Testimony of

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The Separation of Nuclear Families under U.S. Immigration Law

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Committee on the Judiciary
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Mr. Chairman, Madam Ranking Member, Members of the Subcommittee:

I am Demetrios Papademetriou and I am President of the Migration Policy Institute, an independent, non-partisan think tank in Washington that analyzes U.S. and international migration trends and policies. MPI, which I co-founded in 2001, grew out of the International Migration Policy Program at the Carnegie Endowment for International Peace.

Thank you for the opportunity to testify today on "The Separation of Nuclear Families under the U.S. Immigration Law." Because this hearing focuses narrowly on one particular facet of the legal immigration system, I will be brief.

How a country approaches immigration and how it treats its immigrants is a powerful statement to the world about its values and the principles by which it stands. Our country's commitment to American families is reflected in the emphasis U.S. immigration law places on the (re)unification of families. In fact, about two-thirds of all permanent immigration visas are allocated directly to family members through the family unification system; this number increases to about 80 percent if you include the family members of immigrants admitted for employment, as refugees, or for other purposes.

The way in which the United States allocates family visas is very complex. As you undoubtedly know, there are six categories for non-citizens applying for lawful permanent residence through the family-based channel. The Second Preference, which is the category reserved for the close family members of lawful permanent residents (LPRs), is the focus of today's hearing and thus the focus of my remarks.

The Second Preference category allocates about 115,000 visas to the spouses and unmarried children of LPRs, and is broken down into two sub-classes: 2A and 2B. About 77 percent of Second Preference visas go to the spouses and minor (under age 21) unmarried children of lawful permanent residents in the 2A sub-class, while the remainder goes to the unmarried adult children of this class of immigrants (designated 2B). The category's numerical limitations have created a waiting list ("backlog") of about 700,000 persons, divided the following way: the 2A category accounts for slightly more than 200,000 persons; the 2B category for nearly 500,000.

The 700,000 figure is a (close) approximation of the likely total number of those waiting on visa lists because of the way petitions are counted. The numbers we all use come from the State Department's National Visa Center, which reports the total number of applications the State Department has received and has placed on the appropriate visa waiting lists. There is a second way in which applicants can apply for an immigrant visa. Applications for adjustments of status under the *Immigration and Nationality Act's* Section 245 (which allows a lawfully present individual to adjust status from within the United States), are processed by U.S. Citizenship and Immigration Services (USCIS) and are not part of the total that is reported by the State Department. For the Second Preference, the number of adjustments of status processed by USCIS is a fraction of those processed by the State Department (fewer than 12,000 in fiscal 2011) but the pool of applications that are with USCIS is thought to be much larger than that.

These numbers translate into average waiting times of somewhat more than two years for the 2A class. That means that a spouse or unmarried minor child of a US permanent resident with a petition for a 2A visa will *likely* have to wait a little more than two years. (The reason that this is a "likely" waiting time is because as LPRs become U.S. citizens, they and their spouses and minor children become exempt from numerical limitations.) Waiting times for the 2B class are much longer, at roughly eight years; applicants from the two heaviest users of the family immigration system—Mexico and the Philippines—currently have to wait 20 and 11 years respectively to reunite with their lawful permanent resident spouse or parent who is already in the United States.

I have been a student of the U.S. immigration system for several decades; my Institute and I also study immigration systems around the world, particularly those that are more nimble in adjusting their immigration policies than we are. The United States is unique in the length of the waiting time it imposes to reunite permanent residents with their spouses and minor children.

As this brief review of the Second Preference backlog makes clear, our commitment to (re)unifying the nuclear families of green card holders is almost a false promise in that it keeps nuclear families apart for substantial periods of time. This is not only how *not* to keep commitments; it is also a powerful incentive to break immigration laws. The needed fix is rather simple: decide to adjust the relevant parts of the immigration formula by focusing on the fundamental principle behind that part of the system—*keeping the closest members of families (spouses and minor children) together.*

- The proposed adjustment can take one of two forms.

    1. Nuclear families of LPRs (2A) could be moved into the Immediate Relative (IR) category of the immigration system. Unlike U.S. citizens, who can reunify with spouses, minor children, and parents, lawful permanent residents could only reunify with spouses and unmarried children. In effect, we would have two IR categories, IR-A, and IR-B.

    2. An alternative would be to change some of the conditions of the "V" non-immigrant visa. That visa targets precisely the population that is the subject of this hearing: Spouses and unmarried children of lawful permanent residents. The V visa was part of the *Legal Immigration Family Equity Act* in 2000. To qualify for the visa requires that one meets six criteria. Three among them are relevant to this discussion: (a) the petitioner must have filed a petition before December 20, 2000, the law's enactment date; (b) the petition's priority date must be at least three years old; and (c) the priority date must not be current. Amending the visa to remove these three requirements would allow the spouses and unmarried children under the age of 21 of LPRs to enter and stay legally in the United States with the right to work while waiting for their priority date to become current or for the principal to become a citizen. Of course, other things will also have to be dealt with (such as protecting children who "age out" or marry in the interim), but these should be easy to do once the decision to anchor the change on the fundamental principle of family unity is made.

To summarize, either adjustment option you choose to follow will advance the fundamental principle that this brief testimony proposes that you embed at the core of the U.S. immigration system: (re)unifying the closest family members of both U.S. citizens and green card holders. It is a good principle to stand on as you consider changes to U.S. immigration laws.

I thank you, Mr. Chairman, for the opportunity to testify and would be pleased to answer any questions.