

Cluster V

***489** THE CHILD CITIZENSHIP ACT AND THE FAMILY REUNIFICATION ACT: VALUING
THE
CITIZEN CHILD AS WELL AS THE CITIZEN PARENT

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Leading civil rights advocates today lament the degree to which current immigration law fails to maintain family unity. The recent passage of the Child Citizenship Act of 2000 is a rare bipartisan step in the right direction because it grants automatic citizenship to foreign-born children of U.S. citizens upon receipt of their permanent resident status and finalization of their adoption. Congress now has before it the ***490** Family Reunification Act of 2001, which aims to restore certain procedural safeguards relaxed in 1996 to ensure that foreign-born parents are not summarily separated from their children, many of whom may be U.S. citizens. Because it usually takes both children and parents to create a family, my hope is that Congress will look just as favorably upon the seemingly more complex, but actually less extraordinary, measures suggested in the Family Reunification Act as it did with the Child Citizenship Act of 2000. My fear, however, is that, despite its promised gains, embedded within the Child Citizenship Act of 2000 are assumptions that will make passage of key parts of the Family Reunification Act difficult if not impossible. One of these assumptions is that criminal adult legal permanent residents (LPRs) are presumptively deportable unless they happen to be a citizen's adopted child.

I. INTRODUCTION: FAMILY REUNIFICATION, THE CCA AND THE FRA

On April 4, 2001, Cecilia Muñoz, Vice President of the National Council of La Raza, and Karen Narasaki, President and Executive Director of the National Asian Pacific American Legal Consortium (NAPALC), presented their respective constituencies' priority lists on immigration and naturalization before the U.S. Senate Subcommittee on Immigration and Claims. [FN1] While, not surprisingly, "INS reform" was specifically highlighted in both women's remarks, [FN2] the idea of family reunification was also an ***491** important underlying issue. Ms. Muñoz talked about the need to allow Latina/o guestworkers and

farmworkers the ability to adjust their statuses to permanent residence, so that they might be able to reunite with their families. [FN3] She also mentioned the disruption of family lives wrought by the infamous 1996 immigration reform laws, leading to the mandatory deportation of certain noncitizens. [FN4] Similarly, Ms. Narasaki lamented the serious visa processing backlogs that are disrupting strong Asian family relationships, which include the care of aging parents, child care by grandparents, and the pooling of resources by siblings to start family businesses or to purchase homes. [FN5]

Thus, it appears that in both the Latina/o- and Asian-American communities, keeping families intact continues to be a high priority, and an issue that should have national and natural appeal beyond these two groups. After all, family immigration is a cornerstone of modern immigration law for which Congress has allotted at least 226,000 visas per year. [FN6] As Professors Alex Aleinikoff, David Martin, and Hiroshi Motomura have noted, "The dominant feature of current arrangements for permanent immigration to the United States is family reunification." [FN7] Indeed, this emphasis on family unity has been a staple of immigration law since the first comprehensive family-based set of preferences were established in 1952. [FN8] Thus, it would seem that any federal bill that would advocate family reunification would appear to at least have a fighting chance for passage.

*492 Indeed, the Child Citizenship Act of 2000 [FN9] (CCA), which conferred automatic citizenship status upon certain foreign-born children [FN10] of United States citizen parents, was brought before both Congressional chambers and signed by then President Clinton in a little over a month's time; it became effective on February 27, 2001. The CCA enjoyed broad bipartisan support chiefly because it helped bridge the still existing psychological gap between adopted and biological children, at no apparent cost to the government. In addition, by conferring United States citizenship upon a foreign-born adopted child when she enters the United States in the legal custody of her parents, Congress ensured that this legal permanent resident (LPR) turned citizen could never be deported. [FN11] The law virtually guaranteed that the child would never be forced to live outside the United States. [FN12] Thus, the CCA achieves two forms of family unity: psychological, by equalizing the citizenship status of the biological and adopted child; and physical, by removing the threat of deportation from the former LPR's life. [FN13]

A second family unification bill followed the triumph of the CCA. On April 4, 2001, Representative Barney Frank of Massachusetts introduced the Family Reunification Act [FN14] (FRA), which was promptly referred to the House Committee on the Judiciary. [FN15] In one sense, the bill looks at the flipside of the family relationship examined in the CCA. [FN16] Instead of focusing on the noncitizen child, most of the FRA's provisions hope to ensure that the noncitizen parent is not separated from her child, who may, in many instances, be a United States citizen. [FN17]

Because it takes, in many cases, [FN18] both the parent and child to form a family relationship, one might suspect that if Congress welcomed the idea of strengthening the United States citizen parent-noncitizen child bond through the CCA, it might also embrace the inverse by approving the FRA's provisions to reunite the noncitizen parent and the United States *493 citizen child. After all, it should not matter whether the child or the parent is the United States citizen if one of the underlying objectives of both the CCA and the FRA is to keep families together.

The rest of this Essay will test that hypothesis. Part II will examine the CCA in more depth, concluding that, despite its promise of permanently uniting citizen parents and noncitizen children, it does not protect an important group of noncitizen children from deportation: those who, as adults, have committed crimes. Part III will then apply the

CCA analysis to the pending FRA bill and will argue that, despite its stated goal of reuniting families, the FRA bill faces a steep uphill battle because it aims to provide relief to individuals who were specifically left out of the CCA: criminal adult noncitizens. Part IV will attempt to explain the reasons for this apparent disconnect, relying on outsider scholarship's emphasis on anti-subordination to unmask the biases inherent in the passage of the CCA that might preclude broad support for the FRA bill. For instance, empirical evidence suggests that the racial makeup of the United States citizen parent-noncitizen child would likely be white and nonwhite, respectively, while the racial makeup of the noncitizen child-noncitizen parent would likely be monoracial, specifically nonwhite and nonwhite. Also at play is class bias: most native born United States residents are of higher socioeconomic standing than foreign born residents. These racial and class biases might explain why many members of Congress who share the same race and class as the United States citizen parents to be benefitted by the CCA, viewed the bill favorably; however, these same biases may preclude them from passing the FRA. This Part will also address possible responses to this Essay's arguments.

Finally, Part V will argue that, even if much of the FRA is rejected (which I do not think it should be), at the very least, the "humanitarian waiver" provision should be approved by Congress. Unlike the CCA, this provision does not provide a blanket citizenship remedy for those aggrieved, but instead allows for the weighing of humanitarian concerns, including family unity, against the noncitizen parent's deportability grounds. Much of current immigration law allows for such waivers and Congress would go a long way towards achieving parity by celebrating the parent-child bond, regardless of who is the citizen and who is the parent.

II. THE CHILD CITIZENSHIP ACT OF 2000

On February 27, 2001, seventy to seventy-five thousand foreign-born adopted children became automatic United States citizens thanks to the Child Citizenship Act of 2000. [FN19] In an era when Congressional politics has been notoriously partisan, the CCA enjoyed swift and easy passage. *494 Introduced in September 21, 1999 as the "Adopted Orphans Citizenship Act," [FN20] it was later revised to cover certain foreign-born biological children as well, hence its ultimately more sweeping title. [FN21] Following a single hearing held five months after its introduction, the bill was considered and unanimously passed by both chambers of Congress; President Clinton signed the Act into law on October 30, 2000. [FN22]

Two key provisions of the CCA are relevant to maintaining family unity--an "automatic citizenship" provision and a "deportation relief" provision. First, the law automatically confers United States citizenship upon biological and foreign-born children who are: (1) under eighteen years old, (2) admitted to the United States as an LPR, and (3) in the legal and physical custody of at least one U.S. citizen parent. [FN23] Second, it provides instant relief from deportation and criminal prosecution for those LPR children who innocently voted in an election. [FN24]

During the passage of the House Bill, the "automatic citizenship" provision was widely praised by various representatives for essentially four reasons. First, it cut back on the amount of paperwork United States citizen parents were required to deal with in order to complete the two-step adoption and citizenship process. [FN25] Prior to the law, parents had to first petition their foreign-born children to become LPRs and enter the United States as immigrants. After their children entered the United States, the parents had to file a second application for the naturalization of these LPR children, using virtually identical paperwork. [FN26] The CCA makes these LPR children automatic citizens once their adoptions are final, thus getting rid of that last step to citizenship. [FN27]

The second reason follows from the first: because one bureaucratic layer has been eliminated, United States citizen parents now do not have to wait an interminably long time for the INS to process these naturalization applications, some of which historically took up to two years to complete. [FN28]

**495* Third, the automatic citizenship provision bridges the gap between foreign-born adoptees and their native-born biological siblings. [FN29] By eliminating the need for their parents to file for naturalization, both foreign-born adoptees and their native-born biological siblings enjoy the same rights of citizenship, acting to further blur distinctions between adopted and biological children in the United States.

Fourth, because foreign-born LPR children automatically become citizens upon completion of their adoptions, they become immune from deportation. [FN30] Tragically, adopted LPR children whose parents never filed for naturalization have been subject to deportation, often for minor crimes, including petty drug offenses. [FN31] The automatic citizenship provision acts as a preventative bar to future deportation for foreign-born adoptees. To deport a person to another country to which she has no ties struck some of the representatives as a disproportionately harsh punishment for relatively minor crimes. [FN32]

Remarks directed to the "deportation relief" provision also stressed the importance of ensuring that deportation was an appropriate sanction for certain conduct. While fraudulently casting a vote in an election should be a deportable offense, exercising the franchise on the mistaken assumption that one is a United States citizen should not, nor should it be grounds for criminal prosecution or a bar to naturalization. [FN33] Related to this notion is the argument that children should not be punished for their parents' failure to file for naturalization, an idea that undergirds the "automatic citizenship" provision as well. [FN34]

**496* In sum, both the "automatic citizenship" and "deportation relief" provisions of the CCA work toward keeping LPR children united with their United States citizen parents, despite the citizen parents' failure to comply with the current law.

As we shall see below, the proposed Family Reunification Act of 2001 also works towards keeping families together, but primarily acts to provide relief to the noncitizen parent rather than the noncitizen child, who is the CCA's focus.

III. THE PROPOSED FAMILY REUNIFICATION ACT OF 2001

The proposed FRA was introduced in the House of Representatives on April 4, 2001 and was immediately referred to the House Committee on the Judiciary, which reported out an amended version in July 2002. [FN35] The bill has two main components. First, it seeks to restore discretion to the Attorney General by eliminating certain mandatory rules. [FN36] Specifically, the bill restores discretion with respect to 1) cancelling the removal of some LPRs with aggravated felony sentences of a few years, 2) release from detention, 3) humanitarian concerns, including "assuring family unity," and 4) eliminating the automatic bar for certain returning LPRs. [FN37] And second, the proposed FRA relaxes certain mandatory time restrictions used against noncitizens by modifying the "stop-time" rule in which service of a Notice to Appear curtails the time that counts toward one's residency requirements. [FN38]

There are two important ways in which the arguments used to support the CCA, which won wide bipartisan support, could be made for the FRA. First, like the CCA, the FRA aims to ensure that deportation is an appropriate consequence of certain undesirable conduct. Just as the CCA sought to prevent the deportation of innocent LPR voters, the

FRA reserves deportation for only the most serious offenders. As part of the 1996 amendments to the Immigration and Nationality Act (INA), the Anti-Terrorism and Effective Death Penalty Act (AEDPA) and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) expanded the definition of crimes for which one might be held deportable, including the list of potential "aggravated felonies." [FN39] More pointedly, the *497 definition of "aggravated felony," which began as one paragraph in 1988, now contains twenty-one paragraphs with many subsections. [FN40] And, not surprisingly, "aggravated felons" are not just the hardened criminals of the world, but include many convicted of minor offenses. Consider the following story from Professor Nancy Morawetz's recent piece:

Jose Velasquez, for example, was at a party when a friend approached him looking to buy drugs. Velasquez told the person that he did not sell drugs, but he identified someone else who might. He was arrested and later pled guilty to drug conspiracy, even though he had no financial connection to the person that he had suspected was selling drugs. The court imposed a fine and placed Velasquez on probation. Velasquez's conviction is treated as an aggravated felony, and Velasquez, who has lived in the United States for thirty-nine years as a legal resident, now faces mandatory deportation. Similarly, a person with two drug possession convictions may be treated as an aggravated felon even if the convictions were misdemeanors under state law. [FN41]

Just as it would be unfair to send adopted children who have grown up in the United States to foreign lands, it would be just as unfair to deport Mr. Velasquez, who has lived in the United States for an even longer period of time. To use Massachusetts Representative Gejdenson's words in support of the CCA, such deportation would be "needlessly cruel." [FN42]

Second, and more important, is the similarity in purpose between the CCA and proposed FRA, which is to unify families, a touchstone of our immigration policy. [FN43] Indeed, the CCA and the FRA are two sides of the same coin of family unity: the CCA focuses on keeping the noncitizen child with the citizen parent, while the FRA aims to keep the noncitizen parent with the, often citizen, child. [FN44] The FRA's proposed restoration of *498 administrative discretion and the modification of mandatory provisions that disproportionately disadvantage noncitizens operate in concert to keep the parent with the child, just as the CCA works to keep the child with the parent.

As the next section suggests, however, the "family unity" theme that undergirds both the CCA and the FRA collapses under the gaze of critical scrutiny, revealing race and class bias that might make the FRA difficult to pass.

IV. UNMASKING THE CCA AND THE FRA

Taking a closer look at both the CCA and the FRA, it is highly unlikely that the FRA will receive the same broad bipartisan support that the CCA did because the CCA leaves out precisely the kind of person the FRA aims to protect-- criminal adult noncitizens. This Essay demonstrates how certain persons left uncovered by the CCA will remind Congress of those likely to be protected by the FRA and how race and class privilege operate to support the analysis here.

A. The CCA Leaves Criminal Adult Noncitizens Deportable, Which Is Who the FRA Aims to Benefit

While the CCA protects foreign-born adopted children under eighteen years of age by granting them automatic citizenship, [FN45] it does nothing to protect those sons and daughters of United States citizens who have already been convicted of minor offenses, but have been subjected to deportation orders under the 1996 immigration reform bills.

Consider the following two stories of foreign-born adoptees who have been deported: [FN46]

In one well-known case, John Gaul was adopted by a Florida family at the age of four. Though born in Thailand, he speaks no Thai, has no Thai relatives, knows nothing of Thai culture and had never been back to Thailand--until the US government deported him last year as a criminal alien at the age of 25. The Gauls had obtained an American birth certificate for John shortly after adopting him, and didn't realize until he applied for a passport at age 17 that he had never been naturalized. They immediately filed the papers, but due to INS delays his application wasn't processed before he *499 turned 18. An immigration judge ruled that the agency had taken too long to process the application, but that the 1996 law allowed him no discretion to halt the deportation.

In another recent instance, Joao Herbert, a 22-year-old Ohioan adopted as a young boy from Brazil, was ordered deported because he had sold 7.5 ounces of marijuana while in his teens. It was his first criminal offense, for which he was sentenced only to probation and community treatment. But because he had never been naturalized, he was considered an aggravated felon subject to deportation.

Herbert has been in detention for a year-and-a-half because the Brazilians consider his adoption irrevocable and refuse to accept him. Were they to do so, it is unclear how he would manage--he knows no one in his native country and no longer understands his native tongue. [FN47]

Both of these stories come from the press release issued by Congressman Delahunt, a key sponsor of the CCA. [FN48] The release also quotes the Congressman as saying, "No one condones criminal acts, ... [b]ut the terrible price these young people and their families have paid is out of all proportion to their misdeeds. Whatever they did, they should be treated like any other American kid." [FN49] Interestingly, Delahunt's initial bill would have applied to children over eighteen, but he could not get it approved by his colleagues. [FN50]

*500 B. Race and Class Narratives Undergirding the CCA

Except for innocent non-citizen voters over eighteen, no other deportable foreign-born adoptees are provided relief by the CCA. This fact does not bode well for the FRA, whose provisions specifically contemplate providing relief to adult non-citizens convicted of crimes including expanding the number of exceptions available to deportable adult offspring not covered by the CCA. My sense is that societal race and class narratives influenced Congress's CCA deliberations, privileging United States citizen parents in the mixed-status family but not non-citizen adults, and therefore, not non-citizen parents/adults in the FRA debate. More specifically, the "citizen householder family" is more likely to be white and of a higher socioeconomic status than the "immigrant householder family," thereby prompting legislators to view the CCA more favorably than the FRA. In addition, race and class bias with respect to crime might explain the CCA exception precluding criminal adult offspring from receiving automatic citizenship and relief from deportation.

The key to the CCA was the notion that foreign-born adopted children should be granted United States citizenship as efficiently as possible as a way to establish parity between

adopted and biological children and to eliminate the possibility of deportation in the future. Most adults wanting to adopt in the United States are white, and most children waiting to be adopted, both domestically and internationally, are nonwhite. [FN51] Thus, many **501* adoptive American families are likely to be ones in which the parents are white and the adopted children are nonwhite. Viewed from this perspective, it is easy to see why the CCA was so positively received. Many of the white senators and representatives [FN52] easily identified with the white United States citizen parents who wanted to make sure their nonwhite adopted children were United States citizens.

While the ensuing law included a provision to ensure that biological foreign-born children were treated in the same manner as adoptees, the CCA was originally named the "Adopted Orphans Citizenship Act." Indeed, one of the major sponsors of the CCA, Congressman Delahunt, adopted a child from Vietnam; [FN53] another, Representative, Schakowsky, has two adopted relatives from Korea. [FN54] During the floor speeches, references were made to these personal connections, surely making the identification process even easier for the other colleagues in the room. [FN55]

**502* In contrast to the adoptive citizen family experience, most immigrant families are likely to have large, single-race homes, most of which are nonwhite. It is well-known that family immigration from Asia and Latin America comprises the bulk of immigration to the United States post-1965, [FN56] and that many Asian and Latino/a immigrants have more children than native-born families (whether white or nonwhite). [FN57] Furthermore, they usually do not have the financial wherewithal [FN58] or the cultural affinity for non-relative adoptions (although relative adoptions are more common) [FN59] that many native-born Americans do. [FN60]

These facts suggest that the congresspersons probably have different narrative pictures of the "citizen householder family" and the "immigrant householder family": a "citizen" family is one headed by a middle-class, white United States citizen regardless of the color of the children, while an "immigrant" family is one headed by a poor, brown or yellow noncitizen, regardless of the color of the children. If this racial and class divide along citizenship lines underscores the CCA narrative, it makes sense then that these privileged lawmakers would be able to more easily identify with the United States citizen parents rather than with the immigrants, and therefore be easily persuaded of the CCA's merits.

A further, more subtle, stereotype also might be at work here. I suspect that we tend to ascribe the parent's citizenship status to the child. After all, **503* the INS allows for precisely that: a parent may confer citizenship status to a child, but not the other way around. [FN61] Hence, the CCA is attractive because it reinforces that belief by making it easier for citizen parents to confer their status upon their noncitizen children. Thus, Congress may have viewed the collapsing together of LPR and citizenship status for foreign-adoptees as noncontroversial because it appealed to their normative sense that children should have the same citizen status as their parents, even though the bill clearly showed that there were families for whom this was not true.

In addition, a race, gender, and class narrative may also explain the "criminal adult" exception built into the CCA. To the extent that the experiences of John Gaul and Joao Herbert, both male and both people of color, one Asian (Thai) and one Latino (Brazilian), were both raised on the House floor as examples of children caught up in the 1996 Acts, that may have unintentionally convinced many that the exception was well-founded. Instead of engendering sympathy for these two men, Congressman Delahunt may have inadvertently reinforced the stereotype that young, male, noncitizen people of color are more likely to commit crime. [FN62] In some persons' minds, Herbert and Gaul, because

of their race, gender, class, and citizenship, might have crossed the line from child to criminal. [FN63]

C. How Race and Class Bias Might Doom the FRA

Should Congress view the FRA through the same race- and class-tinted lenses as described above, the bill will likely stand little chance of passing in its current form. From this perspective, the immigrant householder who *504 might benefit from the FRA will probably not be as sympathetic a figure as the citizen householder favored in the CCA. It will be harder for a middle-class, white congressman to empathize with the plight of a poor, nonwhite noncitizen than to understand the hardships faced by a middle-class, white U.S. citizen parent.

Moreover, the CCA itself did not provide full relief to the citizen householder. As mentioned earlier, the CCA does not cover foreign-born children, such as John Gaul and Joao Herbert, who are older than eighteen years of age. If Congress was unwilling to protect adult offspring of U.S. citizens from deportation, why should it view other adult noncitizens more favorably, especially those of a different race and class?

D. The Truth About Immigrant Householder Families: Close to Ninety Percent of Them Have Citizen Children

The racial and class divide that separates the "immigrant householder family" and the "citizen householder family" may be overcome by two important facts. First, nearly one out of ten families with children in the United States is a mixed-immigration status family: that is, at least one of the parents is a noncitizen and at least one of the children is a citizen. [FN64] This suggests that, contrary to what some may surmise, many parents and children do not share the same immigration status. Indeed, if the CCA was meant to address the citizenship divide between U.S. citizen parents and their noncitizen children, then it makes sense that there would be families that fall into the other mixed-status category of U.S. citizen child and noncitizen parent.

Second, and more importantly, eighty-nine percent of children in mixed-status families are citizens. [FN65] This fact suggests that family unification among "immigrant householder families"--those who would benefit from the FRA--is just as important as among "citizen householder families"--those who will benefit from the CCA. Put differently, if family unification is an important immigration policy, then both adults and children who are U.S. citizens should benefit. The CCA was successful because legislators could identify with the U.S. citizen parents who wanted to keep *505 their children from being deported. [FN66] The FRA's proponents stand a chance if they can persuade Congress that the beneficiaries of the bill will not be the noncitizen parents, but their citizen children.

E. Some Objections and Responses

Even if Congress were to shift its focus from the noncitizen parent to the citizen child in considering the FRA, one might argue that Congress's desire to be tough on crime precluded it from giving citizen parents an unqualified right in the CCA to be united with their foreign-born adoptees. After all, the citizen parents of John Gaul and Joao Herbert saw their sons deported when it appeared that Congress would not go forward on Representative Delahunt's original suggestion that the bill apply to all offspring, even those eighteen and older. [FN67] In addition, the whole idea of race and class being an underlying reason for the exception is overwrought, one might contend. The real divide is between child and adult--adults deserve less protection than children, regardless of their race or class, and both Gaul and Herbert were adults. [FN68]

There are at least four responses to this. The first is an appeal to family unity, which underlies both the CCA and the FRA. While it certainly would have been better for the Gaul and Herbert families not to see their sons deported, both offspring were young adults at the time of their deportation and apparently are coping well in their new environments. [FN69] Many citizen children adversely affected by a parent's deportation are likely to be younger: a comparison of age groups between native- and foreign-born Americans shows that a greater percentage of native-born persons are ages eighteen and younger, "because most of the children of foreign-born parents are natives." [FN70] Given their youth and the relative poverty of their families, the deportation of citizen children's noncitizen parents would have a greater emotional and socioeconomic impact on them than on adults like Gaul and Herbert. [FN71]

The second argument focuses on punishment proportionality. While the CCA did not compromise Congress's "tough on crime" stance by excluding adults from automatic citizenship, it simultaneously created a loophole by *506 removing a second deterrent and punishment, that of deportation. In passing the CCA, legislators expressed the belief that deportation should not be visited upon persons convicted of minor crimes who have already been punished for the misdeed. [FN72] However, under the Act, a U.S. citizen parent can rest assured that her legally adopted LPR child will not be deported even if she commits murder because that child will be a citizen.

In contrast, the FRA creates no such loophole, but rather restores the concept of punishment proportionality and fundamental fairness. For example, should the FRA fail, a longtime resident of the United States may be removable upon return from a brief visit abroad if the INS finds out about a minor crime committed many years ago. It does not matter whether the LPR is a productive member of society or that his children are U.S. citizens. The tragedy is that unlike my hypothetical new citizen child murderer, the foregoing deportation scenario is what befell Jesus Collado. [FN73]

The third reason speaks to both family unity and punishment proportionality. Unlike the CCA, the FRA does not provide automatic relief from deportation for the noncitizen. At best, it provides the Attorney General the opportunity to provide relief from deportation should the individual case so warrant. [FN74] The noncitizen in such instances is still presumptively deportable, unless exceptional circumstances suggest otherwise. This flexibility allows the decisionmaker to consider the very issues of family unity and punishment proportionality that made the CCA so appealing. For instance, from a proportionality standpoint, one might contend that Mr. Vasquez's tenuously drug-related conduct described earlier [FN75] may have been as innocent as the voting conduct subject to the blanket exception created by the CCA.

Finally, the fourth argument addresses the race and class issue. Although it is true that immigration politics, race and class are theoretically distinct issues, much has been written about their intersection. [FN76] I do not suggest *507 here that race and class were definitely issues, but they may have been, both in the decisions to pass the CCA and yet exempt offspring ages eighteen and older. My desire, therefore, is that when Congress more fully examines the FRA that it take into account any underlying biases our society may have about race and class by seeing how these may have played a role in the CCA's passage. If the child/adult divide was truly the issue, and not race and class, then I would hope that when Congress examines the FRA, it considers whether family unity and punishment proportionality are concepts that apply to all races and classes, not just those of privileged few. As a thought experiment, it would be useful to imagine a Congressional hearing or floor speech in which the stories about the aggravated felons who might benefit from the FRA include a white, upper-middle class, LPR banker from Ireland convicted of an aggravated DUI [FN77] or for being a drug co-conspirator simply for pointing out a drug dealer at a party (not unlike Mr. Velasquez's

situation [FN78]). Our banker friend has lived in the U.S. for over thirty years and has three young children, all of whom are U.S. citizens by birth. None of the children has ever visited Ireland. His Irish wife has stayed at home to care for their children all this time, and does not have a paying job herself. I suspect that at least some of the legislators might be able to better relate to that story than to the Herbert or Gaul narratives, if only because they might be able to identify with the Irish man, much like Representatives Delahunt and Schakowsky could share their personal adoption experiences with their colleagues. [FN79]

V. CONCLUSION: SALVAGING THE FRA BY KEEPING THE HUMANITARIAN WAIVER

Like the CCA, the FRA goes a long way toward promoting family unity, an important immigration policy objective. While I would prefer that the FRA be passed in its entirety, [FN80] I would urge that at the very least, Congress adopt the "humanitarian waiver" provision, which allows the Attorney General's designate, the immigration judge, to balance "family unity" against the noncitizen's offense. [FN81] Like the CCA, it is an efficient, *508 insignificant departure from current practice, given that such waivers are common throughout the Immigration and Nationality Act (INA), especially in the case where removal would adversely affect either a citizen spouse or child. [FN82] Second, it captures nicely the themes of "family unity" and "punishment proportionality" without making either one a trump, since it allows the immigration judge to exercise her discretion on a case-by-case basis. Third, and finally, unlike the CCA, it is not a permanent remedy, in that the waiver does not bestow automatic immunity from deportation through the grant of citizenship. Rather, it simply allows the noncitizen to continue to reside in the United States if the family unification reasons are particularly compelling.

I now return to the beginning. Both LaRaza and NAPALC believe strongly in family unity, and, indeed, our immigration policy embraces it. Latinas/os of different ethnicities and backgrounds must unite collectively and join together with other like-minded groups of all stripes and persuasions (e.g., child advocates, immigrant support groups, family advocates) to find ways to support bills such as the FRA which ultimately benefit all families. Aside from supporting national organizations such as *509 LaRaza, interested Latinas/os should participate in their own state [FN83] and local organizations to spread the word. Organizing around a theme of family unity and being able to counteract possible biases inherent in even the most benign of laws such as the CCA, should go a long way towards protecting the rights not just of U.S. citizen parents, but of often neglected citizen children as well.

As a U.S. citizen parent of an adopted child from the Philippines, I am thrilled that my son, Ryan, is now a U.S. citizen because of the Child Citizenship Act. But I am also a Filipino immigrant who came to the United States as an adult, and I can therefore relate to the beneficiaries of the proposed Family Reunification Act of 2001. My hope is that Congress will see its way clear to recognizing that family unity should apply to both citizen and immigrant "householder families" because in the end, U.S. citizens, children as well as adults, benefit from the preservation of this core immigration principle.

Footnotes:

FN1. Professor of Law, The Pennsylvania State University, Dickinson School of Law. E-mail: <VCR1@PSU.EDU>; webpage: <<http://www.dsl.psu.edu/facdetail.asp?fid=26>>. I would like to thank my colleagues to whom I presented a version of this Essay at the LatCrit VI Conference in April 2001 for their useful remarks. Thanks as well to Kevin Johnson for reviewing an early draft and for his thoughtful comments that have greatly improved this piece. I also appreciate the invaluable help of my research assistant, Gwenn McCollum. Most importantly, thanks to my wife, Corie, and my son, Ryan, as well as my family in the Philippines for their constant love and support of this and many other projects. All errors that remain are mine alone.

FN1. La Raza's priorities included:

1. INS Reform--fair and speedy adjudication;
2. Farmworkers and Guestworkers--labor protection and adjustment of status;
3. Revisiting 1996 law; and
4. Enforcement Issues and Practices--better training, stop racial profiling.

See generally Testimony of Cecilia Muñoz before the U.S. Senate Subcommittee on Immigration and Claims, at [http:// judiciary.senate.gov/oldsite/te040401cm.htm](http://judiciary.senate.gov/oldsite/te040401cm.htm) (Apr. 11, 2001).

NAPALC's priorities included:

1. Family-based immigration;
2. Employment-based visas;
3. Asylum-seekers and refugees;
4. Naturalization and other Services--Hmong Citizenship Act; and
5. INS Administration.

See generally Testimony of Karen Narasaki before the U.S. Senate Subcommittee on Immigration and Claims, at [http:// judiciary.senate.gov/oldsite/te040401kn.htm](http://judiciary.senate.gov/oldsite/te040401kn.htm) (Apr. 11, 2001).

FN2. "The Latino community has an enormous interest and stake in the reform of the INS." Muñoz, *supra* note 1. "The INS continues to be one of the most dysfunctional federal agencies Before moving forward, we urge the subcommittee to hold hearings, make a comprehensive study that includes a realistic assessment of the costs, and seeks [sic] input from a wide range of stakeholders." Narasaki, *supra* note 1. Post-September 11, 2001, one of the federal government's priorities has been the reorganization of the INS. See, e.g., Editorial, A New INS. But Is It Improved?, CHI. TRIB., Nov. 26, 2001, at 16, [available at 2001 WL 30795567](#); Editorial, Splitting Up the INS Won't Be Easy, But It's Necessary if Its Two Roles Are to be Fulfilled Effectively, NEWSDAY, Apr. 29, 2002, at A22, [available at 2002 WL 2740520](#).

FN3. Muñoz, *supra* note 1.

FN4. Id.

FN5. Narasaki, *supra* note 1.

FN6. [8 U.S.C. § 1151\(c\)\(1\)\(B\)\(ii\) \(2000\)](#) (stating that no less than 226,000 immigrant visas shall be allocated to the four family preference categories per fiscal year). In addition, there is no limit to the number of "immediate relative" visas that may be issued per year. [8 U.S.C. § 1151\(b\)\(2\)](#).

FN7. T. ALEXANDER ALEINIKOFF ET AL., IMMIGRATION AND CITIZENSHIP: PROCESS AND POLICY 319 (4th ed. 1998).

FN8. See STEPHEN H. LEGOMSKY, IMMIGRATION AND REFUGEE LAW AND POLICY 147 (3d ed. 2002); see also McCarran-Walter Act of June 27, 1952, Pub. L. No. 82- 414, 66 Stat. 163 (codified as amended at [8 U.S.C. §§ 1101-1189](#)). For more on family immigration, see generally SARAH B. IGNATIUS & ELISABETH S. STICKNEY, IMMIGRATION AND THE FAMILY (1995).

FN9. Child Citizenship Act of [2000, Pub. L. No. 106-395](#), 114 Stat. 1631 (2000).

FN10. While this includes both biological and adoptive children, I will focus on the foreign adoption issue, especially since it formed the impetus for the broader bill. See *infra* Part II.

FN11. See Child Citizenship Act of 2000.

FN12. See *id.*

FN13. See *id.*

FN14. 147 Cong. Rec. H1481 (daily ed. April 4, 2001).

FN15. *Id.*

FN16. See *id.*

FN17. See *id.*

FN18. I believe that there are many other definitions of a family beyond the parent-child relationship. See, e.g., [Moore v. City of E. Cleveland, 431 U.S. 494, 505-06 \(1977\)](#) (recognizing that the right to family unity applies to extended families). However, I want

to focus on this paradigm as a method for unveiling the assumptions about immigration and nationality law that underlie the CCA and probably the FRA.

FN19. 78 No. 10 Interpreter Releases 495 (Mar. 12, 2001).

FN20. Child Citizenship Act of 2000, H.R. 2883, 106th Cong. (2000).

FN21. On February 15, 2000, Rep. William Delahunt introduced H.R. 3667 to the 106th Congress, which created equivalent privileges for both biological and adopted foreign-born children. 146 Cong. Rec. H454 (daily ed. Feb. 15, 2000). H.R. 3667 and H.R. 2883 were harmonized, with the amended H.R. 2883 eventually moving forward through Congress. [H.R. Rep. No. 106-852 \(2000\)](#).

FN22. See 146 Cong. Rec. D1168 (daily ed. Nov. 2, 2000).

FN23. Child Citizenship Act of 2000, § 320(a)(1)(2)(3), 114 Stat. 1631 (2000).

FN24. *Id.* § 237(a)(6)(B).

FN25. See generally 146 Cong. Rec. H7774 (daily ed. Sept. 19, 2000) (statements of Rep. Smith, Rep. Jackson-Lee, and Rep. Delahunt)(available at <http://web.lexis-nexis.com/congcomp>).

FN26. See *id.* (statements of Rep. Smith and Rep. Delahunt).

FN27. 78 No. 10 Interpreter Releases 495 (Mar. 12, 2001).

FN28. See Child Citizenship Act of 2000: Hearing on H.R. 2883 Before the House Comm. on the Judiciary, Immigration and Claims Subcommittee, 106th Cong., 146 CONG. REC. S10491, (2000) (testimony of Maureen Evans, Joint Council on International Children's Services).

In 1999, Joint Council did a survey on a range of INS services. Over 1,000 U.S. families responded from 49 states and from overseas. Over 60 percent of the families waited more than 6 months from the time of filing for citizenship until they received the citizenship certificate. About 40 percent waited close to a year or more. And we've certainly heard many cases that take two years or more.

Id.; see also U.S. GEN. ACCOUNTING OFFICE IMMIGRATION BENEFITS: SEVERAL FACTORS IMPEDE TIMELINESS OF APPLICATION PROCESSING, REP. NO. GAO-01-488 1 (May 2001). INS has been criticized by "Congress, the media, and immigrant advocacy groups for its inability to provide immigrants with timely decisions on their applications for such benefits as naturalization and legal permanent residence." *Id.*

FN29. See 146 Cong. Rec. H7774 (daily ed. Sept. 19, 2000) (statement of Rep. Schakowsky).

FN30. Id. (statement of Rep. Delahunt).

FN31. See infra text accompanying note 48 (Joao Herbert was rendered deportable for selling a small amount of marijuana).

FN32. 146 Cong. Rec. H7774 (daily ed. Sept. 19, 2000) (statement of Rep. Delahunt).

FN33. Id. (statement of Rep. Jackson-Lee).

FN34. See Child Citizenship Act of 2000: Hearing on H.R. 2883 Before the House Comm. on the Judiciary, Immigration and Claims Subcommittee, 106th Cong., 146 CONG. REC. S10491, (2000) (testimony of Maureen Evans, Joint Council on International Children's Services).

FN35. 148 Cong. Rec. D809 (daily ed. July 23, 2002); see also Press Release, American Immigration Lawyers Association, Press Release, House Judiciary Committee Approves Due Process Reform Measure (July 26, 2002) (posted on AILA InfoNet, at www.aila.org, Doc. No. 02072606).

FN36. Family Reunification Act, H.R. 1452, 107th Cong. (2001).

FN37. Id.

FN38. Id.

FN39. See generally Criminal Aliens Under the Illegal Immigration Reform and Responsibility

FN40. Id. at 624.

FN41. Nancy Morawetz, [Understanding the Impact of the 1996 Deportation Laws and the Limited Scope of Proposed Reforms, 113 HARV. L. REV. 1936, 1940-41 \(2000\)](#) (footnotes omitted). For more of these stories, see also Terry Coonan, [Dolphins Caught in Congressional Fishnets--Immigration Law's New Aggravated Felons, 12 GEO. IMMIGR. L.J. 589 \(1998\)](#).

FN42. 146 Cong. Rec. H7774 (daily ed. Sept. 19, 2000) (statement of Rep. Gejdenson).

FN43. See *supra* text accompanying notes 6-8.

FN44. Apparently, nearly one out of every ten U.S. families with children is of "mixed status"; that is, at least one of the parents is a noncitizen and at least one of the children is a citizen of the United States. Michael Fix & Wendy Zimmermann, *All Under One Roof: Mixed Status Families in an Era of Reform*, Urban Institute Website (June 1999), at http://www.urban.org/immig/all_under.html (last visited on Sept. 13, 2002) (cited in Kevin R. Johnson, *The Case Against Race Profiling in Immigration Enforcement*, 78 WASH. U.L.Q. 675, 715 n.216 (2000)).

FN45. See *supra* Part II.

FN46. For similar stories, see Susan Levine, *On the Verge of Exile; For Children Adopted From Abroad, Lawbreaking Brings Deportation*, WASH. POST, Mar. 5, 2000, at A01, [available at 2000 WL 2289137](#).

FN47. Press Release, Holt International Children's Services, House of Representatives Passes Delahunt Child Citizenship Bill (Sept. 19, 2000), at <http://www.holtintl.org/update091900bpr.html> (last visited Sept. 13, 2002).

FN48. *Id.*; see also Susan Taylor Martin, *Despite Adversity, Deportee Now Has New Life*, ST. PETERSBURG TIMES, Aug. 28, 2000, at 4A, [available at 2000 WL 26320174](#); Assoc. Press, *Bill Eases Citizenship For Adopted Children*, CHARLESTON GAZETTE, Feb. 18, 2000, at 9A, [available at 2000 WL 2593374](#); Assoc. Press, *Deported Brazilian Left on Unfamiliar Ground*, HOUS. CHRON., Nov. 30, 2000, at 34, [available at 2000 WL 24530766](#); Terry Oblander, *Clemency Proposal Rejected by Taft; Man Faces Deportation on Drug Sale Charge*, PLAIN DEALER (Clev.), Aug. 26, 2000, at 1B, [available at 2000 WL 5162379](#) (stating that, "[Gov.] Taft characterized Herbert as an 'established drug dealer' who had shown no remorse for his actions, which included the sale of marijuana to a police informant and escape from a court-ordered drug program.").

FN49. Holt International Children's Services Press Release, *supra* note 47.

FN50. *Id.* In *In re Rodriguez-Tejedor*, 23 I. & N. Dec. 153 (B.I.A. July 24, 2001), the BIA held that the CCA's automatic citizenship provisions did not apply retroactively to LPRs over the age of eighteen.

FN51. Elizabeth Bartholet, *Where Do Black Children Belong? The Politics of Race Matching in Adoption*, 139 U. PA. L. REV. 1163 (1991).

The large majority of the people actively looking to adopt in this country are white and for the most part they want white children, at least initially.

The familiar refrain that there are no children available for adoption is a reflection of the racial policies of many adoption agencies and the racial preferences of many adoptive

parents. The reality is that there are very few white children by comparison to the large pool of would-be white adopters. But there are many non-white children available to this pool, both through independent adoption in this country and through international adoption. And there are many non-white children waiting in foster care who are unavailable solely because of adoption agency insistence that they not be placed transracially.

Id. at 1166 (footnotes omitted); see also Burton Z. Sokoloff, Antecedents of American Adoption, 3 ADOPTION 17, 23 (Spring 1993) (stating that, "As the shortage of same-race, non-disabled infants persisted and, in fact, increased, white infertile couples turned to nontraditional sources in the search for adoptable babies. Important among these were transracial and international adoptions"); Arnold R. Silverman, Outcomes of Transracial Adoption, 3 ADOPTION 104, 107 (Spring 1993) (stating "[b]y far, the most frequent form of transracial adoption in the United States is the adoption of Korean-born children by white American parents"); International Adoptions to US Rise Again in 2001, ADOPTIVE FAMILIES, Mar./Apr. 2002, at 10 (indicating that largest source countries in 2000 and 2001 were Cambodia, mainland China, Guatemala, India, Kazakhstan, Romania, Russia, South Korea, Ukraine, and Vietnam).

FN52. "The 106th Congress include[d] among its 535 voting members 37 African Americans, 18 Hispanics, and three Asians and Pacific Islanders in the U.S. House of Representatives; and two Asians and Pacific Islanders and one American Indian in the U.S. Senate." Kevin M. Pollard & William P. O'Hare, Population Reference Bureau, America's Racial and Ethnic Minorities, 54 POPULATION BULL., no. 3 (Sept. 1999), at [http://www.prb.org/Template.cfm?](http://www.prb.org/Template.cfm?Section=PRB&template=/ContentManagement/ContentDisplay.cfm&ContentID=5884)

Section=PRB&template=/ContentManagement/ContentDisplay.cfm&ContentID=5884 (visited Oct. 7, 2002). More specifically, the racial make-up of the 106th Congress was as follows:

1. Total members -- 535 (435 H.R., 100 Senate)
2. Black -- 37 (6.91%) (37 H.R., 0 Senate)
3. Hispanic -- 18 (3.36%) (18 H.R., 0 Senate)
4. Asian/Pacific Islander -- 5 (0.9%) (3 H.R., 2 Senate)
5. American Indian -- 1 (0.2%) (0 H.R., 1 Senate)

Id.

FN53. See 146 Cong. Rec. H7774 (daily ed. Sept. 19, 2000) (statement of Rep. Smith).

FN54. Id. (statement of Rep. Schakowsky).

FN55. Id. (statement of Rep. Smith, Chairman, Immigration and Claims Subcommittee of the House Judiciary Committee. "[Mr. Delahunt] speaks with great credibility since he and his wife adopted a daughter from Vietnam at the end of the Vietnam War."). In thanking Rep. Delahunt for his leadership, Ms. Jackson-Lee noted his "direct and very special interest" in this issue. Id. (statement of Rep. Jackson-Lee).

In a sense, this was colorblindness at its best: these congresspersons hoped to treat all children--biological or adopted, white or nonwhite--as automatic citizens upon their entry into the country as legal permanent residents. Yet, if these congresspersons aimed to keep nonwhite adopted children with their white parents, why did Congress not extend the CCA to adult offspring like Joao Herbert and John Gaul? Put another way, do adopted noncitizen children "lose" their status as citizens after they become adults? If not, then why the exception? The good news is that because of the CCA, there will never be another Joao Herbert or John Gaul; of course, tell that to Messrs. Herbert or Gaul and to their U.S. citizen parents.

FN56. U.S. CENSUS BUREAU, THE FOREIGN BORN POPULATION IN THE UNITED STATES 1 (Mar. 2000) (noting that 51% of the foreign born U.S. residents were from Latin America while 25.5% were from Asia).

FN57. *Id.* at 4 (noting that, "In 2000, 26.6% of family households in which a foreign-born person was the householder consisted of five or more people. In contrast, only 13.2% of native family household[s] were this large.").

FN58. *Id.* at 5-6 (noting that foreign born U.S. residents are more likely to be unemployed, earn less, and live in poverty than the native born). Adoptions, whether domestic or international, are rather expensive. See, e.g., BARBARA B. BASCOM & CAROLE A. MCKELVEY, THE COMPLETE GUIDE TO FOREIGN ADOPTION 263 (1997) (estimating minimum costs at \$20,000 for a foreign adoption).

FN59. Irma D. Herrera, Hispanic Attitudes Toward Adoption 2, at <http://www.pactadopt.org/press/articles/hispanic.html> (last visited Sept. 16, 2002) (describing the open attitude of Hispanics in South Texas towards intra-family adoptions and adoptions of out-of-wedlock children by family friends); see also Sokoloff, *supra* note 51, at 23 (stating that "black, Hispanic, and Asian women rarely placed babies for adoption at any time [in U.S. history]"). Then again, the British apparently are less open to adoption than Americans. See Tara Mack, The Export of American Babies, LADIES HOME J., Oct. 1, 2000, at 178, [available at 2000 WL 13275469](#) ("The English have long looked upon adoption as abnormal, if not perverted,' explains Matthew Fort, fifty-three, a London food critic who adopted his daughter, Lois, in the U.S. eleven years ago when she was three weeks old. 'The attitude in America has been absolutely the reverse.'").

FN60. See Kathy S. Stolley, Statistics on Adoption in the United States, 3 ADOPTION 26, 38 (Spring 1993) ("Although data clearly demonstrate that unrelated adoptions occur more frequently among whites and those of higher socioeconomic status as measured by education and income, they also suggest that adoptions among persons of color and those with lower educational and income levels tend to be adoptions of related children.").

FN61. Even though a U.S. citizen over twenty-one years of age may confer immigration benefits to a child, [8 U.S.C. § 1151\(b\)\(2\)\(A\)\(i\)](#), her parents must still fulfill other obligations in order to naturalize, including demonstrating good moral character and fulfilling residency requirements. See [8 U.S.C. § 1427\(a\) \(2000\)](#).

FN62. Much has been written about "racial profiling" in recent years, most visibly in the context of the police "stopping motorists for traffic violations based solely on their race, or so-called 'Driving While Mexican' or 'Driving While Black.'" Victor C. Romero, [Racial Profiling: "Driving While Mexican" and Affirmative Action](#), 6 MICH. J. RACE & L. 195 (Fall 2000); see also DAVID A. HARRIS, PROFILES IN INJUSTICE: WHY RACIAL PROFILING CANNOT WORK (News Press 2002); Johnson, *supra* note 44; David A. Harris, [The Stories, the Statistics, and the Law: Why "Driving While Black" Matters](#), 84 MINN. L. REV. 265 (1999); Jennifer A. Larrabee, "DWB (Driving While Black)" and Equal Protection: The Realities of an Unconstitutional Police Practice, 87 J.L. & POL'Y 291 (1997); Tracey Maclin, [Race and the Fourth Amendment](#), 51 VAND. L. REV. 333 (1998); Anthony C. Thompson, [Stopping the Usual Suspects: Race and the Fourth Amendment](#), 74 N.Y.U. L. REV. 956 (1999).

FN63. Ironically, despite the epidemic of school shootings in suburban and rural America, committed primarily by young white males, we do not concoct the same racial profile of the would-be school assassin. See Tim Wise, *School Shootings and White Denial! A White Person's Perspective*, at www.harlemlive.org/writing-art/essays/schoolshootings/schoolshooting.html (last visited Sept. 13, 2002).

FN64. See Fix & Zimmerman, *supra* note 44, at 1.

FN65. *Id.* at 4.

Because most children of U.S. immigrants are born in the United States, birthright citizenship largely explains the fact that three-quarters of children in immigrant families (i.e., families with a noncitizen parent) are citizens. Eighty-nine percent of the children in mixed-status families (i.e., families with a noncitizen parent and a citizen child) are citizens.

Id.

FN66. See *supra* note 55.

FN67. See *supra* text accompanying note 50.

FN68. See *supra* Part IV.A.

FN69. See *supra* note 48.

FN70. U.S. CENSUS BUREAU, *supra* note 56, at 3.

FN71. One might respond that the citizen children do have the option of following their parents. Of course, this is an option open to U.S. citizen parents whose children, like Herbert and Gaul, face deportation. However, the CCA ensures that such an option is one which U.S. citizen parents no longer have to contemplate by automatically

conferring citizenship upon the foreign-born LPR adoptees at the completion of the adoption process.

FN72. See *supra* text accompanying note 31.

FN73. See Mae M. Cheng & Margaret Ramirez, *After Outcry, INS Releases Man Held for Old Crime*, *NEWSDAY*, Oct. 25, 1997, at A19. Fortunately, Collado was released after much public outrage; this does not mean, however, that the INS was not acting within its Congressionally-delegated power. For more on Collado, see, e.g., *No Justice for Immigrants*, *THE PROGRESSIVE*, Nov. 1, 1997, at 8; Vincent J. Schodolski, *Immigrants Face Deportation for Old Crimes Under New Laws: Reform Snares Legal Residents*, *CHI. TRIB.*, Oct. 12, 1997, at 3. See also Mae M. Cheng, *New INS Guidelines Soften '96 Laws*, *NEWSDAY*, Nov. 26, 2000, at A48, [available at 2000 WL 10046189](#) (quoting Collado's attorney as criticizing new INS prosecutorial discretion as not helping returning LPRs like Collado).

FN74. See Family Reunification Act of 2001, 107 H.R. 1452, 107th Cong. (2001).

FN75. See text accompanying note 33.

FN76. See, e.g., *2 IMMIGRATION AND THE CONSTITUTION: DISCRIMINATION AND EQUALITY IN CONTEMPORARY IMMIGRATION LAW* (Gabriel J. Chin et al. eds., 2000) (discussing the intersection of race, gender, sexual orientation and immigration law and suggested readings therein); Kif Augustine-Adams, [Gendered States: A Comparative Construction of Citizenship and Nation](#), *41 VA. J. INT'L L.* 93 (2000); Johnson, *supra* note 44.

FN77. *In re Magallanes-Garcia*, B.I.A. 3341 (Mar. 19, 1998) (affirming order of deportation).

FN78. See *supra* text accompanying note 41.

FN79. See *supra* text accompanying notes 53-54.

FN80. I would have preferred the original unvarnished bill, but am pragmatic enough to understand that politics involve compromise. I am unconvinced, however, that a compromise on preserving family unity should depend on whether the beneficiary is a U.S. citizen parent or child.

FN81. The FRA's humanitarian waiver provision states, in pertinent part:

(f) Cancellation of Removal for Certain Permanent Residents for Urgent Humanitarian Reasons or Significant Public Benefit.

(1) In general. In the case of an alien otherwise eligible for cancellation of removal under subsection (a), except that the alien has been convicted of an aggravated felony that renders the alien unable to satisfy the requirement in subsection (a)(1)(C), the Attorney General may cancel removal of the alien under such conditions as the Attorney General may prescribe, but only--

(A) on a case-by-case basis for urgent humanitarian reasons, significant public benefit (including assuring family unity), or any other sufficiently compelling reason; and

(B) after making a written determination that the cancellation of removal poses no danger to the safety of persons or property.

Proposed Family Reunification Act of 2001, H.R. 1452, 107th Cong. (2001) (emphasis added). While, unfortunately, the amended bill reported out of committee in July 2002 does not contain this explicit provision (and, indeed, the attorney general requires that the immigration judges consider mitigating circumstances), I would advocate a reinstatement of more specific language highlighting the importance of preserving family unity. For the American Immigration Lawyers Association's analysis of the amended bill, see American Immigration Lawyers Ass'n, House Judiciary Committee to Consider Due Process Reform Bill, posted on AILA InfoNet, at www.aila.org, Doc. No. 02072201 (July 22, 2002).

FN82. See, e.g., 8 U.S.C. § 186a(c)(4)(A) (2000); 67 No. 11 Interpreter Releases 341 (including a waiver of inadmissibility for extreme hardship, which INS suggests is to conditional permanent resident or spouse or dependent child); [8 U.S.C. § 1182\(h\)\(1\)\(B\)](#) (including a waiver of inadmissibility for extreme hardship to U.S. citizen or LPR spouse or parent); [8 U.S.C. § 1182\(a\)\(9\)\(B\)\(v\)](#) (including a waiver of inadmissibility based on extreme hardship to U.S. citizen or LPR spouse or parent).

FN83. Latinas/os in my home state of Pennsylvania agreed to form the Pennsylvania Latino Voting Rights Committee which will link with similar groups in seven other states to educate Latinas/os on voting issues. Assoc. Press, Latinos Form Statewide Voting Organization, HARRISBURG SUNDAY PATRIOT-NEWS, Apr. 8, 2001, at A5. Such an organization might be the perfect venue to develop consensus around such issues.