

July 25, 2011

## **DISSECTING THE HALT ACT**

### *The Impact of Eliminating Discretion from Our Immigration System*

Immigration restrictionists on Capitol Hill are attempting to move legislation through Congress that would prevent the Obama Administration from exercising the executive branch's long-held power of [prosecutorial discretion](#).<sup>1</sup> The "[Hinder the Administration's Legalization Temptation Act](#)" (HALT Act) is a bill introduced by Representative Lamar Smith (R-TX) that would suspend certain discretionary forms of immigration protections and relief until January 21, 2013—the day after the first Obama administration comes to an end.<sup>2</sup> The bill would also revoke any of the specified protections and relief that are granted between the date of the bill's introduction (July 12, 2011) and the date of its enactment. According to a letter circulated by Rep. Smith to solicit support for the HALT Act, its purpose is to "remind the Obama Administration that the founding fathers put Congress in charge of setting the nation's immigration policy."<sup>3</sup> What Rep. Smith seems to forget is that the American system of justice has long granted the executive branch of government the discretion to decide how, and against whom, to enforce federal immigration laws.

The HALT Act takes aim at the following types of immigration protections and relief:

#### **Waiver of the 3 and 10 Year Bars to Admission**

Certain immigrants who are "unlawfully present" in the United States—either because they entered the United States without inspection or because they overstayed a visa—are barred from being re-admitted to the United States for three or ten years.<sup>4</sup> Specifically, if a person is unlawfully present for more than 180 days, but less than one year, and then departs the U.S. voluntarily (and prior to the commencement of removal proceedings), he or she is subject to a three year bar. If an immigrant is unlawfully present for more than one year, he or she is subject to a ten year bar.

Because the impact of a [three or ten year bar](#) can be devastating for families of U.S. citizens or lawful permanent residents, Congress created a waiver to these bars for specific situations. The waiver is available only where the applicant can show that his or her exclusion from the United States will cause extreme hardship to a U.S. citizen or permanent resident spouse or parent.

If the HALT Act were enacted, the Department of Homeland Security (DHS) would be unable to waive the 3 and 10 year bars regardless of circumstances or need.<sup>5</sup>

## **Humanitarian Parole**

Humanitarian parole is used sparingly to bring someone into the United States for a temporary period of time due to a compelling emergency. DHS may grant parole on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.”<sup>6</sup> Parolees must depart the U.S. before the expiration of their parole.<sup>7</sup>

Under the HALT Act, DHS would no longer be able to temporarily allow an immigrant to enter the U.S. “for urgent humanitarian reasons or significant public benefit.” The Act would only permit parole for purposes of being tried in a criminal court, for law enforcement purposes, or if the immigrant’s life is “imminently threatened.”<sup>8</sup>

## **Cancellation of Removal**

Cancellation of removal is a form of immigration relief available to individuals who have been placed in removal proceedings before the U.S. Executive Office for Immigration Review. Like the waiver for the 3 and 10 year bars, cancellation of removal reflects Congress’s desire to provide relief for U.S. families who otherwise would be separated and who would face extreme hardship. If the individual has been in the United States for at least ten years, is of good moral character, and removal would result in exceptional and extremely unusual hardship to the person’s U.S. citizen or lawful permanent resident spouse, parent, or child, an Immigration Judge may grant the person cancellation of removal.<sup>9</sup>

If the HALT Act is passed, Immigration Judges would no longer be able to grant cancellation of removal to people who qualify and who can satisfy the high standard of “exceptional and extremely unusual hardship.” These people would then be ordered removed from the United States. Given that cancellation of removal generally is granted only to persons who have deep ties to the community, and where the removal will result in economic or other grave hardship to family members, suspension of this relief will affect whole families and communities.<sup>10</sup>

## **Temporary Protected Status**

The Secretary of DHS may designate a foreign country for Temporary Protected Status (TPS) due to conditions in the country that temporarily prevent the country’s nationals from returning safely, or in certain circumstances, where the country is unable to handle the return of its nationals adequately.<sup>11</sup> A country may be designated because there is an ongoing military conflict; it has experienced an environmental disaster; or there exist other temporary and extraordinary conditions. U.S. Citizenship and Immigration Services (USCIS) may grant TPS to eligible nationals of designated countries who are already in the U.S. These individuals, while under TPS, are not removable from the U.S., cannot be detained by DHS, may obtain employment authorization, and may apply for travel authorization.<sup>12</sup>

Under the HALT Act, DHS would be unable to designate countries for Temporary Protected Status, no matter how dire the situation in the country in question.<sup>13</sup> For example, DHS would not be able to grant TPS for a disaster on par with the Haitian earthquake, which claimed at least 316,000 lives.<sup>14</sup> Thus far, DHS has granted TPS to at least 48,000 Haitians.<sup>15</sup>

## Deferred Action and Extended Voluntary Departure

Certain kinds of immigration protections are non-statutory, based on determinations by the executive branch that it would not be in the best interests of the United States to require removal of certain persons. Deferred action is a formal DHS decision not to pursue enforcement against a person for a specific period of time in the exercise of the agency's prosecutorial discretion. Although the grant of deferred action does not confer lawful immigration status or alter the person's existing immigration status, a noncitizen granted deferred action may apply for an Employment Authorization Document.<sup>16</sup> Extended Voluntary Departure (EVD) is a form of humanitarian relief that is no longer used. It allowed the Attorney General to temporarily stay removal of noncitizens from designated countries facing political strife, natural disasters, or other crises. Between 1960 and 1990 the Attorney General granted EVD to noncitizens from Poland, Cuba, the Dominican Republic, Czechoslovakia, Chile, Vietnam, Lebanon, Hungary, Romania, Uganda, Iran, Nicaragua, Afghanistan, Ethiopia, and China in response to various periods of political upheaval and natural disaster.

Under the HALT Act, DHS would no longer be able to grant deferred action to anyone, except to go to court for law enforcement purposes, or if the immigrant's life is imminently threatened, and in these circumstances, employment authorization could not be granted.<sup>17</sup>

## Employment Authorization

The Secretary of Homeland Security is currently authorized to provide work authorization to persons in the categories described above.<sup>18</sup> Under the HALT Act, the regulations providing for work authorization in these categories would also be suspended. The HALT Act also suspends the authority to grant work authorization to a person who has applied for registry (meaning they have lived in the U.S. since before January 1, 1972), and suspends all authority to provide employment authorization to immigrants who have been released from custody for various reasons.<sup>19</sup> Finally, the HALT Act attempts to eliminate DHS authority to grant employment authorization through regulation to persons not specifically authorized to work by the Immigration & Nationality Act.<sup>20</sup>

## Endnotes

---

<sup>1</sup> Shoba Sivaprasad Wadhia, [The Morton Memo and Prosecutorial Discretion: An Overview](#) (Washington, DC: Immigration Policy Center, American Immigration Council, July 2011)

<sup>2</sup> The "Hinder the Administration's Legalization Temptation Act" (HALT Act); H.R. 2497, 112<sup>th</sup> Cong., 2011.

<sup>3</sup> Lamar Smith, "[Cosponsor the Halt Act](#)," June 23, 2011.

<sup>4</sup> Immigration & Nationality Act (INA) §§ 212(a)(9)(B)(i)-(ii).

<sup>5</sup> HALT Act Section 2(a).

<sup>6</sup> INA § 212(d)(5).

<sup>7</sup> U.S. Citizenship & Immigration Services, "[Humanitarian Parole](#)."

<sup>8</sup> HALT Act Section 2(b).

<sup>9</sup> INA § 240A(b); U.S. Department of Justice, Executive Office for Immigration Review, [Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents](#).

<sup>10</sup> HALT Act Section 2(c).

<sup>11</sup> INA § 244(b).

---

<sup>12</sup> Persons under TPS may also qualify for a green card if otherwise eligible. U.S. Citizenship & Immigration Services, “[Temporary Protected Status](#).”

<sup>13</sup> HALT Act Section 2(d).

<sup>14</sup> Randal C. Archibold, “[Haiti: Quake’s Toll Rises to 316,000](#),” *New York Times*, January 13, 2011.

<sup>15</sup> Nadra Kareem Nittle, “[Victory! Homeland Security Extends Protections \(TPS\) for Haitians in U.S.](#),” Change.org, May 18, 2011.

<sup>16</sup> 8 C.F.R. § 274a.12(c)(14).

<sup>17</sup> HALT Act Section 2(f).

<sup>18</sup> U.S. Citizenship & Immigration Services, “[Employment Authorization](#).”

<sup>19</sup> HALT Act Section 2(g).

<sup>20</sup> HALT Act Section 2(e).