

April 23, 2014

The Honorable Jeh Johnson
Secretary
Department of Homeland Security

Dear Secretary Johnson:

We, the undersigned organizations, write to strongly urge you to take immediate action to protect immigrant families. We believe that all families belong together, regardless of immigration status. Family unity is a fundamental American value but our broken system often hurts families by separating loved ones for years through red tape, bureaucracy, and, increasingly, harsh and aggressive enforcement practices.

Our country has a long history of reuniting families who are looking for new and prosperous opportunities or who seek protection in the United States. But current flawed enforcement practices and policies have hurt millions of immigrant families, many of whom are of mixed immigration status. In 2011, Pew Research Center approximated that 4.5 million U.S. citizen children have at least one undocumented parent. A study by Human Impact Partners estimated that more than 152,000 U.S. citizen children were impacted by deportations in 2012 alone. Finally, as of November 2013, more than 4.2 million loved ones are waiting in the family visa backlogs. These family members face devastatingly long wait times for the chance to reunite. Many family members eligible for a family-based visa already live in the U.S. but are at risk of deportation and separation from their loved ones.

Children and other family members are deeply impacted by the current enforcement regime. Children experience significant trauma and hardship when a parent is detained and/or deported, which can have adverse impacts on children's overall development and long-term success. Family members left in the United States must also deal with the loss of income and financial stability that can occur when loved ones are torn from them. Some families may opt to return to their home countries rather than be separated, but this can present unique challenges for U.S. citizen children who are unfamiliar with their parents' home countries and cannot easily integrate into these foreign communities.

As the Department of Homeland Security (DHS) undertakes its review of enforcement policies and practices, we strongly urge you to take immediate action to stop the pain being inflicted on families through detentions and deportations. This not only affects the impacted families but harms our communities overall. There are a number of actions DHS should undertake that, combined, would promote family unity. This letter is not intended to provide an exhaustive list of recommendations for enforcement reform or administrative relief. Rather, the letter identifies just some of the specific actions DHS should undertake with regards to families to make its enforcement more humane and effective.

Reducing collateral consequences of enforcement on family unity

In August 2013, Immigration Customs and Enforcement (ICE) issued a directive to protect families when parents are caught between the immigration and child welfare systems. The directive was an important step, but DHS must continue to prioritize protecting parental interests in the course of its enforcement activities and should strive to implement its policies consistently in all agencies. In 2011, the Applied Research Center conservatively estimated that 5,100 children were in the foster care system because a parent had been detained or deported. The number of such children has surely only grown as DHS has continued removing immigrants at record levels.

DHS should strive to reduce the use of detention, utilize community support programs, and provide more discretionary relief for parents, legal guardians, and primary caregivers regardless of their children's citizenship. The agency must continue to make efforts to ensure that parents facing detention and removal have meaningful opportunities to make informed decisions with respect to their children's care and well-being. DHS should train personnel in steps they can take to protect and promote detained and removed parents' right to participate in administrative and judicial processes affecting custody of their children, and to make travel and custody arrangements that preserve family unity. Protecting parental interests will help mitigate some of the negative impacts on family members because of enforcement activities.

Expand unlawful presence waivers

A significant number of undocumented immigrants in the U.S. might be eligible to obtain legal status through a qualifying family member but the existing 3- and 10-year unlawful presence bars discourage many immigrants from trying to adjust their status. Beginning in 2013, USCIS began permitting certain undocumented family members (specifically the spouses, parents, and children of U.S. citizens) to apply for unlawful presence waivers from within the United States if they can establish that separation would result in extreme hardship to a U.S. citizen spouse, parent, or child over the age of 21. (By statute, unlawful presence waivers are not available where imposing the 3- and 10-years bars against a parent would result in extreme hardship to a U.S. citizen *minor* child, which has led to heartbreaking situations and must be addressed in legislation). This new rule encouraged more family members to come forward because there was less fear that, if the waivers were denied, they would be separated from their loved ones for long periods of time.

However, this rule change did not extend to family members of lawful permanent residents (LPRs), even though spouses and children of LPRs are eligible for the same unlawful presence waiver. USCIS should revise current regulations to permit the spouses and children of LPRs to apply for unlawful presence waivers from within the United States, as is permitted for the family members of US citizen parents, children, and spouses. The family members of LPRs experience the same challenges and trauma as a result of separation as do any other family members, and their families should be considered eligible for stateside processing for these waivers.

Interpret "extreme hardship" broadly

DHS must look at any family separation as an extreme hardship and should interpret the "extreme hardship" standard for the unlawful presence waivers broadly to promote family unity.

In some cases individuals are granted a green card but are unable to acquire it because of the difficult decision to leave their families and trigger a bar, without the certainty of being reunited with their families. While financial hardships and complicated health issues can be an extreme hardship for a family, so too can separation or displacement of an entire family to a country that has become foreign to them. In many cases, families are forced to return to poverty and have no support in their home country, no home and no means of income. This too is an extreme hardship and should be considered when adjudicating requests for waivers. An expansive interpretation of extreme hardship would keep more immigrant families intact and remove the fear of detection and deportation. Further, DHS would be able to focus its resources on individuals who pose the greatest threats to national security and public safety.

Expand parole in place to all immediate relatives

In 2013, U.S. Citizenship and Immigration Services (USCIS) issued a memorandum authorizing parole in place for certain military family members. DHS should extend this policy to all immediate relatives, which would have a significant impact on preserving family unity. Parole in place would also provide a mechanism for eligible family members to apply for green cards without risking leaving the United States and triggering the 3- and 10-year bars.

Family members of human trafficking survivors and victims of crime should be further protected

DHS should issue regulations to solely consider age at the time of filing for all derivative family members petitioned by T and U visa recipients, survivors of human trafficking and victims of crimes respectively. Once status is granted, regulations should also allow derivatives to maintain status, in spite of aging out. Currently victims of crimes and human trafficking can petition children under 21 and spouses. If a victim is under 21, she may also petition parents and siblings under 18. USCIS has publicly acknowledged that “[d]ue to unforeseen delays, some derivative children aged-out of derivative eligibility while their derivative petitions for U nonimmigrant status were pending.”¹ Victims and their families should not be punished for administrative delays. The humanitarian nature of these cases make family unity and support especially important. Family members should be afforded the opportunity to maintain their status and preserve family unity, which ultimately benefits law enforcement because victims of crimes will be more likely to continue to cooperate knowing his or her family member is in status.

Increase protections for families at the border, including for individuals being repatriated or removed

When a group of migrants is apprehended, existing protocols in many sectors do not require Customs and Border Protection agents to inquire as to familial relationships. DHS should develop and implement a standardized process to determine familial relationships among apprehended migrants and take steps to ensure that deportation practices do not needlessly separate family members, especially by removing or repatriating family members to different ports of entry from one another.

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¹<http://www.uscis.gov/sites/default/files/USCIS/Outreach/Feedback%20Opportunities/Interim%20Guidance%20for%20Comment/U-Visa-Age-Out-Interim-PM.pdf>.

We look forward to working with you to implement humane and commonsense enforcement reforms that will prioritize and preserve family unity. If your staff have questions or need further information, please contact Erin Oshiro, Senior Staff Attorney at Asian Americans Advancing Justice-AAJC at (202) 296-2300 or eoshiro@advancingjustice.org.

Sincerely,

American Citizens for Justice/Asian American Center for Justice
American Civil Liberties Union (ACLU)
American Immigration Lawyers Association
Arab American Institute
Asian & Pacific Islander American Health Forum
Asian & Pacific Islander American Vote - Michigan
Asian American Civic Association
Asian American Federation of Florida
Asian American Organizing Project
Asian American Resource Workshop
Asian Americans Advancing Justice-AAJC
Asian Law Alliance
Asian Pacific American Labor Alliance, AFL-CIO (APALA)
Asian Pacific American Network of Oregon (APANO)
Asian Pacific Community in Action
Asian Services In Action (ASIA Inc.)
Center for Pan Asian Community Services, Inc.
Council on American-Islamic Relations (CAIR)
First Focus
Florida Chinese Federation
Gamaliel
Gift2Care.org
Illinois Coalition for Immigrant and Refugee Rights
Immigrant Legal Advocacy Project
Lutheran Immigration and Refugee Service (LIRS)
Mile High JAAC
MinKwon Center for Community Action
NAAPIMHA
NAFSA: Association of International Educators
National Asian Pacific American Bar Association (NAPABA)
National Council of La Raza (NCLR)
National Federation of Filipino American Associations (NaFFAA)
National Immigrant Justice Center
National Immigration Law Center
National Queer Asian Pacific Islander Alliance
OCA-South Florida Chapter
OCA-NY Asian Pacific American Advocates
OCA-Tucson Chapter

Papa Ola Lokahi
PCUN, Oregon's Farmworker Union
Progressive Hmong American Democrats & Allies
South Asian Americans Leading Together (SAALT)
Southeast Asia Resource Action Center (SEARAC)
The Episcopal Church
The Leadership Conference on Civil and Human Rights
The Young Women's Christian Association of Queens
U.S. Committee for Refugees and Immigrants (USCRI)
United Food & Commercial Workers International Union (UFCW)
United Auto Workers (UAW)
United Chinese Association of Florida
Wisconsin United Coalition of Mutual Assistance Association, Inc.
Women's Refugee Commission

cc: Cecilia Muñoz, White House Domestic Policy Council