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April 14, 2014

President Barack Obama
White House

Secretary Jeh Johnson
Department of Homeland Security

Attorney General Eric H. Holder
Department of Justice

Dear President Obama, DHS Secretary Johnson, and Attorney General Holder:

We are writing to set forth *immediate* steps the Administration could and should take to dramatically reduce the adverse consequences of a large undocumented population on U.S. workers and businesses, the human rights abuses suffered by these migrants, and the harsh and irrational consequences caused by the Administration's policies of massive deportations, entanglement with local police through the so-called "Secure Communities" program, and unparalleled criminalization of persons who enter without inspection (so-called "Operation Streamline").

Below we make a series of straightforward, rational, and cost-effective administrative proposals that would better protect U.S. workers, better protect the fundamental human rights of immigrants, and set the stage for eventual Congressional action to improve the current dysfunctional immigration laws. We made many of the same suggestions when this Administration came into office about six years, but perhaps now they will be seriously considered.

The Center for Human Rights and Constitutional Law has represented several million immigrants in nationwide and statewide class action cases – more than any other law group in the country – and has previously helped draft bi-partisan legislation (including the 1986 IRCA and the 2000 LIFE Act). We are very familiar with the ways in which the Immigration and Nationality Act (INA), particularly as amended in 1996, and the policies of your Administration have had adverse and possibly unintended consequences both for U.S. workers, businesses and immigrant families. We receive input from thousands of immigrants, community and faith-based organizations, unions and business CEOs on a regular basis. Our recommendations are based upon this input.

In a nutshell, your administrative policies over the past six years have (1) caused the deportation of hundreds of thousands of immediate relatives of US citizens and lawful permanent residents, (2) resulted in tens of thousands of criminal convictions of persons for no more than entry without inspection (making it difficult to impossible for these migrants to ever legalize their status in the future), (3) resulted in hundreds of thousands of migrants being fired from stable jobs (through "worksite enforcement" that largely misses sweatshops) forcing them to turn to sweatshops and

unscrupulous employers to find work (less than 1% leave the US), (4) discouraged thousands of immigrants from reporting serious crimes for fear of exposure to deportation, (5) incarcerated more immigrants than ever before at enormous cost to the public and for no sound public safety reasons, and (6) caused unnecessary and tragic deaths along the border. By now it should be clear that these policies have done nothing to advance the goal of comprehensive immigration reform. Many of the proposals below are in line with the same principles as your Administration's extension of Deferred Action Status to certain youthful arrivals.

The following proposed administrative changes are within the power of the Administration to adopt, would result in cost-savings to DHS, and would legalize either temporarily or permanently several million immigrants, many of whom are already "in the system" with applications pending before DHS.

1. Deferred Action Status (DAS): DAS should immediately be extended to the largest population possible. The Administration should consider extending DAS to all immigrants who would be eligible to apply for legalization under the Senate bill. If that approach is rejected, below we identify sub-groups that are obvious candidates for DAS. Granting immigrants DAS and temporary employment authorization would immediately benefit US workers (by removing the unfair incentive of unscrupulous employers to hire undocumented migrants over equally or better qualified US citizens) and the business community which often hires undocumented workers despite full compliance with federal employer sanctions laws only to suffer sudden and costly losses of workers as a result of ICE work site enforcement operations. *Critically important is to grant these immigrants "advance parole" (routinely granted to immigrants with DAS) so they may briefly travel to visit family in their home countries. Hundreds of thousands of immigrants with already approved visa petitions are currently blocked from obtaining lawful permanent resident status by the 1996 ten-year bar (barring lawful resident status for ten years because of one year's undocumented status in the U.S.) but could adjust their status and become lawful permanent residents if granted advance parole allowing them to briefly depart the U.S. and return lawfully*.

Among the obvious sub-groups of immigrants with special equities and long-term residence here who should be granted DAS are the following:

(a) *Immigrants residing in the U.S. with already approved family and work-related visa petitions* who are unable to receive permanent resident status only because of visa backlogs or because of the "zero tolerance" 1996 bars to legalization (e.g. people who many years ago made a single false claim to citizenship or those who have simply lived in the US without authorization for more than one year). Neither the backlogs nor the 1996 bars have caused these immigrants with approved visa petitions to self-deport. Instead they simply remain here in undocumented status unable to take advantage of their approved visa petitions. These immigrants are already "in the USCIS system." DHS knows who they are, where they live, their social security numbers, criminal histories, etc. Since they are already "in the system," are not going to leave the country, are highly unlikely to be apprehended, and have largely played by the rules, granting this population Deferred Action Status would be rational policy. *Granting those blocked from legalizing their status by the 1996 10-year bar "advance parole" (routinely granted to people with DAS) so they can briefly visit their home countries and return lawfully would allow*

hundreds of thousands of these immigrants to adjust their status and promptly become lawful resident aliens with no change in federal law.

(b) *Parents of US citizens*. The parents of US citizen children are unable to petition for lawful permanent resident status until the child turns 21 years of age. Even then, 99.99% of these immigrants face a 10-year bar for being here for one year or longer in undocumented status (even if crime free). Under the 1996 amendments, there is NO waiver of the bar for parents who have raised US citizen children here for 21 years, even though there is a waiver available for someone who has had a two-week-old marriage arranged over the Internet. Like the other groups described above, these immigrant have largely been here for many years, are unlikely to self-deport, and may but are unlikely to be apprehended and removed unless they commit crimes. Without employment authorization, the vast majority of these immigrants are working for employers who prefer undocumented workers over equally qualified US workers.

(c) *Immigrants with administratively closed cases*. Under the ICE Morton memo, several thousand immigrants with special equities have had their removal cases administratively closed but have not been granted temporary employment authorization. They are "in the system," ICE knows who they are, where they live, their social security numbers, etc. Releasing them indefinitely without employment authorization forces the vast majority of these immigrants to work in violation of federal law and encourages their employers to exploit them and prefer them over US workers. They should be granted Deferred Action Status now.

(d) *Immigrants with pending employment-related claims*. Sound policy suggests that workers with employment-related claims, which often impact on US workers and working conditions, should not fear removal if they come forward to bring illegal employment practices to the attention of the authorities. These immigrants whether involved in pending labor disputes, union drives, or with pending labor complaints should be granted Deferred Action Status to encourage workplace compliance with federal and state labor, health and safety, and anti-discrimination laws.

(e) *Unaccompanied abused and abandoned minors*. Under present policy all unaccompanied minors apprehended by DHS are placed in removal proceedings. Absent any mandate that these minors be provided counsel at government expense, as in other civil matters involving children, the majority of these children face adversarial removal hearings without any type of advocate representing their interests. The number of unaccompanied children arriving to the U.S., having fled violence and trauma in their home countries, has increased to historic levels. Until such time that the "best interests of the child" principle can be upheld with respect to this group of children, DHS should cease to subject them to the harsh rigors of removal proceedings. To do so would benefit the already overburdened and backlogged immigration courts and allow these children to seek administrative remedies outside the time constraining context of removal proceedings.

(f) *Expand the DACA program* to all immigrants who entered before the age of 16, regardless of their age today and update DACA continuous residence cut off to June 15, 2013. The rational for these adjustments are the same as those that prompted approval of the DACA program in the first place. These changes would improve arbitrary cut-off dates selected in the initial DACA program. In addition, without a change in federal law the Administration could and should allow

all DACA recipients to enroll in the armed services. Numerous House GOP members have voiced support for allowing DACAs to enlist, including Reps. Pete King, Paul Ryan, and Buck McKeon.

(g) *Parents of immigrants granted DACA status*. By definition this group has lived continuously in the U.S. for many years (probably most over 20 years). They have raised children here. Their children have now been granted temporary status. This group is highly unlikely to voluntarily depart the U.S. and be separated from their children and probably over 90% will never be apprehended or deported (other than if they commit crimes). Most are likely eligible to seek stays of removal proceedings under ICE's so-called Morton memo. However, that memo does not grant recipients temporary employment authorization. As stated above, without employment authorization, the vast majority of these immigrants work for employers who prefer undocumented workers over equally qualified US workers.

While extending DAS to the largest number of immigrants possible would do the most to protect U.S. workers, reduce job exploitation, and increase tax payments, we believe the sub-groups identified above are among the most obvious groups to consider for an extension of the Executive use of Deferred Action Status.

2. Amend regulations to permit USCIS to adjudicate adjustment of status applications for immigrants with removal orders: There are tens of thousands of immigrants living in the U.S. with approved visa petitions who qualify for adjustment of status to become permanent residents but have final orders of removal issued by Immigration Judges and are blocked by current law to have their cases reopened before the Immigration Judges (because of deadlines to reopen cases) who under current regulations are the sole authority to adjudicate adjustment applications. *Simply amend the regulations so that USCIS may adjudicate applications for adjustment of status by these immigrants (who largely already have approved work-related or family-based visa petitions but remain here indefinitely in undocumented status)*. Far less desirable and efficient, but alternatively consider amending the regulations to encourage ICE attorneys to move to reopen completed removal cases so that qualifying immigrants can have Immigration Judges adjust their status.

3. Expand "grandfathering" regulations under INA § 245i: Under INA § 245i as interpreted in current regulations immigrants who had a petition filed for them on or before April 30, 2001, may adjust their status in the U.S. based upon the pre-April 2001 petitions or based upon new applications filed after April 2001. This protection is critically important since the absurd 1996 3- and 10-year bars (and related bars) went into effect requiring that immigrants with approved visa petitions that are not eligible to adjust their status within the U.S. and must return to their home countries to obtain lawful resident status must remain in their home countries for ten years. These bars have not caused immigrants ineligible to obtain permanent resident status to leave the U.S. but instead has mushroomed the undocumented population living in the U.S. While a legislative fix is likely necessary to reinstate 245i, your Administration could expand the regulations (8 CFR 245.10(a) that define who is grand-fathered under 245i (which allows certain immigrants to obtain permanent resident status in the U.S. and thereby get around the 3- and 10-year bars) to include, for example, principal immigrants whose spouses are grandfathered under current regulations, and immigrants substituted on an Application for Alien Employment

Certification filed on or before April 30, 2001 (since the I-140 Approval Notice is issued in the name of the substituted immigrant and bears the priority date on or before April 30, 2001).

4. Limit detention by encouraging the use of appearance bonds and OR: Detentions under this Administration have skyrocketed with thousands of immigrants detained for removal proceedings even though they are likely to appear if released on bond or under appropriate reporting conditions. This practice is extremely costly (though supported by the private corporations that profit from the detention policy) and separates family members for months or years while an immigrants' deportability is being evaluated by an over-worked and backlogged immigration Judge system. Among other things, ICE should adopt nationwide the decision in *Rodriguez v. Robbins* which requires that immigrants detained under INA § 236c be granted a hearing after six months of detention. ICE detains over 425,000 immigrants each year at a price tag of $2 billion, even though the vast majority of immigrants do not need to be locked up to ensure their appearance for court or to protect the public from harm.

5. Limiting Operation Streamline: Despite declining illegal crossings on the US Mexico border (which likely at best account for only 45% of the undocumented population in the US), criminal prosecutions and summary deportations have skyrocketed over the past six years. Under Operation Streamline tens of thousands of immigrants have been prosecuted in the federal courts for entry without inspection, many after brief visits home because a parent or other close relative was seriously ill or dying. These prosecutions effectively end or make extremely difficult immigrants' ability to legalize their status in the future, result in felony charges upon a second attempted entry, clog the federal courts with tens of thousands of mostly misdemeanor cases, leave fewer enforcement resources available to address major drug and smuggling cases, and are associated with major costs (detention, marshals, judges, prosecutors and court-appointed defense counsel). Operation Streamline is also used to summarily "deport" through "expedited removal" orders thousands of immigrants apprehended near the border. These orders block future legal immigration. As happened for decades before Operation Streamline took effect, most first time entrants should be granted "voluntary departure" with warnings that a second apprehension may result in formal deportation which would block their future legalization. Criminal prosecutions should stop other than for smugglers, immigrants with past serious criminal convictions who seek to re-enter illegally, and traffickers. Also of note, while Mexicans and Central Americans make up no more than 45% of the undocumented population, they make up 99% of those facing criminal charges.

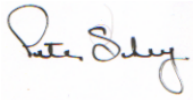
6. Limiting the Secures Communities and INA § 287(g) programs: Terminate the Secure Communities ("S-Comm") program. S-Comm (local police reporting arrests of undocumented immigrants to ICE) results in fear of the police, discourages undocumented immigrants, immigrants with visa petitions pending and lawful immigrants with undocumented family members from reporting violent crimes or cooperating with criminal investigations, and frequently channels people into the deportation system despite the insignificance of their alleged crimes. For the same reasons, reliance on 287(g) programs should be reduced or eliminated. The practice of placing "immigration holds" on immigrants in local custody should also be amended so no "hold" lasts more than 24-48 hours, the time ICE would have to hold a detainee before bringing him or her before an immigration judge.

7. Reduce border deaths: Inform immigrants apprehended along the border who cooperate in prosecutions of violent smugglers and traffickers about the availability of U and T visas. Inform abused and abandoned unaccompanied minors apprehended along the border of the availability of SIJ visas. Place rescue beacons throughout the border region. Restrict the use of lethal force used by the Border Patrol to circumstances in which objective facts indicate Border Patrol lives or the lives of others are in imminent danger. Prohibit the use of high-speed Border Patrol chases when a number of immigrants are passengers in vehicles used by smugglers. Numerous unnecessary deaths have been caused by these high-speed Border Patrol chases after the past several years. Technology can be used to track the smuggler's vehicle without engaging in dangerous high-speed chases.

8. Allocate greater resources to timely compliance with FOIA requests. In order to properly defend themselves in removal proceedings or successfully present visa petitions, immigrants often need copies of their immigration records and seek these under the Freedom of Information Act (FOIA). ICE and CIS are backlogged in responding to FOIA requests and allocating greater resources to reasonably timely responding to FOIA requests would significantly reduce the filing of petitions with inaccurate information, avoid the filing of petitions for which immigrants do not even qualify (for some reason disclosed in the FOIA response), and facilitate the progress of removal proceedings (often delayed while immigrants attempt to obtain copies of their immigration records).

We urge you to consider adopting these proposals immediately. *Adoption of these recommendations would allow as many as two million immigrants to become eligible to obtain lawful permanent resident status under current laws while providing temporary protection to thousands of others with special equities, many already in the DHS system*. Thank you for your consideration.

Sincerely,



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