomsky, Immigration and Refugee Law and Policy 243–45 (4th ed. 2005) (outlining the four preference categories of the family sponsored program: "unmarried sons and daughters of United States citizens," "spouses and the unmarried sons and daughters of LPRs," "married sons and daughters of United States citizens," and "brothers and sisters of over-age-21 United States citizens"). For employment-based immigrants, the preference categories include priority workers, professionals holding advanced degrees, skilled workers, professionals, and workers who can demonstrate that their labor is needed, certain special immigrants, and lastly, entrepreneurs, "who invest $1,000,000 each in enterprises that employ at least ten Americans." *Id.*

31. *See* U.S. Dep't of State, Visa Bulletin for January 2008, http://travel.state.gov/visa/frvi/bulletin/bulletin_3897.html (last visited Dec. 11, 2007) (providing immigrants with annual updated bulletins regarding visas).

When a beneficiary's priority date is current, it means that a visa is available for that person.[32] Until that person's priority date becomes current, however, there is no visa available for him or her, and he or she must continue waiting.[33]

Out of the four preference categories for the family-based visa scheme, the spouses and children of lawful permanent residents fall within the second preference (or "the spouse and children of a lawful permanent resident").[34] Currently, the bulletin states that the priority date for second preference applicants is March 15, 2002.[35] Ironically, such a long wait time is futile. After all, in most situations, the LPR can naturalize and become a citizen after five years of being a permanent resident.[36] Furthermore, there are no visa quota limitations for the immediate relatives of United States citizens.[37] Thus, if the spouse and child wait abroad three extra months (five years in lieu of four years and nine months), the naturalized United States citizen can petition for them to come to the United States, and a visa will be available immediately.

B. *The Repercussions Immigrants Face if They Circumvent the Immigration Laws*

The reason it takes four years and nine months for a spouse and child to be united with the LPR petitioner in the United States is through no fault of the immigrant. Rather, the responsibility lies with the United States government. The long wait times have two causes. The first is the quota system, which by default creates a lag in the time it takes for a visa to be available. The second is the inefficiency of the United States Citizenship and Immigration Services (USCIS).

Practically, it is unlikely that people will live separated from their immediate family for four years and nine months.[38] However, families exer-

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32. *See* U.S. Dep't of State, Visa Bulletin for January 2007, http://travel.state.gov/visa/frvi/bulletin/bulletin_3100.html (last visited Dec. 11, 2007) ("Only applicants who have a priority date earlier than the cut-off date may be allotted a number.").

33. *See id.*

34. DAVID WEISSBRODT & LAURA DANIELSON, IMMIGRATION LAW AND PROCEDURE IN A NUTSHELL 123 (5th ed. 2005).

35. *See* U.S. Dep't of State, Visa Bulletin for January 2007, http://travel.state.gov/visa/frvi/bulletin/bulletin_3100.html (last visited Dec. 11, 2007).

36. ILONA BRAY, BECOMING A U.S. CITIZEN: A GUIDE TO LAW, EXAM, AND INTERVIEW 21 (2d ed. 2004) ("Most immigrants must wait for a full five years of permanent residency before they are eligible for citizenship.").

37. *See* DAVID WEISSBRODT & LAURA DANIELSON, IMMIGRATION LAW AND PROCEDURE IN A NUTSHELL 122 (5th ed. 2005) (describing how immigration by "immediate relatives" of United States citizens is unlimited).

38. *See* Nora V. Demleitner, *How Much Do Western Democracies Value Family and Marriage? Immigration Law's Conflicted Answers*, 32 HOFSTRA L. REV. 273, 276 (2003)

cising any other option face potentially detrimental set backs to their goal of citizenship.[39] The LPR can visit abroad; but unfortunately, considerations of one's employment and permanent residency status preclude extended visits. If the LPR leaves the United States beyond six months, then there is a presumption that the LPR abandoned his permanent residency.[40] While this presumption can be rebutted with the proper evidence, this is not the case if the LPR leaves the United States for longer than a year. If the LPR leaves the country for longer than one year, then the LPR automatically abandons his residency.[41]

On the contrary, if the spouse and child want to visit the United States, then they will face difficulties as well. Generally, the USCIS does not issue tourist visas to people who have I-130s filed because tourist visas are meant to be temporary, and spouses and children of United States residents have a strong incentive to violate the temporary nature of the visa.[42] Moreover, if the spouse and child do enter or remain in the United States unlawfully, the consequences can be grave. In immigration law, there is a concept often referred to as the "unlawful presence bar."[43] Unlawful presence is defined as "the period where an individual is present in the United States after the expiration of the period of lawful stay

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("In a more mobile world, law will fail in keeping many individuals who have a strong emotional bond from joining each other in the country the family selects as more desirable.").

39. *See id.* at 269–97 ("While exile - the right to remove citizens from the state's territory - has largely been prohibited in Western countries, all countries retain the right to remove non-citizens from their territory through deportations. Most removals take place because non-citizens do not have the requisite documents, such as visas or permanent residency papers, to stay and/or work in a foreign country. Such removals may occur even if the individual has close family members who are nationals or permanent residents of the country of immigration. This may be the case when the undocumented immigrant has failed to wait outside the receiving country during the requisite waiting period.").

40. *See* ILONA BRAY, BECOMING A U.S. CITIZEN: A GUIDE TO LAW, EXAM, AND INTERVIEW 27 (2d ed. 2004) ("USCIS presumes that a six-month trip (or longer) means that you made your main home in another country and that your period of U.S. permanent residence is no longer "continuous.").

41. *See id.* ("But a trip of more than one year breaks the continuity of your U.S. stay automatically and you are ineligible to apply for citizenship until you have completed a continuous permanent residency period.").

42. RAMON CARRION, U.S.A. IMMIGRATION GUIDE 84 (5th ed. 2004) ("Once an individual demonstrates an intention to accomplish a particular end, [such as demonstrating that the applicant intends on traveling to the U.S. to remain there indefinitely by filing an I-130,] a governmental official will often find it outside his or her point of reference to imagine that an applicant can sincerely modify his or her goals so as to remain in conformity with the law.").

43. JOSEPH A. VAIL, ESSENTIALS OF REMOVAL AND RELIEF: REPRESENTING INDIVIDUALS IN IMMIGRATION PROCEEDINGS 77–78 (Stephanie L. Browning ed., American Immigration Lawyers Association 2006) (explaining the "unlawful presence bar" concept).

authorized by the government, or is present in the United States without having been admitted or paroled."[44] A person deemed unlawfully present is barred from re-entering the country upon their departure from the United States.[45] The amount of time a person is barred from re-entry is dependent on how long the person was unlawfully present in the United States, and the penalties are particularly harsh.[46] If a person is unlawfully present for between 180 days to a year, then he or she is barred from entering the United States for three years upon exiting the country.[47] If one is unlawfully present for longer than a year, then he or she is barred from entry for ten years.[48] The catch is that in order to immigrate lawfully later, many of these unlawful immigrants will have to leave the country for consular processing.[49] At this point, the inadmissibility bar will set, and either they are stuck or they have to apply for a waiver, which delays them even further.[50]

Because of the harsh consequences immigrants can face, their options become limited to either waiting for several years or risking substantial setbacks in acquiring lawful immigrant status, therein risking further separation from their immediate relatives.

C. *The Law Adopts the Family Unit as the Centerpiece of American Society and Emphasizes that Unity in the Family is Preferred Over Separation*

Since its inception, the United States advocates unity in the family, evidenced in the fact that early settlers lived in communal settings with their families.[51] The founding members of this Nation fled their countries in

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44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. JOSEPH A. VAIL, ESSENTIALS OF REMOVAL AND RELIEF: REPRESENTING INDIVIDUALS IN IMMIGRATION PROCEEDINGS 77–78 (Stephanie L. Browning ed., American Immigration Lawyers Association 2006).

49. Law Offices of James D. Eiss, The Three and Ten Year Bars Revisited: When It Helps To Be Put Into Removal Proceedings, http://www.usvisahelp.com/index.php?option=com_content&view=article&id=16:the-three-and-ten-year-bars-revisited&catid=1:articles&Itemid=5 (last visited Dec. 11, 2007) ("If an alien is both (1) subject to the three or ten year bar and (2) ineligible to adjust status, then her only option for obtaining an immigrant visa is to apply using consular processing and either get a waiver of the bar from the consulate, or wait abroad for the three or ten years to run.").

50. *Id.*

51. *See* Charles H. Wolfe, Who Were the Pilgrims?, http://www.plymrock.org/who_were_the_pilgrims.htm (last visited Dec. 11, 2007) (providing an example of how when the pilgrims first arrived to America, they organized themselves into communal settings). Moreover, they only broke into private, individual groups when it was economically unfeasible for them to continue in their communal fashion. *Id.* "Still under the obligation to

pursuit of religious freedom, and the religions that they practiced, namely various forms of Christianity, stressed kindness to one's family and unity within the family unit.[52]

The theme of family unity prevails throughout the nation's history, not only in the settlement the country, but also in the foundations of jurisprudence. The United States Supreme Court emphasizes the importance of the family unit, and the Court states that it is "preferred" that parents not be separated from their children.[53]

Moreover, the importance of family is evidenced in the fact that there is an entire body of law devoted to ensuring the sanctity of family within the United States. In fact, there is a separate set of laws for each state that shape this nation's principles of family; thus, there are fifty versions of American family law. The area of family law is so vast that it is a pivotal part of the framework of American values and is irreversibly integrated into American jurisprudence. Each of the family law codes rests upon public policy, in which the inherent message is that the family unit should preserved. For example, the Texas Family Code carries a presumption that any marriage that occurs, even if not procedurally valid, will be presumed valid.[54]

The body of family law in the United States is a testament to the idea that strength and unity of family serve as core American values; yet many immigrants today are faced with the unpleasant reality that several United States lawmakers ignore this value when it comes to immigrant families. These lawmakers insist on forcing certain families to remain separated.

However, this was not the situation the founding members of this country faced when they settled our nation, nor when the forefathers wrote our revered Constitution. Today, however, our leaders find it appropriate to exclude people from our country and keep families separated. The circumstances that provoked such a shift in policy developed over centu-

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practice communal agriculture, they doubled their first year's production, and planted [sixty] acres. But that was no by means enough, they still were near starvation. And so the third year, they switched to private agriculture, assigned each family its own property, [and] made each responsible for itself." *Id.*

52. *See, e.g.*, 1 *Timothy* 5:8 (New International Version) ("If anyone does not provide for his relatives, and especially for his immediate family, he has denied the faith and is worse than an unbeliever.").

53. *See* Reno v. Flores, 507 U.S. 292, 310 (1993) ("[P]arents whom our society and the United States Supreme Court's jurisprudence have always presumed to be the preferred and primary custodians of their minor children.").

54. TEX. FAM. CODE ANN. § 1.101 (Vernon 2002) ("[e]very marriage entered into in this state is presumed to be valid unless expressly made void . . . and annulled").

ries and carried many implications with regard to the rights of United States citizens and non-citizens.

D. *United States Immigration Policy History*

1. Immigration Policy During American Colonization

Much of the reason that the immigration law concerning families became so insular today rests in the fact that immigration law, as a whole, started off liberally but strayed down a path of restrictions and limitations only to end up convoluted and stuck at an indefinite juncture between pro-immigrant and anti-immigrant sentiments. In settling the English colonies, immigrants arrived freely and welcomed by other Europeans already settled. These immigrants came for "economic reasons or to avoid religious persecution in their homelands."[55] They dreamed of freedom and prosperity, the proverbial "American Dream." This was as true in the seventeenth and eighteenth centuries as it is today.

The first exclusionary policies came with the exclusions of "paupers" and "criminals" by the colonial governments as early as 1639.[56] But then the limitations ended, and for several years, immigrants arrived freely to the area. At that point, the first colonists tolerated immigration to the extent that the colonies needed more people for labor and security.[57]

Even after the colonists gained their independence and formed the United States, a policy of unrestricted immigration remained because (1) it was unclear who in the government had the authority to control immigration, and (2) there was a lot of land in the United States, which in turn demanded a labor supply to cultivate it.[58] However, an increasing sentiment towards restricting the types of immigrants allowed into the United States emerged when the composition of immigrants changed from Western Europeans to Eastern Europeans and some Asians.[59] Despite the growing sentiment favoring exclusionary immigration principles, no such principles were adopted because it was unclear who in the government possessed the authority to restrict immigration.[60] Additionally, the Civil

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55. DAVID WEISSBRODT & LAURA DANIELSON, IMMIGRATION LAW AND PROCEDURE IN A NUTSHELL 1–2 (5th ed. 2005) (discussing the reason in which immigrants fled to the Americas).

56. *Id.* at 2 (examining the ways in which the government limited immigration in the seventeenth century).

57. *See id.* at 3 (discussing the reasons in which the United States allowed an open immigration policy).

58. *See generally id.* at 2–20.

59. *See id.* at 9 ("These 'new immigrants' were Italians, Slavs, and Jews, who were often considered 'inferior' by the predominantly Anglo-Saxon population.").

60. *See* DAVID WEISSBRODT & LAURA DANIELSON, IMMIGRATION LAW AND PROCEDURE IN A NUTSHELL 3 (5th ed. 2005) ("[f]or almost 100 years, it was unclear whether the

War eventually demanded that immigration be left unrestricted because there was a need for labor during war time.[61]

Eventually, the United States Supreme Court affirmed that the authority to control immigration matters belonged to the federal government.[62] With the power to restrict immigration officially, Congress could place restrictions at any time.[63] The period after World War I brought an optimal time for restrictions.[64] The United States favored an isolationist policy and sought to protect its own labor force from the anticipated postwar flood of European refugees. To ensure limiting the number of people that immigrated to the country, Congress enacted legislation, the 1921 Temporary Quota Law, which established a quota system and only allowed a certain number of immigrants from each country access to immigrate into the United States.[65] In 1965, the quota system was altered from a preference system based on national origin to one based on the familial ties of the immigrants.[66] The 1965 alterations represented a major step concerning family matters in immigration law and laid the foundations for the family based system currently being utilized today. In 1965, however, lawmakers did not likely anticipate the backlog and inefficiency aftermath that leads to several problems families of LPRs face today.

While the 1965 adoption of the new quota system remains significant, the most major developments with regard to family based immigration came within the last three decades. Since 1965, a number of major statutes passed and reflect radical changes in immigration policy; some of these statutes still carry policies that are in effect today.

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federal government was even intended by the Constitution to have power to regulate immigration.").

61. *See id.* at 5 ("The need for labor in both the North and South was magnified during these war years; an 1864 Act even facilitated immigration by validating contracts pledging future wages in payment for overseas passage.").

62. *See id.* at 4 ("Not until 1875 did the U.S. Supreme Court in *Henderson v. City of New York* . . . declare state restrictions on immigration to be unconstitutional, as an infringement on the federal power over foreign commerce.").

63. *See id.* at 7 ("Congress finally decided by the 1880s that immigration was appropriate for federal control. The Act of 1882 may be considered the first general federal immigration act.").

64. *See id.* at 10 (describing how Congress enacted immigration reform based on prevalent anti-immigrant views of World War I).

65. *See* PHILIP MARTIN & PETER J. DUIGNAN, MAKING AND REMAKING AMERICA: IMMIGRATION INTO THE UNITED STATES 6 (2003), *available at* http://media.hoover.org/documents/he_25b.pdf.

66. *See* DAVID WEISSBRODT & LAURA DANIELSON, IMMIGRATION LAW AND PROCEDURE IN A NUTSHELL 17–18 (5th ed. 2005) ("The 1965 amendments abolished the old four-preference system and established in its place a seven-preference system for close relatives and those immigrants with needed occupational skills from the Eastern Hemisphere.").

2. Immigration Reform Control Act of 1986 (IRCA)

After World War II, the immigrant populations began entering the United States illegally, and for decades, the numbers of illegal immigrants increased. The Immigration Reform and Control Act of 1986 (IRCA) symbolized an attempt to respond to this growth.[67] IRCA represented a significant step in immigration history because it gave new life to immigration law.[68] During the thirty-four years preceding IRCA, no other laws concerning immigration passed. Furthermore, IRCA stood fundamentally important because it highlighted varying interests surrounding immigration policy. Over time, it became increasingly clear that the United States population contained factions in favor or against liberalizing immigration policy.[69] IRCA represented a compromise between the differing views.[70] The statute allowed for a one-time amnesty, but also focused on deterring illegal immigration.[71] However, in light of IRCA's compromise, it became clear that the United States consisted of two attitudes, a pro-immigrant attitude and an anti-immigrant attitude. As a re-

67. *See* Numbers USA, U.S. Amnesties for Illegal Aliens, http://www.numbersusa.com/interests/amnesty.html (last visited Dec. 13, 2007) ("The Immigration Reform and Control Act of 1986 (IRCA) was enacted by Congress in response to the large and rapidly growing illegal alien population in the United States.").

68. *See generally* DAVID WEISSBRODT & LAURA DANIELSON, IMMIGRATION LAW AND PROCEDURE IN A NUTSHELL 21–27 (5th ed. 2005) ("Thirty-four years had passed since the enactment of the last major immigration reform, when Congress finally adopted in 1986 the Immigration Reform and Control Act (IRCA).").

69. *See* Numbers USA, U.S. Amnesties for Illegal Aliens, http://www.numbersusa.com/interests/amnesty.html (last visited Dec. 13, 2007) (explaining how the views of opposing factions led to the integration of the IRCA); *see generally* DAVID WEISSBRODT & LAURA DANIELSON, IMMIGRATION LAW AND PROCEDURE IN A NUTSHELL 21–27 (5th ed. 2005).

70. *See* Numbers USA, U.S. Amnesties for Illegal Aliens, http://www.numbersusa.com/interests/amnesty.html (last visited Dec. 13, 2007) ("The final bill was the result of a dramatic compromise between those who wanted to reduce illegal immigration into the United States and those who wanted to 'wipe the slate clean' for those illegal already living here by granting them legal residence."); *see generally* DAVID WEISSBRODT & LAURA DANIELSON, IMMIGRATION LAW AND PROCEDURE IN A NUTSHELL 21–27 (5th ed. 2005) ("[IRCA] represented a political compromise between four interests—(1) those people seeking to deter illegal immigration by discouraging unauthorized employment in the U.S.; (2) those seeking a one-time amnesty for non-citizens who, for years, had been locked out as illegal immigrants; (3) those who wanted to insure continued access to low-cost agricultural labor without elaborate federal regulation; and (4) those who wished to insure that penalizing employers for illegally hiring undocumented employment practices.").

71. Numbers USA, U.S. Amnesties for Illegal Aliens, http://www.numbersusa.com/interests/amnesty.html (last visited Dec. 13, 2007) ("As a 'balance' to this huge amnesty, IRCA also included several provisions designed to: strengthen the enforcement of immigration laws (including sanctions for employers who knowingly hire illegal aliens); increase border controls; and create a program to verify the immigration status of aliens applying for certain welfare benefits.").

sult, the United States would face a harder time balancing the various interests when making statutory decisions for the future.[72]

3. Immigration and Nationality Acts of 1990 (IMMACT 90)

The Immigration and Nationality Acts of 1990 (IMMACT 90) represented a significant series of statutes passed to clarify policies regarding entry into the United States.[73] As a follow up to IRCA, IMMACT 90 instituted several policies that are in effect today.[74] Additionally, IMMACT 90 contained a broad spectrum of benefits for immigrants.[75] In particular, with respect to family unity for LPRs, IMMACT 90 created a program that allowed for the families of LPRs to come to the United States legally.[76] Specifically, the "Family Unity Program" outlined that any person who entered the United States as of May 5, 1988, resided in the United States on that same date, and who is not lawfully admitted for permanent residence, can gain temporary status, employment authorization, and even additional benefits from the government.[77] While the program is still valid, it does not offer much help to the families of LPRs because most second preference visa applicants have priority dates long after 1988.[78]

4. LIFE Act and the V Visa

In the midst of anti-immigrant sentiment, "a few laws passed during the late 1990s that reflected concerns that the INS was effectively unable to process the growing number of immigration and naturalization petitions."[79] One of these laws was the Legal Immigration Family Equity Act

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72. *See generally* DAVID WEISSBRODT & LAURA DANIELSON, IMMIGRATION LAW AND PROCEDURE IN A NUTSHELL 21–27 (5th ed. 2005) (discussing the diverging attitudes amongst proponents and opponents of IRCA).

73. *Id.* ("In 1990, Congress passed a series of amendments to the Immigration and Nationality Act, collectively referred to as the Immigration Act of 1990 . . . .").

74. *Id.* at 28 ("[IMMACT] augmented the regulations enacted by IRCA, which focused primarily on illegal immigration.").

75. *Id.* at 29 (describing the benefits received by minorities as a result of the 1990 Act).

76. *See generally id.* (listing the statistical increases of family sponsored immigration).

77. *See* Immigration Act of 1990 § 301, Pub. L. No. 101-649, 104 Stat. 4978, 8 U.S.C. 1255a NOTE (1990); *see also* Form I-817, http://www.U.S.C.is.gov/files/form/I-817.pdf (last visited Dec. 13, 2007) (listing the purpose of the Form I-817 as for requests of benefits under the Family Unity Program).

78. *See* Samuel W. Bettwy, *A Proposed Legislative Scheme to Solve the Mexican Immigration Problem,* 2 SAN DIEGO INT'L L.J. 93, 112–13 (2001) (stating only five thousand visas were provided for 1988).

79. Brian John Halliday, *Look at the H-1B Visa Program: The Short-Term Solution for Continued American Competitiveness in the Global High-Technology Marketplace*, 11 U. FLA. J.L & PUB. POL'Y 33, 67 (1999).

(LIFE Act) of 2000.[80] The LIFE Act expanded the K Visa (for spouses and accompanying children, in addition to fiancés of United States citizens) and created the V Visa (for spouses and children of permanent residents) to allow applicants to live and work in the United States while waiting for their immigrant petitions to be processed.[81] The LIFE Act permits spouses and children of LPRs, who filed petitions prior to December 21, 2000 and waited for a visa number at least three years, to enter the country and work until their priority date becomes current.[82] These immigrants may apply for a V nonimmigrant visa.[83]

Despite a public interest to promote family unity,[84] the V Visa faces a significant problem. The key date for this statute is December 21, 2000, and consequently, very few immigrants now qualify for this type of visa, which forces those immigrants who do not qualify to be without their families for extended periods of time. Yet, under the LIFE Act, Congress created § 245(i), which allows for certain illegal immigrants to pay a $1000 penalty to apply for permanent resident status.[85] As long as these immigrants filed an I-130 before April 30, 2001, they may apply for permanent resident status under this section of the statute.[86]

While the government made efforts towards promoting the family unity of LPRs via tools such as the family unity program and the V Visa, the efforts, however, embodied a pro-immigrant paradigm that seemingly is out-dated. Today, methods of uniting the families of LPRs remain ob-

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80. Legal Immigration Family Equity Act (LIFE) of 2000, Pub. L. No. 106-553, 114 Stat. 2762, 8 U.S.C.A. § 1101 NOTE (2000).

81. *See* Legal Immigration Family Equity Act (LIFE) of 2000, Pub. L. No. 106-553, 114 Stat 2762, 8 U.S.C.A. § 1101 NOTE (2000); *see also* Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(V) (2007) (describing the requirements for the V Visa).

82. *See* 8 C.F.R. § 214.15(c)(1) (2005) ("[A]n alien who is the beneficiary (including a child of the principal alien, if eligible to receive a visa under section 203(d) of the Act) of an immigrant visa petition to accord a status under section 203(a)(2)(A) of the Act that was filed with the Service under section 204 of the Act on or before December 21, 2000, may apply for V nonimmigrant status if: Such immigrant visa petition has been pending for 3 years or more . . . .").

83. *See id.*

84. AmericanImmigration Lawyers Association, AILA Comments on V Visa Regulations, http://www.aila.org/content/default.aspx?bc=6714%7C8916%7C8921%7C10551%7C2100 (last visited Dec. 13, 2007) ("It is unmistakable that the driving force behind Congress' enactment of the V category is the compelling public interest in family unity.").

85. LIFE Act § 245(i), 8 U.S.C. § 1255(i) (2000).

86. *Id.* ("[A]n alien physically present in the United States . . . who is the beneficiary . . . of–a petition for classification under section 1154 of this title that was filed with the Attorney General on of before April 30, 2001 . . . may apply to the Attorney General for the adjustment of his or her status to that of an alien lawfully admitted for permanent residence. The Attorney General may accept such application only if the alien remits such application a sum equaling $1,000 as of the date of receipt of the application . . . .").

solete, and the struggle between pro-immigrant and anti-immigrant sentiments prevents the development of new methods of lawful admission into the United States for the families of LPRs.

5. Proposed Legislation in 2007

In May 2007, the immigration system was clearly inadequate and in dire need of alterations.[87] As a result, a bipartisan effort ensued to make comprehensive reforms within the entire immigration system of the United States.[88] The proposed legislation included bipartisan support from Congress and contained elements that attempted to satisfy Americans who were in favor of lenient immigration policies and to cater anti-immigration American views.[89]

The proposal included a plan to provide a method of acquiring legal status to numerous unlawful immigrants.[90] On the other hand, the proposal also demanded bolstered border security in addition to a high-tech employment verification system aimed at preventing unlawful immigrants from getting jobs.[91]

In terms of granting legal status to unlawful immigrants, the proposed agreement allowed unlawful immigrants to obtain a temporary "Z Visa." Thereafter, these unlawful immigrants would pay fees, including a $5000 fine, which would put most of these individuals on a path towards permanent residency. The "path" could take from eight up to thirteen years. In addition, the proposal required the heads of the immigrant households to return to their original home countries for a period of two years before coming back to the United States permanently. Ironically, many legislators referred to the provision as an "amnesty" for immigrants who resided in the United States unlawfully.[92]

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87. *See* Julie H. Davis, *Deal May Legalize Millions of Immigrants*, WASH. POST, May 18, 2007, *available at* http://www.washingtonpost.com/wp-dyn/content/article/2007/05/17/AR2007051701218.html ("[T]he deal mandates bolstered border security and a high-tech employment verification system to prevent illegal workers from getting jobs.").

88. *See id.* ("The compromise brought together an unlikely alliance of liberal Democrats . . . and conservative Republicans . . . on an issue that carries heavy potential risks and rewards for all involved.").

89. *Id.*

90. *Id.*

91. *Id.*

92. Julie H. Davis, *Deal May Legalize Millions of Immigrants*, WASH. POST, May 18, 2007, *available at* http://www.washingtonpost.com/wp-dyn/content/article/2007/05/17/AR2007051701218.html ("Almost instantly, the plan brought vehement criticism from both sides of the immigration issue, including liberals who called it unfair and unworkable and conservatives who branded it an overly permissive 'amnesty.'").

Several other provisions made the proposed legislation quite technical and potentially difficult on immigrants.[93] One of the most significant effects of the proposal would shift the current immigration system, centered on family ties, toward an immigration system centered on preference categories based on advanced degrees and sophisticated skill sets. Such revisions mainly constituted a push by a conservative Republican agenda.[94] In most instances, family ties alone would no longer suffice to qualify immigrants for permanent residency.[95] "Strict new limits would apply to U.S. citizens seeking to bring foreign-born parents into the country."[96]

While the bill seemed like a celebration for unlawful immigrants in need of an avenue to gain legal status, the reform contained disastrous costs for family unity. First, the bill would make it more difficult for settled United States immigrants to sponsor their family members to gain legal status in the United States. Moreover, the bill would call for the immigrant family's head of the household to commit tasks, which did not appeal to immigrants.[97] For example, many immigrants remained suspicious of the return home requirement[98] because they wondered exactly what would guarantee their re-entry into the United States.[99] In addi-

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93. *Id.* at 2.

> They could come forward right away to claim a probationary card that would let them live and work legally in the U.S., but could not begin the path to permanent residency or citizenship until border security improvements and the high-tech worker identification program were completed. A new crop of low-skilled guest workers would have to return home after stints of two years. They could renew their visas twice, but would be required to leave for a year in between each time. If they wanted to stay in the U.S. permanently, they would have to apply under the point system for a limited pool of green cards. *Id.*

94. *Id.* ("Republicans have long sought such revisions, which they say are needed to end 'chain migration' that harms the economy.").

95. *Id.* ("Family connections alone would no longer be enough to qualify for a green card except for spouses and minor children of U.S. citizens.").

96. *Id.* (discussing the shift from family-based immigration petitions to merit-based petitions); *see also* Comprehensive Immigration Reform Act of 2007, S. 1348, 110 Cong. § 503 (2007) (excluding parents from preference for family-allocated visas).

97. Peter Prengaman, *Illegal Immigrants Question Senate Deal*, WASH. POST, May 17, 2007, *available at* http://www.washingtonpost.com/wp-dyn/content/article/2007/05/17/AR2007051701867.html ("Across the nation, illegal immigrants, many of whom toil in dirty, low-paying jobs, sharply criticized the Senate's immigration overhaul package as overly burdensome and impractical.").

98. Comprehensive Immigration Reform Act of 2007, S. 1348, 110th Cong. § 601 (2007) (discussing the requirement that petitioners return to their home country to renew visas).

99. Peter Prengaman, *Illegal Immigrants Question Senate Deal*, WASH. POST, May 17, 2007, *available at* http://www.washingtonpost.com/wp-dyn/content/article/2007/05/17/AR2007051701867.html ("'If I go home, who is going to guarantee that I'll be let back in?' said the 44-year-old who lays bricks, clears weeds and does landscaping.").

tion, many immigrants, could not afford the fines and fees associated with the proposed path to permanent residency.[100] Therefore, while the bill seemed like progress for undocumented immigrants, the benefits emerged from large costs to families.

While provisions of the bill catered to both perspectives of the immigration debate, parties on each side could not come to a compromise sufficient to pass the bill in the Senate.[101] Some authorities believe the Bill's failing to pass indicates a delay of at least a year and a half to acquire an adequate comprehensive immigration system.[102] As such, immigrant families still lack means to be lawfully united, thereby highlighting the inherent contradiction of the immigration system. Regardless of one's pro-immigrant or anti-immigrant sentiment, a defining characteristic of being pro-American is the emphasis on family unity. Allowing someone to become a permanent resident of the United States, then subsequently prohibiting him from being with his family for nearly five years, is irrational of United States lawmakers since preservation of the family unit constitutes an American ideal.

III. LEGAL ANALYSIS

Because the issue resembles such a contradiction, it is necessary to examine the possible policy reasons why the government adopted a seemingly anti-family unity position with regard to permanent residents. While the Family Unity Program of IMMACT 90 and the V Visa provisions of the LIFE Act marked two notable attempts by the government to unite families, immigrant families continue to wait for substantial progress, long overdue. The lack of a system to unite immigrant families causes repercussions, not only for immigrants, but also for the country.

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100. *Id.* ("Where would I find $5,000? In two years, I don't get $5,000," said Daniel Carrillo Maldonado, an illegal immigrant who was looking for construction work outside a Home Depot in Phoenix.").

101. Julie Hirschfeld Davis, *Senate Drives Stake Through Immigration*, WASH. POST, June 29, 2007, *available at* http://www.washingtonpost.com/wp-dyn/content/article/2007/06/28/AR2007062800160.html ("The bill's Senate supporters fell 14 votes short of the 60 needed to limit debate and clear the way for final passage of the legislation. The tally was 46 to 53, with three-quarters of the Senate's Republicans voting to derail the bill.").

102. *Id.* ("'I believe that until another election occurs, or until something happens in the body politic, that what occurred today was fairly final,' said Sen. Mel Martinez[,][and] Rep. Zoe Lofgren, who heads the House Judiciary subcommittee that was to write a version of the bill, said the Senate's inability to move forward 'effectively ends comprehensive immigration reform efforts' for the next year and a half.'").

A. *Possible Reasons for Current Contradiction*

1. The United States Values Citizens More Than Lawful Permanent Residents

The United States's contradictory stance on family unity suggests that the families of citizens are more valued than the families of permanent residents. Allowing citizens the right to be with their families immediately, by either a K Visa or lack of a quota limitation, but insisting that an LPR remain separate from his or her family for nearly five years for no reason other than he or she is not a citizen, clearly indicates a preference for the families of citizens over the families of LPRs. Accordingly, the American populace contains an impression of American lawmakers as "anti-immigrant" and apathetic to families of immigrants.[103] Ironically, the United States is a country of immigrants in that every person's origins in this country can be traced back to an immigrant. For purposes of this analysis, however, the term "anti-immigrant" refers to those individuals who recently immigrated to the United States and whose culture and heritage are likely regarded "foreign." The United States government seems to disfavor these recently immigrated individuals and their families. After all, most citizens of the United States are not foreign-born immigrants; yet, they have the right to bring their families to the United States immediately. Foreign born immigrants who currently reside in the United States as LPRs are required to live separate from their families for years on end.

While the United States Constitution prescribes more rights for citizens than non-citizens,[104] according to the United Nations, family unification is considered a universal right. The Universal Declaration of Human Rights, an authoritative source on international law states, "the family is the natural and fundamental group unit of society and is entitled to protection by the society and the State."[105] Furthermore, the International Covenant on Civil and Political Rights (ICOCP) prescribes an obligation

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103. *See Promoting Family Values and Immigration: Hearing on the Role of Family-Based Immigration in the U.S. Immigration System Before the H. Comm. Judiciary Subcomm. on Immigration*, 110th Cong. 1, 14 (2007) (statement of Bill Ong Hing, Professor of Law and Asian American Studies, University of California-Davis) *available at* http://judiciary.house.gov/media/pdfs/Hing070508.pdf ("We risk sending a strong anti-family message if we reduce rather than expand family immigration opportunities.").

104. *See* Address of T. Alexander Aleinikoff, Dean of the Georgetown University Law Center, Immigration Law: The Constitutional Rights of Non-Citizens, Address to the ACS National Convention (July 29, 2005), *available at* http://www.acslaw.org/files/Immigration%20Law.pdf (detailing how non-citizens are deprived of various rights, such as the right to certain types of welfare, the right to vote, the right to counsel at certain immigration hearings, etc.).

105. G.A. Res. 217A(III), U.N. GAOR, 3d Sess., pt. 1, U.N. Doc. A/810 (1948).

to protect families.[106] As a result, the United States is depriving its lawful permanent residents of a right that they should be afforded.

2. The United States Seeks to Alienate its Principles with those of Other Western Democracies

While the U.N.'s proclamation and the statements in the ICOCP for the unification of families are seemingly clear, several western countries, including the United States, are instituting policies that ignore and act in direct defiance of such provisions. For example, the European Union (E.U.) is considering a proposal concerning family unification that would allow member nations to deny entry to immigrants under twenty-one and attempting to acquire lawful status through his or her spouse.[107] The intention behind this proposal is to increase immigrant assimilation and prevent forced marriages.[108] Similarly, it is likely that the United States takes a restrictive position on immigration and family unity because its allies are also taking a similar stance. Often, countries will shape their policies based on the behaviors of other countries to keep in line with the ideals and goals of their allies.[109] The United States could be seeking to keep its policies in line with those of most of the other countries in the West, like the members of the E.U. and various Caribbean countries with fairly strict immigration policies.[110]

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106. International Covenant on Civil and Political Rights, Article 23(1), General Assembly resolution 2200A(XXI) (1976), *available at*: http://www.unhchr.ch/html/menu3/b/a_ccpr.htm ("The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.").

107. Nora V. Demleitner, *How Much do Western Democracies Value Family and Marriage?: Immigration Law's Conflicted Answers*, 32 HOFSTRA L. REV. 273, 284 (2003) ("The proposed EU directive on family unification would allow member states to set the minimum age for family unification for married couples up to age twenty-one. This would be permitted even if domestic laws set the marriage age at eighteen or below.").

108. *Id.* ("The E.U. has stated two grounds on which it justifies this provision. It should increase integration and prevent forced marriages.").

109. *See, e.g.*, Prime Minister Malcolm Fraser, Address at the 1985 London Conference on Communism and Liberal Democracy (Mar. 20, 1985), *available at* http://www.unimelb.edu.au/malcolmfraser/speeches/nonparlimentary/liberaldemocracies.htm ("The United States is saying that European countries should adopt similar polices to her own . . . ."). Often, country alignment occurs between nations in order to promote trade. *See id.* With similar economic policies or political policies, nations can more readily engage in trade with one another. *See id.* Regarding immigration policy, these countries often have similar political philosophies, and when seeing a policy adopted that reflects its own agendas, these nations may find it prudent to adopt the same polices. *See id.*

110. *See generally* Storchevoy Lenoard, *The Right to Family Reunification in the Immigration Law of the Commonwealth Caribbean and the United States: A Comparative Study*, 7 TOURO INT'L L. REV. 177, 203–06 (1997) (discussing the parent and grandparent immigration law differences between the United States and the Commonwealth Caribbean). "In view of the traditional importance of the grandmother's role in the Caribbean family—a

3. The United States Attempts to Prevent Chain Migration

One of the most common reasons why the government limits migration to the United States is a concept most often referred to as "chain migration."[111] Chain migration is a term used to describe when people use their newly acquired citizenship status to petition for someone else to acquire citizenship status.[112] Chain migration often occurs with families, especially siblings and extended family.[113] As a result, those who have acquired lawful status in the United States will subsequently bring their relatives to the United States; and, those relatives will, in turn, bring more relatives, and so on.[114] The process is potentially never-ending, resulting in unmanageable immigrant volumes, which makes chain migration a threat to American lawmakers.[115]

4. The United States has Terrorism Concerns

Particularly since "9/11," terrorism concerns added a higher degree of protectionism with regard to immigration laws,[116] therein resulting in further restrictions in terms of family and spousal unification.[117] While it is understandable that the American government wants to be careful regarding who it lets into the country,[118] stopping families from being to-

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role which does not have a parallel in the American family structure—affording grandparents, along with spouses, children, and parents, the right to family reunification appears legitimate." *Id.*

111. *See generally* James Pinkerton, *Change in Laws Could Divided Families: Proposals Would Limit the Ability of Legal Immigrants to Send for Kin*, HOUS. CHRON., Apr. 23, 2006; Siew-Ean Khoo, *The Context of Spouse Migration to Australia*, 39 INT'L MIGRATION 1, 111 (2001).

112. *See* James Pinkerton, *Change in Laws Could Divided Families: Proposals Would Limit the Ability of Legal Immigrants to Send for Kin*, HOUS. CHRON., Apr. 23, 2006 ("Some critics, however, say the laws encourage what they describe as 'chain migration,' in which immigrants send for not only their children and spouses, but also their brothers, sisters and parents."); Siew-Ean Khoo, *The Context of Spouse Migration to Australia*, 39 INT'L MIGRATION 1, 111 (2001).

113. *See* James Pinkerton, *Change in Laws Could Divided Families: Proposals Would Limit the Ability of Legal Immigrants to Send for Kin*, HOUS. CHRON., Apr. 23, 2006 (explaining the "chain migration" process which usually begins with one family member gaining citizenship status, who subsequently petitions for other members also).

114. *See id.* ("And they, in turn, send for more relatives . . . .").

115. *See id.* ("[a]nd the number of new immigrant arrivals careens out of control").

116. *See generally* About.com, Background Checks: Not Just for Foreigners Anymore, http://immigration.about.com/cs/travelborders/a/airportchks4all.htm (last visited Dec. 13 2007) (describing an increase in security after 9/11).

117. *See* Nora V. Demleitner, *How Much Do Western Democracies Value Family and Marriage?: Immigration Law's Conflicted Answers*, 32 HOFSTRA L. REV. 273, 285 (2003) (discussing spousal and family unification within the context of immigration law).

118. *See* Cynthia S. AnderFuhren, *Family Unity in Immigration and Refugee Matters: United States and European Approaches*, 8 INT'L J. REFUGEE L. 347, 362 (1996) (identify-

gether for years at a time should not be part of the solution. Not only may family members be denied entry due to suspected terrorist associations, but waiting times have been prolonged because of background checks and resulting backlogs.[119]

Concerns with terrorism typically affect the entry of foreign husbands; however, some countries, like Denmark and the United Kingdom, are taking a different approach. Rather than force restrictive policies upon males, these countries impose immigration rules that also affect women, who are being sponsored by their resident husbands.[120] The restrictions may be a way to encourage integration of foreign immigrants with the majority population.[121] To explain, these policies are enforced in order to overcome the "forced marriages" of foreign females, particularly in the Asian community.[122] For example, in the United Kingdom, the age at which a spouse could immigrate to the country was recently raised from sixteen to eighteen.[123] Additionally, Denmark lawmakers passed a law which prescribes that Danes under the age of twenty-five who marry foreigners lose the right to lawfully bring their spouses into the country.[124] The goal of these Western governments may be to encourage their residents to marry within the borders of their countries while discouraging the import of foreign spouses and, in turn, foreign customs. These countries' policies suggest that the migration of spouses from foreign nations

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ing some legitimate interests the government has in regulating immigration, including "the interest of national security, public safety or the economic well-being of the country, [and] for the prevention of disorder or crime").

119. *See* Nora V. Demleitner, *How Much Do Western Democracies Value Family and Marriage?: Immigration Law's Conflicted Answers*, 32 HOFSTRA L. REV. 273, 285 (2003) (discussing prolonged waiting time for reunification of spouses and families under immigration law) .

120. *See* Migration Watch UK, Immigration and Marriage: The Problem of Continuous Migration, http://www.migrationwatchuk.org/Briefingpapers/other/Immigration_Marriage.asp (last visited Dec. 13, 2007) (summarizing the problem of arranged and forced marriages and its effects on immigration).

121. *See id.* ("In 2001, the Danish Government introduced a legislative programme designed to reduce the number of people immigrating to Denmark. The Government also committed more resources to integrating existing immigrants. One aspect of the programme was a narrowing of the conditions for family reunification.").

122. *See* Nora V. Demleitner, *How Much Do Western Democracies Value Family and Marriage? Immigration Law's Conflicted Answers,* 32 HOFSTRA L. REV. 273, 285 (2003) (justifying restriction provisions).

123. *See Forced Marriages Targeted*, BBC NEWS, Oct. 27, 2004, http://news.bbc.co.uk/2/hi/uk_news/3027297.stm ("The change, introduced by Home Secretary David Blunkett last month, means British 16- and 17-year-olds will now have to wait until they are 18 before they can invite their husband or wife to live in the UK.").

124. *See e.g. Mix and Match,* ECONOMIST, June 14, 2003, at 7.

may be contributing to a lack of integration.[125] However, this attitude may increase the appeal for radical groups in the future.[126]

By preventing foreign women from migrating as spouses, the British and Denmark governments make the assumptions that (1) women help men assimilate into society, and (2) non-native women would impair a man's ability to integrate.[127] Such assumptions are quite bold; if the United States outwardly and unashamedly proceeded with a policy based on these two assumptions, then it is likely that the policy would ultimately face a great deal of criticism and even breakdown.[128] Hence, the United States lawmakers likely would not proceed on the platform of discouraging foreign customs and culture; however, this idea has not escaped the minds of the government's constituents.

5. Procedural Reasons

Procedural flaws on the part of the Customs and Immigration Service (CIS) are also a cause for the delay of so many immigrants being able to be with their families. The CIS is currently experiencing a backlog of several years, partly because of inefficiency within the CIS office.[129] However, the procedure followed within the CIS office not the only factor to blame. The INA prescribes a quota system that only allows for a certain number of immigrant visas to be allotted.

This quota system is a larger culprit with regard to procedural delays. The quota system allows only 480,000 family based immigrant visas per

125. *See* Nora V. Demleitner, *How Much Do Western Democracies Value Family and Marriage? Immigration Law's Conflicted Answers,* 32 HOFSTRA L. REV. 273, 285 (2003) (implying an increase in the attraction of radical groups).

126. *See id.* (recognizing that denial of entry could increase terrorist threats).

127. *See id.* (explaining that family migration is a "crucial aspect of integrating and stabilizing migrant populations").

128. *See* Damaris Rose, Valerie Preston & Isabel Dyck, Women, Gender and Immigration: Perspectives and Challenges, http://policyresearch.gc.ca/page.asp?pagenm=v5n2_art_06 (last visited Dec. 13, 2007) (discussing how integrating gender into policy must be heavily researched and should seek to answer many questions about "adopt[ing] lines of questioning that ask how immigration and settlement policies and programs influence gender relations.").

129. CHAD C. HADDAL, CRS REPORT FOR CONGRESS: U.S. CITIZENSHIP AND IMMIGRATION SERVICES' IMMIGRATION FEES AND ADJUDICATION COSTS: THE FY2008 ADJUSTMENTS AND HISTORICAL CONTEXT 28 (2007), *available at* http://www.opencrs.com/rpts/RL34040_20070612.pdf ("An item that has concerned Congress for a number of years has been USCIS' backlog of unadjudicated applications."). "The USCIS adjudication process has also been a stated priority of President George W. Bush, who has sought to reduce the application processing time for immigrant benefits to six months or less." *Id.* "Congress has called upon the service to improve its processing time and to eliminate the backlog." *Id.*

year.[130] One may initially suspect that a figure of 480,000 visas is an ample number to suffice for the needs of spouses and children of LPRs; however, the 480,000 represents the total number of family-based visas issued, including those granted to immediate relatives of citizens and those who fall into other preference categories.[131] The quota floor is 226,000 visas for each of the preference categories.[132] Immediate relatives of citizens are not limited by quotas.[133] Thus, the immediate relatives of citizens may utilize the maximum ceiling of the visa quota available to them, limiting those in the preference categories to the quota "floor" amount. The policy of allotting a certain number of visas to be among all the applicants in the preference categories, including the spouses and children of LPRs, leads to substantial wait times for the spouses and minor children of permanent residents. Waiting periods help explain the large number of undocumented family members in the United States.

However, in light of all these potential reasons to restrict immigration, no reasons should outweigh the rights of a family to be united. In fact, none of the plausible reasons mentioned seem to overcome the potential repercussions that the United States could experience by restricting its immigration policies so considerably against the families of LPRs.

B. *Repercussions for the United States of the Current Policies*

The United States does not recognize the right to unite with spouses and children as absolute.[134] In light of the restrictions, it is unlikely that such hurdles deter those abroad from entering the country without respect for the law.[135] In fact, the efforts of the United States government

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130. RUTH ELLEN WASEM, CRS REPORT FOR CONGRESS: U.S. IMMIGRATION POLICY ON PERMANENT ADMISSIONS 2–3 (2004), *available at* http://www.ilw.com/immigdaily/News/2004,0224-admissions.pdf ("The INA provides for a permanent annual worldwide level of 675,000 legal permanent residents (LPRs), but this level is flexible and certain categories of LPRs are permitted to exceed the limits, as described below.").

131. *Id.* ("The permanent worldwide immigrant level consists of the following components: family-sponsored immigrants, including immediate relatives of U.S. citizens and family-sponsored preference immigrants (480,000 plus certain unused employment-based preference numbers from the prior year); employment-based preference immigrants (140,000 plus certain unused family preference numbers from the prior year); and diversity immigrants (55,000). Immediate relatives of U.S. citizens as well as refugees and asylees who are adjusting status are exempt from direct numerical limits.").

132. *Id.* at 3 (displaying a table of the legal immigration preference system).

133. *Id.* at 2–3.

134. *See* Nora V. Demleitner, *How Much Do Western Democracies Value Family and Marriage? Immigration Law's Conflicted Answers*, 32 HOFSTRA L. REV. 273, 310 (2003).

135. *See id.* (concluding that obstacles to family unification probably lead to substantial dislocations rather than migration deterrence, as originally planned).

to deter an inflow of immigrants leads to problems in the United States, including: (1) large amounts of money being filtered out of the United States economy,[136] (2) increases in the rate of undocumented migration into the United States, and (3) various results caused by the instability of the host immigrant, such as an increase in crime and a decrease in economic productivity.[137]

Despite the government's efforts to deter illegal immigration, a high population of undocumented aliens exists in the United States, composed mostly of structured familial systems.[138] Often times the breadwinners of families will come to the United States to earn a living; however, the rest of the family remains in its country of origin, and the breadwinner sends back the income to support the family abroad.[139] This pattern of remittance drains resources from the American economy. Productivity in the economy is meant to yield positive resources for workers, who in turn, are meant to circulate these resources back into the economy, either as consumers or as investors. However, when an immigrant sends money back home, re-circulation does not occur. Instead, the potential capital is sent outside of the United States and is not re-injected back into the economy–a cycle that occurs daily and at an aggregate level. In essence, by preventing the LPRs family from immigrating to reunite with him or her, the United States is setting up its own economy to "take a hit" by allowing the resources within the county be consumed and invested in other economies.

It is imperative to note that the family bond is beyond a simple obligation or sense of responsibility. In most instances, family members likely will not let anyone, even their own government, keep them separated

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136. *See, e.g.*, Roberto Suro, Traveling for a Family: The Remittance Economy, http://www.aliciapatterson.org/APF1603/Suro/Suro.html (last visited Dec. 13, 2007) (examining the immigrant lifestyle, with an emphasis on how certain immigrants must support families abroad).

137. *See* Nora V. Demleitner, *How Much Do Western Democracies Value Family and Marriage? Immigration Law's Conflicted Answers*, 32 HOFSTRA L. REV. 273, 285 (2003) (suggesting that promoting the unification of couples and families stabilizes the migrant; in effect, the unification contributes to a reduction in crime and an increase in productivity from the migrant worker).

138. *See* Lutheran Immigration and Refugee Service, Comprehensive Immigration Reform Common Arguments and Counter-Arguments, http://www.elca.org/advocacy/issues/immigration/06-03-27-immarg.pdf (last visited Dec. 13, 2007) ("According to the National Immigration Forum, 70% of the undocumented immigrants in the [United States] are part of families. They either came to join family members already here, or married and had children after they arrived.").

139. *See* e.g, IMMIGRANTS IN THE US SEND MONEY HOME IN RECORD NUMBERS, VOANEWS.COM, June 3, 2005, http://www.voanews.com/english/archive/2005-06/2005-06-03-voa22.cfm (describing how illegal immigrants working for low wages tend to remit money back home to their families often and in small amounts).

from their family.[140] Consequently, spouses and children will come to the United States without regard to the consequences.[141] The United States government, rather than attempt to reconcile family values with undocumented immigration, assigns what seem to be punitive measures to those family members who immigrate out of desperation. Once the spouses and children begin to unlawfully reside in the United States, a timer of sorts begins. This timer counts the time that they were unlawfully present within the country, and as discussed earlier, once they leave the United States, the unlawful presence bars begin.[142] Depending on the amount of time accrued on the so called "timer," the family members will be barred from entry into the United States, often times for ten years.[143] On the surface, this may seem like a problem that should not concern lawmakers; however, the results of this situation lead to hazardous effects within the United States. Many people are afraid of deportation due to the threat of the unlawful presence bars; thus, they remain hidden from law enforcement agencies.[144] As a result, these migrants either end up being victims

140. *See* Nora V. Demleitner, *How Much Do Western Democracies Value Family and Marriage? Immigration Law's Conflicted Answers*, 32 HOFSTRA L. REV. 273, 276 (2003) ("In a more mobile world, law will fail in keeping many individuals who have a strong emotional bond from joining each other in the country the family selects as more desirable.").

141. *See* Brad Knickerbocker, *Illegal Immigrants in the US: How Many Are There?*, CHRISTIAN SCI. MONITOR, May 16, 2006, http://www.csmonitor.com/2006/0516/p01s02-ussc.html ("The number of 'unauthorized migrants' (which includes some who have temporary permission to live in the United States or those whose immigration status is unresolved), also has grown since legalization programs began in the mid-1980s, Pew reported last month: About 180,000 a year in the 1980s; 400,000 per year from 1990-1994; 575,000 per year from 1995–1999; and 850,000 per year from 2000–2005.").

142. JOSEPH A. VAIL, ESSENTIALS OF REMOVAL AND RELIEF: REPRESENTING INDIVIDUALS IN IMMIGRATION PROCEEDINGS 77–78 (Stephanie L. Browning ed., American Immigration Lawyers Association 2006) ("If the individual has been unlawfully present for periods of more than six months but less than one year and has voluntarily departed the Untied States prior to commencement of proceedings, he or she is barred from seeking readmission of a period of only three years."); *see* INA § 212(a)(9)(B)(i)(I).

143. JOSEPH A. VAIL, ESSENTIALS OF REMOVAL AND RELIEF 77–78 (Stephanie L. Browning ed., American Immigration Lawyers Association 2006) ("An individual who has been unlawfully present for a period of one year or more and seeks admission within 10 years of his or her removal from the United States, after accumulating one year or more unlawful presence, is inadmissible."); *see* INA § 212(a)(9)(B)(i)(II).

144. *See, e.g.*, Martha Quillin, *Weighing Family Unity Against Comfort*, NEWS & OBSERVER, Aug. 20, 2006, http://www.newsobserver.com/1154/story/476996.html (discussing the struggles of immigrant families who are separated as a result of immigration law concerns). "The workers live under false names, surrendering their identities, sometimes severing family ties to avoid the notice of immigration officials. 'To live without your name–it's demoralizing,' Zavala says. 'I think that's why there is so much depression within our community. You come here, and you never really know who you should act like or who you should be.'" *Id.*

of crimes and not reporting the crimes out of fear that they, themselves, will be demanded to leave the country,[145] or they may go further and respond to crimes by attempting to take law enforcement into their own hands. The rise of vigilantes may occur because of a fear of dealing with and assisting law enforcement officials. In turn vigilante behavior, or perhaps even worse criminal behavior, results from the threat of the unlawful presence bars.

Moreover, preventing family members from immigrating leads to the instability of the host immigrant. When an immigrant can be with his family, his family helps keep that immigrant stable in terms of his mental and emotional health and well-being.[146] Mental and emotional stability of United States residents are key factors in promoting safety and productivity in American communities.[147] Deprivation of one's family, therefore, could have detrimental effects towards the lifestyles of Americans and their communities. In fact, depriving one's family can lead to an increase in crime and a decrease in economic productivity of the immigrant. When aggregated, the considerations of crime and a decrease in productivity of immigrants living without their families are reasons for concern. The issue of a decrease in economic productivity is only augmented by the fact that the immigrants' incomes are remitted to his or her home country to support the families still living abroad. Another potential effect worth noting is the psychological effect on children who are separated from their parents for years, which can ultimately have detrimental effects that can change the course of the children's futures. Chil-

145. *Cf.* Michael Powell, *New Tack Against Illegal Immigrants: Trespassing Charges*, WASH. POST, June 10, 2005, *available at* http://www.washingtonpost.com/wpdyn/content/article/2005/06/09/AR2005060902035.html ("If I find you are in my country illegally, I'm not going to worry about political correctness. I will detain you.").

146. *Promoting Family Values and Immigration: Hearing on Role of Family-Based Immigration in the U.S. Immigration System Before the H. Comm. Judiciary Subcomm. on Immigration*, 110th Cong. 1 (2007) (statement of Bill Ong Hing, Professor of Law and Asian American Studies, University of California-Davis), *available at* http://judiciary.house.gov/media/pdfs/Hing070508.pdf.

> Reunification with family members gives new Americans a sense of completeness and peace of mind, contributing not only to the economic but also the social welfare of the United States. Society benefits from the reunification of immediate families, especially because family unity promotes the stability, health and productivity of family members. *Id.*

147. *Id.*

> The truth is that the family promotes productivity after resettlement in the United States through the promotion of labor force activity and job mobility that is certainly as important—perhaps more important—than the particular skills with which individuals arrive. Family and household structures are primary factors in promoting high economic achievement, for example, in the formation of immigrant businesses that have revitalized many urban neighborhoods and economic sectors. *Id.*

dren who are alone can experience many dangers that they otherwise would have avoided.[148] For these reasons, permitting family migration is not a mere exercise of state generosity, but rather a crucial aspect of integrating and stabilizing migrant populations. Despite it being clear that the United States has an interest in allowing the family of LPRs to reside in the United States, the government continues on an unyielding course.

C. *How the United States Views Previous Recommendations to Alter its Policies*

In 1990, the government authorized the "bipartisan United States Commission on Immigration Reform" to review United States immigration policy and to recommend to Congress how to improve such policy.[149] Of particular importance to the Commission were the arenas of employment-based immigration, family reunification, and diversity within United States immigration.[150]

In 1995, the Commission provided Congress with a document entitled *Legal Immigration: Setting Priorities*.[151] Within this report, the Commission makes several recommendations to Congress regarding undocumented immigration for the purpose of family unity.[152] The Commission recommended an increase in the number of temporary visas available for

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148. *See, e.g.,* Peri H. Alkas, *Due Process Rights for Unaccompanied Alien Minors in the United States*, 14 HOUS. J. INT'L L. 365, 371 (1992) (discussing Nestor Rodriguez's *Undocumented and Unaccompanied: A Mental Health Study of Unaccompanied, Immigrant Children from Central America*, which explains how children who are unaccompanied can have several adverse experiences such as being sexually molested, experiencing the traumatic death of a relative or friend, or being wounded, shot, or assaulted).

149. U.S. Comm'n on Immig. Reform – Mandate, http://www.utexas.edu/lbj/uscir/mandate.html (last visited Dec. 14, 2007) ("The mandate of the Commission was to review and evaluate the implementation and impact of U.S. immigration policy and to transmit to the Congress reports of its findings and recommendations.").

150. *Id.* ("In particular, the Commission examined the implementation and impact of provisions of the Immigration Act of 1990 related to family reunification, employment-based immigration, and the program to ensure diversity for the sources of U.S. immigration.").

151. U.S. COMM'N ON IMMIG. REFORM, THE NATIONAL INTEREST (1995), *available at* http://www.utexas.edu/lbj/uscir/exesum95.pdf (detailing the Commission's findings and providing numerous recommendations on how to improve the immigration system, including recommendations on how to help families who are currently separated come together more easily).

152. *Id.* (listing recommendations such as implementing a tripartite immigration policy, authorizing Congress to authorize 150,000 visas annually, proposing a statutory core immigration admissions level, and authorizing that Congress recommend admissions levels).

family members abroad to alleviate the effects of the backlog.[153] Fortunately, after this, the government instituted the V Visa. Unfortunately, today, there is once again a need for a temporary visa to alleviate the effects of the backlog, but the government insists on only allowing for the V Visa to be issued if the family member filed an I-130 before December 21, 2000. Currently, the visa bulletin shows there are visas available for those whose petitions were filed before March 15, 2002.[154] In other words, the V Visa is essentially outdated and futile for those who are currently abroad. The necessity for such a visa, however, is clear. There was approximately five years of backlog on the second preference visa category for spouses and minor children, and the Commission stated that spouses and children of LPRs should have priority in receiving admission to the United States.[155] Thus, the current circumstances are not in line with the stated vision of the Commission.

The United States government should be more cautious regarding family unity policies within the United States. In these times of globalization and increasing mobility, the law cannot overcome the will of a family with a strong emotional bond from coming together to reside in the country of their choice.[156] In addition, if the government does not seek to reconcile the interests of the family with those of the lawmakers, minority and immigrant populations will ultimately find themselves in dwindling numbers and conditions.

D. *A Cross Comparative Analysis of Immigration Policy*

Because the current reality surrounding immigration law leads to a version of America that is seemingly un-American, the most significant issue is what can be done to make this country more in line with the ideals of liberty, equality, and unity of the family. There must be a set of solutions that either allows LPRs to be with their families without the government

153. *Id.* ("The Commission further recommends that Congress authorize 150,000 visas annually for the admission of the spouses and minor children of legal permanent residents who have been awaiting entry until such time as this backlog is eliminated.").

154. *See* U.S. Dep't of State, Visa Bulletin for January 2007, http://travel.state.gov/visa/frvi/bulletin/bulletin_3100.html (last visited Dec. 14, 2007) (relying on the January 2007 Visa bulletin for date of when petitions were filed so to actually obtain a visa).

155. *See* U.S. COMM'N ON IMMIG. REFORM, THE NATIONAL INTEREST (1995), *available at* http://www.utexas.edu/lbj/uscir/exesum95.pdf ("We believe that priority for clearance of the backlog should go first to the spouses and minor children of LPRs who entered lawfully under the regular immigration preferences.").

156. Nora V. Demleitner, *How Much Do Western Democracies Value Family and Marriage? Immigration Law's Conflicted Answers*, 32 HOFSTRA L. REV. 273, 276 (2003) ("In a more mobile world, law will fail in keeping many individuals who have a strong emotional bond from joining each other in the country the family selects as more desirable.").

having to forsake its interests or that allows for a shift in government policy, such that the interests of the United States government change to become consistent with the ideal of family unity for all people. In looking to adjust United States policy, a prudent first step would be to look to other countries as examples of how they have structured their immigration systems.

1. The Canadian Model

While other western democracies, like the United States, have become increasingly stringent when confronted with the issue of immigration, Canadian lawmakers have taken pride in welcoming immigrants.[157] The Canadian model exemplifies a system with a broad immigration policy and takes its influences from three major sources.

The first source of Canada's broad immigration policy is international human rights law. The United Nations provided a great deal of guidance regarding the rights of all people that inhabit the Earth. Specifically, the Universal Declaration of Human Rights attempted to claim that every person in the world had certain invariable and inalienable rights.[158] One of these rights was the right to family. As discussed earlier, the family is to be protected by society and the state.[159] Moreover, there are a number of international organizations and treaties that point to the role of the family within the life of people. Each of these, like the ICOCP, prescribes an obligation to protect families.[160] While it is true that the United States immigration law utilizes some international law as a source for policy, the main arena for this international influence is within asylum and refugee law,[161] and the United States obligations to international law stem more

157. *See* David Crary, *Immigration Stirs Debate in Canada: Liberal Admission Policies Are Questioned After Breakup of Purported Terrorist Ring*, ST. LOUIS POST-DISPATCH, June 11, 2006, available at http://www.canadianembassy.org/pressclips/article.asp?intID=32673.

158. See G.A. Res. 217A(III), U.N. GAOR, 3d Sess., pt. 1, U.N. Doc. A/810 (1948); see also Universal Declaration of Human Rights, http://www.un.org/Overview/rights.html (last visited Dec. 14, 2007).

159. See G.A. Res. 217A(III), U.N. GAOR, 3d Sess., pt. 1, U.N. Doc. A/810 (1948).

160. International Covenant on Civil and Political Rights, Article 23(1), General Assembly Resolution 2200A(XXI) (1976), available at http://www.unhchr.ch/html/menu3/b/a_ccpr.htm ("The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.").

161. After World War I, the American government struggled to settle on policies surrounding refugee and asylum law. After all, there were suddenly entire nationalities of individuals who were left without homes because of the new borders created in Eastern Europe. Moreover, various times throughout history governments of other countries (i.e. Cuba and Haiti) oppressed their citizens causing many individuals to flee to the United States in large amounts. To deal with this, the United States kept passing legislation for those specific countries. Finally, in 1980, the United States government passed what it

from a contractual obligation to international treaties rather than a sense of humanitarianism in the American lawmaker.

Another source for Canada's broad immigration policy is the fact that countries find it to their advantage to admit family members. As discussed earlier, the effect of keeping families separated can lead to instability for LPRs who cannot be with their families. The reciprocal effect is, thus, stability within the host immigrant. Allowing LPRs families to join them in the United States leads to the families of immigrants contributing to the reduction of crime, an increase in economic productivity of the host migrant, and the assurances that more of the money made by the migrant is invested back into the local economy and not remitted back to the migrants home country.[162] Moreover, immigrants add to the overall gross domestic product (GDP) of the host country.[163] For these reasons, permitting family migration is not a mere exercise of state generosity, but rather a crucial aspect of integrating and stabilizing migrant populations.

Finally, the third source of Canada's broad policy regarding immigration and family unity is that admitting family members helps prevent undocumented migration.[164] Most of the time, it is in the nation's best interest to provide the spouses and minor children a right to accompany the permanent resident card holder.[165] The spouse and child provide stability; furthermore, the prospect of being able to come to the United States and remain here legally makes lawful immigration more attractive

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hoped would be the laws to end all refugee and asylum laws the Refugee Act of 1980 passed in March. The Refugee Act of 1980 looked to International influences, particularly international U.N. resolutions, which found their sources in the Declaration of Human Rights and U.N. Convention Against Torture.

162. Nora V. Demleitner, *How Much Do Western Democracies Value Family and Marriage?: Immigration Law's Conflicted Answers*, 32 HOFSTRA L. REV. 273, 285–86 (2003) ("[LPRs families] contribute to the reduction of crime, tend to increase the economic productivity of the migrant and assure that less of the money earned by the migrant is remitted to his or her home country.").

163. It is a basic principle of economics that to calculate the gross domestic product, the formula used is: Consumption + Investment + Government expenditures + (Exports - Imports). The greater the number of people who settle in America, assuming their income is not remitted back to their home country, results in higher consumption and investment, thereby increasing the overall output (GDP) of the country.

164. Nora V. Demleitner, *How Much Do Western Democracies Value Family and Marriage?: Immigration Law's Conflicted Answers*, 32 HOFSTRA L. REV. 273, 295 (2003) ("Generous and speedy family unification can help prevent, or at least decrease, large-scale undocumented migration.").

165. *Id.* ("Some family migration is always in the interest of the countries of immigration.").

in the long run.[166] In turn, by attracting more people to immigrate lawfully the adverse effects of undocumented migration decrease.

These three sources of influence for the Canadian immigration system should also serve as sources of influence for the United States to shift its immigration policies towards the idea of family unity.

2. The German Model

In addition to the Canadian immigration system, the United States can look to certain components of the German system which has recently broadened its immigration system.[167] While most Western democracies adopted strict policies with regard to immigration, Germany's immigration system is sprinkled with atypical elements that the United States can use for examples of how to integrate the idea of family unity for permanent residents into the United States immigration law framework.[168] The German federal constitutional court suggested that quotas which result in significant wait periods would "disproportionately impair" a constitutional interest of family unity.[169] As such, the Court decided that waiting periods are unconstitutional, and under the same reasoning, the German Court decided to eliminate the three-year waiting period implemented for the spouses of permanent residents.[170] In the United States, such constitutional arguments are much less likely to prevail. The American government stands steadfast on the idea that it can determine who can and cannot be together by dictating who can and cannot reside in this country. Though the government in America does, in fact, carry the power to exclude certain people from its borders, the rights of humanity do not allow

166. *Id.* at 277 n.18 ("Often it is in a state's interest to provide at least spouses and minor children with the right to accompany a visa holder. They provide stability and the right to bring them along makes migration more attractive.").

167. *See, e.g.*, Wendy Koch, *Mixed Status Tears Apart Families*, USA TODAY, Apr. 26, 2006, at A3, *available at* http://www.usatoday.com/news/nation/2006-04-25-mixed-status_x.htm ("Germany and France have broadened their citizenship laws to include more immigrants.").

168. *See* Dirk Hegen, Recent Immigration Developments in Germany and France, http://www.ncsl.org/programs/immig/eupaper.htm (discussing the changes in immigration policy of Germany and France).

169. Hiroshi Motomura, *The Family and Immigration: A Roadmap for the Ruritanian Lawmaker*, 43 AM. J. COMP. L. 511, 523 (1995) ("The German Federal Constitutional Court has suggested that numerical limitations requiring family members to wait for significant periods of time would 'disproportionately' impair the constitutional interest in family unity.").

170. *Id.* ("Therefore, the German Court further suggested, waiting periods would be unconstitutional under the same reasoning that prompted the German Court's decisions to strike down the three-year waiting period for spouses of certain permanent residents.").

the separation of families and the dilapidation of "the natural and fundamental group unit of society."[171]

E. *Various Views from the United States Perspective*

The American Bar Association (ABA) has reflected similar motivations. After the ABA created the Commission on Immigration, the ABA wrote a letter explaining its stance on the recommendations of the Commission on Immigration. They even referred to the immigration system as "broken" and emphasized the need for family reunification: "The ABA supports immigration reform legislation that would protect our national security, provide worker programs, and promote family reunification, without sacrificing due process for immigrants and refugees. The rule of law can only be restored to our broken immigration system through this type of comprehensive reform."[172]

Certain United States policies may provide the notion that United States immigration policy is fairly liberal. Some may even argue that the United States government has not been unfavorable in its policies with regard to immigrants based on seemingly generous policies regarding immigration issues. However, these benevolent policies have been rare and seem to provide a false image for how generous the government is with respect to immigrants. One such example is the idea of dual citizenship.[173] The American government easily may portray an image of being welcoming to immigrants and provide the impression that United States policies are broadening towards immigrants. After all, how better could the government convey a message of generosity to immigrants than allowing them into the United States while maintaining two heritages. Generally, immigrants have been myopically pleased by the policy. Individuals seem to be able to identify with their home culture while being loyal to the United States.[174] The acknowledgment of dual citizenship and multiple loyalties by the United States government suggests a shift in

171. Universal Declaration of Human Rights, G.A. Res. 217A (III), at 71, U.N. Doc. A/810 (Dec. 10, 1948) ("The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.").

172. Letter from Robert D. Evans, Director, Governmental Affairs Office of the ABA, Apr. 4, 2006, *available at* http://www.abanet.org/publicserv/immigration/cir_senate_ltr4406.pdf (encouraging senators to support comprehensive immigration reform legislation while describing the American Bar Association's stances on immigration issues).

173. Enid Trucios-Haynes, *"Family Values" 1990's Style: U.S. Immigration Reform Proposals and the Abandonment of the Family*, 36 BRANDEIS J. FAM. L. 241, 247 (1998) ("It has been observed that there is a new development in international law a right to personal self-determination, which includes dual citizenship recognition and a multi-layered identity and multiple loyalties including close ties to one's native country.").

174. *Id.* ("This change in the relationship of the individual to the state, resulting from an increased recognition of dual nationality, may be a key step toward true global plural-

policy towards the idea that the state is becoming a less dominating source of personal identity for its citizens.[175] No such shift in policy, however, is occurring. After all, the restrictive immigration policy in the United States[176] directly opposes the notion that the state is relinquishing some amount of control and allowing for its constituents multiple choices concerning their personal identities. In other words, while dual citizenship offers a potential notion that the United States welcomes immigrants with open arms regardless of loyalties to other nations, the facts surrounding the rest of the United States immigration policies do not reflect this generous attitude. Such seemingly generous policies that are currently enforced simply provide a simple façade of hope for immigrant families.

F. *Recommendations for Changes to United States Immigration Laws*

Other than looking to other models, the United States can institute its own policies by adjusting the statutes to allow for quicker relief. One such method would be to extend the critical date for the V Visa. Currently, the V Visa can be granted to a spouse or child of a permanent resident if the family member filed for permanent resident status before December 21, 2000.[177] Eliminating the December 21, 2000 requirement

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ism in which communal ties are based on our own choice of a singular, citizenship-based identity or a more multilayered, transnational identity.").

175. *Id.*

> If this increased recognition of dual citizenship and multiple loyalties points toward the decline of the state as a source of personal identity for citizens, then restrictive immigration reform in the United States directly opposes the notion of new opportunities for individual choice of personal identity. The de facto recognition of dual citizenship by the United States will change in the relationship of the individual to the state. This layered loyalty, or transnational identity, need not threaten the sovereignty or the structure of a society that calls itself a nation; however, it will directly conflict with a restrictive immigration law definition of the family as proposed by the Commission on Immigration Reform.

Id.

176. *See, e.g.*, Morning Edition: New State Laws on Wages, Immigration and Gun Regulation Take Effect, (NPR radio broadcast Jan. 1, 2007) available at http://www.npr.org/templates/story/story.php?storyId=6705902 (describing the new immigration laws likely to go into effect during 2007).

177. USCIS.gov, How Do I Become a V-Nonimmigrant as the Souse or Child of a U.S. Permanent Resident? (V-1, V-2 and V-3 Classifications), http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=51f2194d3e88d010VgnVCM10000048f3d6a1RCRD (last visited Nov. 16, 2007)

> The Legal Immigration Family Equity Act and its amendments (LIFE Act) established a new nonimmigrant category (V) within the immigration law that allows the spouse or child of a U.S. Lawful Permanent Resident to live and work in the United States in a nonimmigrant category. The spouse or child can remain in the United

altogether or altering the date to a more recent one, like December 21, 2005, would allow for the LPR to bring his spouse and children to the United States. Uniting a family not only serves the family's interest, but also the interests of the United States.

Additionally, because the V Visa is limited only to the spouses and children of lawful permanent residents, it is not likely that many terrorists would be able to exploit this nonimmigrant visa to travel to the United States. Moreover, granting this type of visa would allow for the spouse of the LPR to gain work authorization. Therefore, not only would less money be remitted back to the resident's home country, but also a greater amount of disposable income would be utilized by the family, thus re-injecting money back into the United States economy.

Another method to allow family members to be united with one another is to extend the date for 245(i) relief. Section 245(i) of the INA was enacted to allow for family unity to alleviate undocumented migration.[178] In other words, if a family member traveled to the United States as an undocumented alien, 245(i) sets out to provide this person some form of relief by granting the family member permanent resident status.[179] Unfortunately, section 245(i) was only a temporary solution. Just like the V Visa, in order to take advantage of 245(i), one would have had to file an I-130 before a specific date. In the case of 245(i), the eligibility date is April 30, 2001.[180] So, if a family member was an undocumented alien, they would be able to have relief whether they were abroad or even if they had already immigrated under an undocumented status by either taking advantage of the V Visa or filing for adjustment of status under 245(i). However, to take either of these routes, the family member must have filed before the respective eligibility dates. Thus, changing the date

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States while they wait until they are able to apply for lawful permanent residence status (Adjusting Status), or for an immigrant visa, instead of having to wait outside the United States as the law previously required. *Id.*

178. *See* Charles Wheeler, *Adjustment of Status for the Permanently Barred*, ILW.COM, http://www.ilw.com/articles/2006,0328-wheeler.shtm ("Aliens who entered without inspection or who violated the terms of their nonimmigrant status (assuming they are in one of the preference categories) may only adjust status if they qualify under INA § 245(i). This section requires that a Form I-130 or labor certification have been filed on their behalf on or before April 30, 2001.").

179. *See* Numbers USA, What Section 245(i) Actually Does, http://www.numbersusa.com/text?ID=1049 (last visited Dec. 14, 2007) (endeavoring to correct common misstatements and misperceptions of section 245(i)).

180. Law Office of Richard Madison, Changes in Immigration Law and Procedure, http://www.lawcom.com/immigration/chngs.shtml (last visited Dec. 14, 2007) ("The LIFE Act extended the qualifying filing date from January 14, 1998 to April 30, 2001. This allows the beneficiary of a Labor Certificate or BCIS petition filed on or before April 30, 2001 to apply for Adjustment of Status if they are eligible and have an approved BCIS petition. They can apply even if out-of-status.").

for either of these types of relief to a more recent date would benefit family members of permanent residents a great deal. Granted, adjusting the date for 245(i) relief could allow for some people who are not spouses and children of permanent residents to get into the country since the statute offers relief for a number of undocumented aliens.[181] If the government, however, was not opposed to allowing entry in 2000, then there is no plausible reason for not allowing this type of relief once again. While September 11, 2001 significantly increased concern for terrorism, the likelihood that adjusting the eligibility date for 245(i) relief will result in an increase in terrorism is unlikely. To explain, the hijackers that committed the 9/11 attacks were not immigrants looking to adjust their status; their motives were more temporary in nature, and there was no need for them to have a legally extended permit to reside. In fact, the Center for Immigration Studies reported that many terrorists operating in the United States from the early 1990's to 2004 had entered the country under temporary nonimmigrant visas, like student visas and tourist visas, while others arrived with falsified documents.[182] Moreover, the original eligibility date for 245(i) relief was in 1998, and this date was extended to December of 2000.[183] In light of 9/11, the need for a solution still exists. There is no reason 245(i) cannot be renewed for a more current date.

Another method that would allow for a more flexible position on family unity is to alter the unlawful presence bars. Currently, if an undocumented alien is in the country for more than a year unlawfully, then once they leave the country, they will not be permitted back into the United States for a ten year period.[184] It is reasonable to presume that if a family

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181. *See* Law Offices of Carl Schusterman, Section 245(i) Frequently Asked Questions, http://www.shusterman.com/245i-faq.html (last visited on Dec. 14, 2007) ("A person with a labor certification or a visa petition filed on their behalf on or before January 14, 1998, but on or before April 30, 2001, is also qualified for the benefits of 245(i) but only if they were physically present in the U.S. on the date of enactment of the new law (December 21, 2000)." (emphasis omitted)).

182. *See* JANICE L. KEPHART, IMMIGRATION AND TERRORISM: MOVING BEYOND THE 9/11 STAFF REPORT ON TERRORIST TRAVEL 5 (2005), *available at* http://www.cis.org/articles/2005/kephart.pdf ("Temporary visas were a common means of entering; [eighteen of the ninety-four] terrorists [examined in this report] had student visas and another four had applications approved to study in the United States. At least [seventeen of the ninety four] terrorists [examined in this report] used a visitor visa—either tourist (B2) or business (B1).").

183. *See* Law Office of Richard Madison, Changes In Immigration Law and Procedure, http://www.lawcom.com/immigration/chngs.shtml (last visited Nov. 5, 2007) ("[A]nyone who is the beneficiary of a Labor Certificate or petition filed after January 14, 1998[,] must also prove that were physically present in the [U.S.] on [December 21,] 2000, the date of enactment of the LIFE Law.").

184. JOSEPH A. VAIL, ESSENTIALS OF REMOVAL AND RELIEF: REPRESENTING INDIVIDUALS IN IMMIGRATION PROCEEDINGS 77 (Stephanie L. Browning, ed., American Immi-

member entered the United States under an undocumented status and went through the trouble and the risk of being excluded for great deals of time, then they will not be willing to leave their family within a year's time. Thus, simply because a wife would want to be with her husband or even have her child be with her father for a period longer the one year, they face up to ten years of separation. By altering or even removing these bars, it will be much easier for families to be together and do consular processing. Additionally, altering the bars will help those family members that unlawfully immigrate out of desperation to serve as strong advocates of healthy communities.

While Congress has several avenues to utilize in order to alter the problems of the immigration laws, Congress continues to leave families separated, and even though there are some legislative proposals in favor of loosening immigration policy, there are several proposals currently in Congress to make the immigration laws stricter.[185]

IV. CONCLUSION

In a world where terrorists use airplanes as missiles, the threat of nuclear war is constant, and more nations are voicing their opinions against the United States, it is understandable for the United States government to adopt a cautious policy concerning who the nation allows into its borders. Caution in excess, however, leads to oppression. After all, a newly married couple who simply wishes to pursue the American dream is not likely to pose any threat to the national security of the United States. Moreover, the United States government built a nation on several fundamental ideals, including the unity of the family. However, the government's treatment of immigrants testifies to an apathetic position on family unity. The United States must acquiesce to the needs of its constituents. There are several solutions that can alleviate the country's deviation from one of its major ideals. Several nations are able to uphold the ideal of family unity. While several of these other countries may not have the same security concerns as the United States, there is no real excuse for depriving people, whether they are citizens or permanent residents, the human right to family unity.

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gration Lawyers Association 2006) ("An individual who has been unlawfully present for a period of one year or more and seeks admission within 10 years of his or her removal from the United States, after accumulating one year or more unlawful presence, is inadmissible.").

185. *See, e.g.*, Esther Pan, The U.S. Immigration Debate, http://www.cfr.org/publication/10210/us_immigration_debate.html#3 (last visited Dec. 14, 2007); *see also* KNBC.com, Current Immigration Legislation, http://www.nbc4.tv/news/8300721/detail.html (last visited Dec. 14, 2007).

The history and politics of the United States often gives rise to policies concerning immigration and entry into the United States. The country became progressively narrow in its view of allowing outsiders within the nation's borders. Today, the policies that the government enacted do not match their supposed desired effect, and moreover, the policies are inadequate.[186]

While the United States is not depriving everyone of family unity and it attempted to correct the mistake in the past, the United States fails to provide any permanent solutions. Most spouses and children of permanent residents still have no option to enter the country unless they had an application filed on their behalf before December 21, 2000 or, perhaps April 30, 2001. These family members can only wait apart from their significant others (and parents) until the process is complete.

It is important to remember, however, that allowing these family members into the United States can be in favor of domestic interests, with respect to the economy and even the crime rate. Despite these benefits, lawmakers resist a more liberal immigration policy regardless of the lack of any prudent reason, particularly when it goes against the principles that this nation upholds.

Though various solutions are available, the solution remains in the hands of our representative government. Unfortunately, the immigrants of this country (namely permanent residents) are not represented in the government. They cannot vote, and they do not have a method of being heard.[187]

It is imperative that the United States repair the "broken immigration system" by implementing a comprehensive reform.[188] Though people often remain patient for the good of the nation, when a government insists that a person sacrifice his family, then that government has gone too far. The people will not remain silent, nor will their patience sustain them. To preserve the United States system of government as the Forefathers envisioned, it is unavoidable to directly address the problem. To

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186. *See* From the Office of Congresswoman Nancy Pelosi, Pelosi: 'Democrats Want Real Immigration Reform to Enhance Security, Promote Family Unity, Fairness, and Economic Opportunity', http://www.house.gov/pelosi/press/releases/Jan04/ImmigrationReform012804.html (last visited Dec. 14, 2007) (detailing how Democrats prefer a more liberal immigration policy that promotes the ideals of the nation, such as "security, family unity . . . and economic opportunity").

187. Mark Krikorian, Don't Give Noncitizens the Vote, http://www.cis.org/articles/2004/mskoped042604.html (last visited Dec. 14, 2007) (discouraging a policy to allow non–citizens to begin voting).

188. *See* Karen Theroux, *Immigration Legislation: Solutions for a Broken System,* 3 CARNEGIE REP. para. 1–4 (2005), *available at* http://www.carnegie.org/reporter/11/newimmigrants/solutions.html (proposing legislation with goals of providing fairness and equal opportunity for immigrants in the United States.)

continue keeping families separate without valid reason reflects only punitive measures for no crime and can only result in a populace that wishes to treat its government in kind.