



August 19, 2014

President Barack Obama  
The White House  
Washington, DC 20006

Dear President Obama:

As the Department of Homeland Security (DHS) conducts its review of the agency's deportation policies in order to identify ways to make our immigration system more humane, the undersigned Asian American, Native Hawaiian and Pacific Islander (AA & NHPI) organizations write today to urge you to take swift and broad executive action to address our nation's immigration crisis. Our communities cannot wait any longer. We strongly urge you to expand administrative relief and make significant reforms to the current immigration enforcement system without delay.

The National Council of Asian Pacific Americans (NCAPA), founded in 1996, is a coalition of thirty two national Asian Pacific American organizations from around the country. NCAPA represents the interests of the greater AA & NHPI communities and provides a national voice for AA & NHPI issues. An estimated 1.3 million, or 12%, of the total undocumented immigrant community is of Asian descent,<sup>1</sup> and 74% of voting age AAs are born abroad, the largest proportion of any racial group.<sup>2</sup> Fixing our nation's broken immigration system and doing what we can to address the problem in the face of Congressional inaction is of utmost importance to our community.

There are important changes that your Administration should make immediately to reduce family separation and to protect the rights and dignity of immigrants. Below is a list of priorities advocating specific changes that would have the greatest impact on the AA & NHPI community. Part I of our list addresses affirmative action that the Administration should take to broaden administrative relief, while Part II discusses much needed reforms to immigration enforcement policies.

## **I. TAKE AFFIRMATIVE STEPS TO BROADEN ADMINISTRATIVE RELIEF**

Under its executive authority, the Administration can allow individuals to remain lawfully in the United States and obtain work permits in cases where an individual has close family or

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<sup>1</sup> Center for American Progress, "Why Immigration is an Asian American Issue", *available at* <http://www.americanprogress.org/issues/immigration/news/2013/05/28/64474/why-immigration-is-an-asian-american-issue/>

<sup>2</sup>Pew Research Center, "The Rise of Asian Americans", *available at* <http://www.pewsocialtrends.org/2012/06/19/the-rise-of-asian-americans/>

community ties to the United States, as evidenced by the creation of the Deferred Action for Childhood Arrivals (DACA) program. The Administration should use its authority to take the following actions immediately:

**Designate Temporary Protected Status (TPS) for the Philippines:** In November 2013, the Philippines was ravaged by Typhoon Haiyan (Yolanda), which affected 23 million people and displaced 8 million. The Philippines meets the requirements of TPS and we urge DHS to designate TPS for the Philippines immediately and without further delay.

**Create an expanded deferred action program similar to DACA:** We recommend granting deferred action with work authorization to (1) individuals who are close family members of United States citizens, Legal Permanent Residents, or DACA recipients, and (2) individuals who have long resided in the United States or have other strong community ties. This type of deferred action relief should also be available to Legal Permanent Residents who may be at risk of deportation.

We also urge the Administration to make any deferred action application affordable for eligible immigrants. Based on experience with the current DACA program, application fees will likely be a significant barrier for many immigrants. The Administration should keep fees as low as possible and make fee waivers and exemptions available. Also, the Administration should consider creating “family applications” with a single fee because many immigrant families will have more than one family member seeking deferred action. Consolidated family applications will also make adjudications more efficient and cost-effective.

**Broaden the guidelines for DACA applicants eligible for fee exemption:** In order to alleviate the financial burden of first-time and renewing DACA applicants, we recommend broadening the DACA fee exemption guidelines to include low-income families making 200% or less of the U.S. poverty level in the fee exemptions and remove the age requirement currently set at “under 18 years.”

**Target DACA outreach efforts to the AAPI community:** We urge the United States Citizenship and Immigration Services to target outreach to AAPIs by providing in-language public engagements and translated materials in AAPI languages for first-time and renewing DACA applicants.

**Expand the current DACA program age limitation beyond 31 and continuous residence cut-off date to June 15, 2009:** We support expanding the age limitation beyond 31 years of age and moving the cut-off date of continuous residence to June 15, 2009 instead of the current cut-off date of June 15, 2007. The guidelines should be updated to allow individuals who currently have been in the U.S. continuously for five years and who otherwise qualify for DACA to apply.

**Broaden the use of parole for humanitarian purposes:** We urge DHS to grant “Parole in Place” with work authorization for anyone with ties to the U.S. and expand the use of “humanitarian parole” to help reunite families with loved ones.

**Promote family reunification:** We urge the Administration to take action to alleviate the hardship experienced by families caught in the visa backlogs for years and decades. Asian Americans are disproportionately impacted by the family and employment visa backlogs.

One way to end the hardship suffered by these families is by changing how family members are counted for purpose of the visa caps. Current practice counts *both* the principal visa beneficiaries and their derivatives (i.e., spouses and minor children) against the visa caps. This method of counting each family member has the effect of creating even greater demand for the already limited number of visas available each year. However, this practice is not required by statute (*see e.g.*, INA § 203(d)) or regulation. Instead, principals and their derivatives could be counted as a single family unit for purposes of the numerical limitations. For example, using this new counting method, the brother of a U.S. citizen, his wife, and one daughter would be counted a single family unit requiring only one F4 visa, rather than three F4 visas under the current practice. This single administrative change represents a reasonable interpretation of the existing law and would promote family reunification and efficiency. (This change could apply for employment visas as well).

Alternatively, the Administration could use humanitarian parole (*see* INA § 212(d)(5)) to permit family members with pending approved petitions to enter the United States and wait here until their priority dates become current. (The “V” visa included in S. 744 would similarly have allowed certain family members with approved family petitions to live and work in the United States until their green cards became available). We would urge the Administration to issue a policy memo or other guidance making it clear that prolonged family separation is an “urgent humanitarian reason” that warrants the use of humanitarian parole.

## **II. REFORM CURRENT IMMIGRATION ENFORCEMENT POLICIES**

It is estimated that 1.3 million AAPIs living in the United States are undocumented. Between 2009–2012, more than 236,000 AAPIs were returned or removed by DHS.<sup>3</sup> Additionally, over 13,000 individuals have received final orders of deportation to Cambodia, Laos, and Vietnam since 1998.<sup>4</sup> These deportations have separated AAPI families and have sent some immigrants back to countries where they have little or no family connection to the country and sometimes do not even speak the language.

At local, state, and federal levels, racial and religious profiling continues to target minority and immigrant communities through programs such as 287(g) and Secure Communities. Policies that profile have repeatedly proven ineffective, as seen by the National Security Entry-Exit Registration System (NSEERS)<sup>5</sup> and New York City’s Police Department’s surveillance of Muslim Americans.<sup>6</sup> Additionally, these programs have a detrimental impact on communities, both psychologically and in chilling the First Amendment rights of all Americans.<sup>7</sup> Enforcement

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<sup>3</sup> U.S. Department of Homeland Security, “Yearbook of Immigration Statistics: 2012” (Data Tables 40 and 41), available at <http://www.dhs.gov/yearbook-immigration-statistics-2012-enforcement-actions>.

<sup>4</sup> Transactional Records Access Clearinghouse, Syracuse University.

<sup>5</sup> South Asian Americans Leading Together (SAALT), *In Our Own Words: Narratives of South Asian New Yorkers Affected by Racial and Religious Profiling* (March 2012) available at <http://saalt.org/wp-content/uploads/2012/09/In-Our-Own-Words-Narratives-of-South-Asian-New-Yorkers-Affected-by-Racial-and-Religious-Profilng.pdf>.

<sup>6</sup> Nermeen Arastu and Diala Shamas, *Mapping Muslims: NYPD Spying and its Impact on American Muslims* (2013) available at <http://www.law.cuny.edu/academics/clinics/immigration/clear/Mapping-Muslims.pdf>.

<sup>7</sup> *Id.*; South Asian Americans Leading Together (SAALT), *In Our Own Words: Narratives of South Asian New Yorkers Affected by Racial and Religious Profiling* (March 2012) available at <http://saalt.org/wp->

measures that rely on racial or religious profiling are ineffective, violate civil rights, and destroy community relationships with law enforcement and other government agencies, thereby making all communities less safe.

The Administration has the authority to reform the current enforcement system immediately to avert the unnecessary separation of families, to prohibit racial and religious profiling, and to create a more humane and effective enforcement system. The Administration should make the following changes:

**Expand the use of prosecutorial discretion for people with strong ties to the United States:**

A presumption of extreme hardship should be available to those with U.S. citizenship or legal permanent resident children and those who arrived in the United States as children or refugees. In the case of individuals with criminal convictions, Immigration and Customs Enforcement (ICE) should bear the burden of proving that negative factors outweigh the individual's positive attributes and the extreme hardship that deportation would cause the individual and his or her family. Alternatively, Deferred Prosecution Agreements (DPAs), normally used in the white collar crime context, could allow ICE to hold removal proceedings of people with criminal convictions in abeyance with the understanding that the respondent would meet certain conditions for a period of time. DPAs are a form of “pre-trial diversion” that could be used to keep individuals with strong attributes or sympathetic facts together with their families.

**Prohibit racial and religious profiling in immigration enforcement actions:** We urge DHS to eliminate the 287(g) and the Secure Communities programs and dismantle the National Security Exit-Entry Registration System (NSEERS), which are discriminatory and undermine effective enforcement. Additionally, we recommend that the 2003 Department of Justice “Guidance Regarding the Use of Race by Federal Law Enforcement Agencies” be revised to (1) prohibit profiling based on religion and national origin; (2) eliminate loopholes for national security and border integrity; (3) expressly state its applicability to state and local law enforcement who work in partnership with federal government or receive federal funding; (4) prohibit surveillance activities and data collection based on profiling; and, (5) create enforcement and accountability mechanisms.

**Provide all forms and information throughout the removal process in a language that the individual understands.** All individuals facing removal should be informed of their right to obtain counsel in a language they comprehend. Additionally, they should be provided all documentation and information in a language they understand. An estimated 60% of AAPIs in the United States are foreign born and speak over 30 languages, with a reported 76.5% speaking a second language at home. Many AAPIs are English Language Learners and therefore require in-language information to comprehend the removal process and their rights. Given the broad range of diversity among the group's spoken languages, it is not only imperative to provide culturally and linguistically relevant documents to make the process more comprehensive, this will also prevent unnecessary appeals in the future and lessen the burden on the court system.

Thank you for your consideration of our recommendations. We, the undersigned AA & NHPI organizations are hopeful that your announcement will provide broad relief to the diverse needs of our communities.

Respectfully,



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