



December 20, 2013

The Honorable Jeh Johnson
Department of Homeland Security

Dear Secretary Johnson:

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On behalf of the American Immigration Lawyers Association (AILA), we congratulate you on your appointment and recent confirmation. As the national bar association of immigration lawyers, with more than 13,000 members, we look forward to working with you toward the advancement of immigration policy and practice.

Your arrival could not be more timely as national polls show that an overwhelming majority of Americans support comprehensive reform, including legalization. Though much work still needs to be done in Congress, there is far greater agreement now on policy than in years past. America is ready for immigration reform, and we look forward to working with you to ensure legislation is enacted that meets the country's needs.

With respect to administrative reforms, we applaud several positive reforms that the Department has implemented recently. U.S. Citizenship and Immigration Services (USCIS) rose to a number of challenges, including the swift implementation of immigration benefits for same-sex married couples following the Supreme Court's decision in *United States v. Windsor*, the innovative provisional unlawful presence waiver program, and the Deferred Action for Childhood Arrivals (DACA) program, among others. We are also grateful for the agency's quick commitment to provide Temporary Protected Status (TPS) and other relief for individuals affected by the January 2010 earthquake that devastated Haiti. Today, as we find yet another country seriously damaged by natural disaster, we appreciate the steps that USCIS has taken thus far to assist Philippine nationals in the United States and hope that the Administration will grant further protections, including TPS, to this vulnerable population.

Much great work has been done, but much work remains:

- While USCIS is to be commended for these and many other accomplishments, our members and those they represent are deeply concerned by the lack of prompt, fair, and consistent adjudication of applications for immigration benefits. As a result of severe backlogs in processing family-based immigrant petitions, many spouses and children of U.S. citizens are forced to

wait one year or more to join their loved ones in the United States. The Department's continuing support for USCIS efforts to improve adjudication policies and processes needs to continue and expand.

Progress remains slow on the Administration's goals of using immigration laws to encourage entrepreneurship, economic development, and job creation. Businesses, large and small, face often insurmountable obstacles when seeking to bring essential workers to the United States to work on projects that are key to economic growth and U.S. job creation. To many observers and stakeholders, it appears that most decisions regarding content of adjudications start from a presumption of denial as the norm. The development and release of fair and reasonable policies to guide adjudications is taking years, while existing policy results in inconsistent outcomes, unwarranted denials, and unnecessary delays. USCIS must examine its mission through new lenses and restore balance to the benefits function.

- U.S. Customs and Border Protection (CBP) has yet to fully realize and embrace the important role it plays in the adjudication of immigration benefits in its inspection and admission functions. Training of inspectors on immigration benefits and visa categories falls short, and oversight is insufficient. Unfortunately, too often business travelers and pleasure visitors are not made to feel welcome at our borders and ports, and the rules that determine their admission are not transparent and uniformly applied. This hurts trade and travel, undermines our economic competitiveness, and lowers our standing in the eyes of the world.
- AILA supports DHS initiatives that make enforcement smart and targeted, and believes that prosecutorial discretion provides a valid framework for true homeland security: concentrating resources on those who are dangers to public safety or threats to national security, or have egregiously violated immigration law. However, aggressive enforcement practices have resulted in unprecedented detention and removal numbers with deeply harmful effects on our families and communities. DHS's 2011 prosecutorial discretion initiative has shown only limited results and has been inconsistent in its application across the country. ICE reports that 98 percent of the individuals removed each year fall within its priorities for civil immigration enforcement, yet over 40 percent of those removed have no criminal background. Though ICE asserts that it is pursuing a targeted enforcement strategy, it is still removing hundreds of thousands of people who pose no threat to our communities, have lived in the U.S. for years, and would qualify for legal status under reform legislation currently pending. Additionally, while immigration detention currently costs the American taxpayer about \$2 billion per year, ICE has underutilized much less costly and extremely effective alternatives to detention – alternatives that are standard practice in criminal justice systems across the country. We hope you will reexamine DHS's current enforcement practices and truly prioritize enforcement to target serious criminal offenders who pose threats to our communities or who have shown a pattern of egregiously violating immigration law.

- Enforcement practices by CBP have raised even more serious concerns, most notably the continuing reports of improper use of force, including lethal force, by Border Patrol. Inhumane detention conditions at temporary border facilities and ineffective mechanisms for feedback and redress also need to be addressed. Furthermore, CBP has yet to publish any policy concerning prosecutorial discretion, a DHS initiative that was supported by the White House and was intended to extend to all immigration enforcement agencies. Earnest efforts will be needed to bring the practices of CBP in line with the broader directives of the agency.

We apologize if the discussions above seem to weigh more heavily to “what needs to be done” than “what has been done.” Yours is a difficult job, and we are trying to lay out what lies ahead on the immigration front. But, as noted, great strides already have been made, and strong foundations from which to work have been built in several areas. We look forward to working with you and your staff to move forward in improving immigration for all concerned.

We would appreciate the opportunity to discuss these issues and others with you, should you be able to make time. If you would like further information, please contact Gregory Chen, Director of Advocacy, at 202-507-7615, or gchen@aila.org, or Robert Deasy, Senior Director of Liaison & Information, at 202-507-7612, or rdeasy@aila.org.



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