



May 19, 2014

The President  
The White House  
1600 Pennsylvania Ave. NW  
Washington, DC 20500

Dear Mr. President:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition of more than 200 national civil and human rights organizations, we respectfully urge you to do everything in your authority to provide relief to the millions of people in our country who live every day under the threat of deportation under our broken immigration system, and to strengthen due process and civil and human rights protections in immigration enforcement.

Like you, we were encouraged last year when the Senate passed S. 744, the Border Security, Economic Opportunity and Immigration Modernization Act of 2013. While the bill contained many flaws, most notably a dangerous and unnecessary “surge” in border enforcement resources, it was a commendable bipartisan attempt to solve longstanding and difficult shortcomings in our immigration system. And like you, we are frustrated that the House of Representatives has failed to follow up on the Senate’s work.

The House claims that it will not act because your administration has not adequately enforced the law. Nothing could be further from the truth. Much has been said about the more than two million removals since you have taken office, but we find the following examples of enforcement statistics even more troubling:

- Between July 1, 2010 and September 31, 2012, ICE removed 204,810 parents of U.S. citizen children, nearly 23 percent of people removed during that time.<sup>1</sup>
- The detention of nearly 430,000 individuals, often in for-profit corporate facilities, has cost taxpayers about \$2 billion a year.<sup>2</sup>
- Federal criminal prosecutions of immigration-related offenses are at historical highs, rising by 468 percent from FY 2003 to FY 2013, putting huge strains on our judicial system.<sup>3</sup>

At the same time that its leadership falsely blamed you for its failure to take up immigration reform, the House also rejected a proposal by Sen. Charles Schumer (D-NY) to pass reform now, but to delay the effective date until you left office. Their rejection of this perfectly reasonable offer spoke volumes. Yet while the House continues stalling on comprehensive reform and pointing fingers, the bottom line remains that the status quo on immigration enforcement is simply unacceptable.

We recognize that you are bound by the Constitution to “take care that the laws be faithfully executed.” At the same time, it is beyond serious dispute that the implementation of any law inherently requires the making of executive judgment calls at every level, from the writing of regulations that fill in the countless details of laws that Congress does not address, to everyday decisions – in the face of limited resources – to pursue or not pursue individual cases. We believe that the following proposals – which have previously been raised by many

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of our coalition member organizations – are consistent with your constitutional mandate and existing law:

- **Expand Policies to Grant Administrative Relief:** We strongly applauded your 2012 Deferred Action for Childhood Arrivals (DACA) policy, which removed the threat of deportation for many immigrants who had no say in their legal status. DACA could be fine-tuned, however, to eliminate unnecessary cut-offs that deprive some deserving immigrants of relief. We also urge you to follow the successful model of DACA by creating similar administrative relief programs for other categories of immigrants who are otherwise law-abiding and have strong ties to family, community, or work here in the United States.
- **Refine Civil Enforcement Priorities:** We urge you to replace ICE’s overbroad 2011 civil enforcement priorities memo with DHS-wide guidance that limits and better defines the priority categories.
- **Improve Existing DHS Policies Governing Prosecutorial Discretion:** Your administration can take a number of steps to build upon the prosecutorial discretion memoranda issued by former U.S. Immigration and Customs Enforcement Director John Morton and his predecessors by: 1) ensuring the memoranda apply to all of DHS, not just to ICE; 2) creating a presumption of hardship for people with ties to the country; 3) applying deferred action with work authorization (not just administrative closure) to compelling cases; 4) giving timeframes for the grants of discretion, to provide recipients with some stability; 5) evaluating the use of prosecutorial discretion at each stage of the enforcement process; 6) treating some requests for prosecutorial discretion in groups, for example, workers in certain labor situations; 7) ensuring agency compliance with memos governing victims and sensitive locations cases; and 8) establishing a review process at DHS Headquarters.
- **Strengthen Due Process & Human Rights Protections in Detention:** The combination of mandatory detention laws and the widespread use of private, for-profit jails have turned our immigration detention system into a national disgrace. To ameliorate the harm caused by detention, your administration should require a bond hearing for anyone detained more than six months; interpret “custody” in statutes to permit forms of custody short of detention; shift resources from institutional detention to effective and far less expensive alternatives; and reaffirm DHS Secretary Jeh Johnson’s interpretation that the “detention bed quota” in recent appropriations bills is not a mandate to indiscriminately fill those beds with immigrants regardless of need.
- **Eliminate Profiling:** If immigrants are to face deportation, it should never be as a result of racial, ethnic, or national origin profiling. We urge you to revise the flawed 2003 Department of Justice Guidance on profiling, which contains massive exceptions for national security and border integrity that do far more harm than good.
- **Reduce the Use of Deportations without Hearings:** In FY 2013, more than 260,000 people (70 percent of those deported that year) were deported through expedited removals or reinstatement, with no hearing before an immigration judge. We urge you to: 1) end the use of deportations without hearings for people who have a case for relief or for prosecutorial discretion, and for people who agree to a stipulated removal and were not represented by counsel; 2) limit the use of expedited removal to people caught at a port of entry or while trying to enter (as was DHS policy before 2004); and 3) provide an administrative appeal process for immigrants who faced such procedures.



- **Improve Worksite Enforcement Policies:** When immigrants stand up for basic labor and civil rights protections, they should never be undercut by immigration enforcement practices. The administration should: 1) clarify and publicize the processes for immigrants involved in labor and civil rights cases to obtain immediate immigration status and work authorization; 2) prohibit civil immigration or criminal arrests of workers in the context of workplace enforcement actions; 3) look into labor and civil rights complaints before I-9 or other worksite enforcement actions; and 4) prevent employers from abusing I-9 or E-Verify procedures to violate workers' rights.
- **Return Immigration Enforcement to the Federal Government:** We were encouraged by recent reports that DHS plans to revisit the Secure Communities program. We urge you to scrap it altogether – as well as the 287(g) program, the use of detainers, and other ICE ACCESS programs that encourage the use of profiling and undermine public safety.
- **Protect Human Rights at the Border:** While our borders are now more secure than ever, we remain concerned about human rights being compromised in the process. The administration should: 1) end the Operation Streamline program; 2) implement all recommendations on use of force from the Police Executive Research Forum, and strengthen oversight and accountability regarding inappropriate use of force; 3) roll back the U.S. Customs and Border Protection's (CBP) claimed 100-mile authority; 4) create enforceable standards and provide effective oversight for CBP short-term holding facilities; 5) carefully limit the use of drones; 6) equip all CBP officers with lapel cameras; and 7) provide more humanitarian resources such as rescue beacons and water stations along the border region – which will not encourage more crossings, but will reduce the number of senseless migrant deaths.
- **Strengthen Due Process in Removal Proceedings:** Since 1996, a number of “criminal alien” provisions in the law have amounted to the immigration equivalent of mandatory minimum sentences. The administration should, as a general policy, not deport legal residents on the basis of offenses that occurred years ago.

We urge you to take these steps regardless of the fate of immigration reform legislation in Congress. They are fully within your authority and would affirm the administration's commitment to protecting the civil and human rights of all people within our nation's borders.

Thank you for your consideration. If you have any questions, please contact either of us or Rob Randhava, Senior Counsel, at 202-466-3311.

Sincerely,

Wade Henderson  
President & CEO

Nancy Zirkin  
Executive Vice President

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<sup>1</sup> Falling Through the Cracks: The Impact of Immigration Enforcement on Children Caught Up in the Child Welfare System, Immigration Policy Center, available at: <http://www.immigrationpolicy.org/just-facts/falling-through-cracks>.

<sup>2</sup> The Math of Immigration Detention: Runaway Costs for Immigration Detention Do Not Add Up to Sensible Policies, The National Immigration Forum, available at: <http://www.immigrationforum.org/images/uploads/mathofimmigrationdetention.pdf>.

<sup>3</sup> New Mexico Immigration Prosecutions Jumped 46% in FY 2013, TRAC Immigration, available at <http://trac.syr.edu/immigration/reports/335/>.