**Recommendations for Executive Action on Immigration**

**Introduction**

Founded in 1972, Asian Americans Advancing Justice - Asian Law Caucus is the nation’s first public interest law office representing the civil and human rights of Asian American and Pacific Islander communities. Each year, we assist immigrants with legal services in the areas of criminal justice, immigration, housing, workers’ rights, and national security and civil rights.

As one of the busiest non-profit legal organizations for immigrants in Northern California, Advancing Justice - Asian Law Caucus provides free legal assistance to thousands of immigrants each year. Our work includes representing individuals in detention and deportation proceedings as well as assistance with relative petitions, naturalization applications, and DACA. Through our work on implementation of DACA and extensive community outreach, we make the following recommendations for executive action on immigration.

**Recommendations for Administrative Relief**

The President has indicated that in the wake of inaction in Congress he will provide relief to undocumented immigrant communities by the end of the year. We ask that the President act as broadly as possible. The text of S.744, the immigration reform bill which passed the Senate last year, should be a starting point for administrative relief. However, the requirements of S.744 should set the floor not the ceiling of any administrative action. The President, as well as a majority of Congress, and a majority of the public agree that people who qualified under S.744 should be granted legal status and eventual citizenship. Yet, each week thousands of these very same people are deported. The President must act swiftly to end these immoral deportations. We make the following recommendations on requirements for administrative relief.

**1. Exclusions for Prior Criminal Convictions: S.744 Framework**

S.744 laid out criteria for individuals with prior criminal convictions to still qualify for lawful status. Under S.744, only individuals with a felony conviction or more than three misdemeanor convictions, not including minor offenses or convictions related to status, would be excluded. This same framework has existed in prior immigration reform bills[[1]](#footnote-1), like IRCA, as well as the administration’s own policies[[2]](#footnote-2).

Unlike DACA which set out strict restrictions for individuals with prior criminal convictions even non-violent misdemeanors from years ago, the administration must ensure individuals who would be protected by immigration reform in the future are not deported. Continued deportations of individuals with minor offenses will result in unjust consequences.

*Case Example: Sam Viriviri*

Sam Viriviri came to the United States on a tourist visa in the 1990s with his wife and two children fleeing a coup in Fiji. His son, who would have qualified for DACA, was deported after a traffic stop. His wife was deported after ICE raided their home. Later, ICE officers posing as police raided their home again and arrested Sam. Despite being the primary caretaker of his U.S. citizen grandchildren, his long standing residence, work as a caretaker for the elderly, and community ties, ICE denied his request for prosecutorial discretion because of a misdemeanor DUI conviction from almost a decade earlier. An outpouring of community support including over ten thousand emails to ICE caused a reversal of the decision.

2. **Exclusions for Prior Criminal Convictions: Inadmissibility Grounds**

Inadmissibility under INA § 212(a)(2) for prior criminal convictions should not disqualify individuals from administrative relief. First, an inadmissibility requirement would greatly impede the ability of legal service providers to implement administrative relief. Second, excluding people found to be inadmissible would result in manifestly unjust results.

Inadmissibility analysis is possibly the most complicated area of an already complex area of law. For example, currently, the circuits are split in their acceptance of the Attorney General’s decision in *Matter of Silva-Trevino*, a critical decision in determining whether a conviction makes someone inadmissible.[[3]](#footnote-3) As a result, identical conduct in different parts of the country could have greatly varying consequences.

Legal service providers have identified a serious lack of resources available to implement immigration reform and administrative relief.[[4]](#footnote-4) Further, very few legal service providers are experienced in the intersection of criminal law and immigration law. As one of the few organizations focusing on this area, Advancing Justice – Asian Law Caucus receives requests for assistance on these issues from other non-profits on a daily baisis. Requiring inadmissibility analysis on each case would greatly hinder implantation and cause massive confusion about eligibility in immigrant communities.

Given the minor conduct that can trigger inadmissibility, ineligibility due to inadmissibility would result in unjust consequences. For example, minor non-violent offenses like shoplifting or possession of a miniscule amount of marijuana trigger inadmissibility. Further, inadmissibility remains for life.

*Case Example: Roberto Hurtado*

Roberto Hurtado, an undocumented immigrant from Mexico, came to the United States over twenty-five years ago. For two decades, he has been with Maria, his United States citizen spouse. Maria is disabled and requires Roberto’s assistance on a daily basis. In order to provide for Maria, Roberto found a job working as a janitor at a local hospital using a fake social security card. He received several awards for his work, but when the fake social security card was discovered, he was arrested for identity theft. He was sentenced to probation and 190 days in jail. After his sentence, he was turned over to ICE for deportation. Roberto’s conviction makes him inadmissible to the United States for life. He is currently in removal proceedings.

**3. Exclusions for Prior Criminal Convictions: Expungements**

Often individuals face harsh immigration consequences for offenses that resulted in no jail time or where the criminal court has expunged the conviction from the person’s record due to rehabilitation. During the Judiciary Committee’s markup of S.744, Senator Blumenthal had introduced an amendment to resolve this problem.[[5]](#footnote-5) Specifically, the amendment would have excluded from the definition of “conviction” any adjudication which had been expunged, deferred, annulled, invalidated, withheld, vacated, granted probation without entry of judgment, or any similar disposition.

As the Attorney General and several states around the country move away from incarceration as a response to minor offenses, our immigration policies should similarly shift. Notably, for DACA, USCIS has indicated that expunged convictions would not serve as an automatic bar for eligibility.[[6]](#footnote-6) We ask that the same policy be extended to administrative relief.

**Relief for Lawful Permanent Residents Facing Removal**

1. **Extend Administrative Relief to Lawful Permanent Residents**

In an effort to boost its removal numbers for individuals with criminal convictions, ICE detains and deports Lawful Permanent Residents for minor offenses like shoplifting or simple possession of drugs. Often, these convictions are years or even decades old. Relief granted to undocumented immigrants with minor prior offenses should also be extended to Lawful Permanent Residents.

*Case Example: Norma Deguzman[[7]](#footnote-7):*

Norma immigrated to the United States in 1991 as a Lawful Permanent Resident from the Philippines. She was a teenager at the time. In her twenties, she entered into a marriage that was physically and mentally abusive. Eventually, she was able to leave her husband and obtain a restraining order. She was later diagnosed with major depressive disorder, kleptomania, and post-traumatic stress disorder. During this period, she was convicted a number of times for shoplifting of minor items including a cup of coffee and a bag of shrimp. In 2014, years after her last conviction, she was arrested at the airport returning from a funeral in the Philippines and placed in removal proceedings.

1. **End Deportations of Naturalization Eligible Lawful Permanent Residents**

USCIS policy on NTA issuance permits it to place Lawful Permanent Residents applying for naturalization in removal proceedings even if they are otherwise eligible.[[8]](#footnote-8) We regularly see the chilling effect that this policy has on potential naturalization applicants with prior criminal convictions. In order to encourage individuals to naturalize and provide uniform application of the law, we request that USCIS discontinue issuance of NTAs to naturalization applicants.

*Case Example: Mohammed Khan[[9]](#footnote-9)*

Mohammed has lived in the United States for over thirty years as a Lawful Permanent Resident from Pakistan. Mohammed suffered a traumatic brain injury as a child resulting in developmental delay and has limited intellectual functioning. Several years ago, Mohammed was convicted of domestic violence and sentenced to four days in jail. Last year, he applied for naturalization. A couple of weeks after attending his interview, ICE officers came to his home arrested him, placed him in removal proceedings, and released him on an ankle monitoring bracelet. His naturalization application was denied because of the pending removal proceedings even though he was otherwise eligible. Although he is very likely to be granted relief in removal proceedings, the process will take years and has caused severe emotional distress.

1. **Implement Prima Facie Naturalization Determinations for LPRs Facing Removal**

By regulation, Immigration Judges are authorized to terminate removal proceedings for individuals who are prima facie naturalization eligible and present compelling factors. *See* 8 C.F.R. § 1239.2(f). The Board of Immigration Appeals has held that USCIS must make determinations as to who is prima facie eligible for naturalization. *See Matter of Acosta-Hidalgo*, 24 I&N Dec. 103 (BIA 2007). However, USCIS has steadfastly refused to issue determinations or implement the regulation. We request that USCIS create a procedure for individuals to obtain prima facie naturalization determinations. Inaction by USCIS is causing thousands of Lawful Permanent Residents who are eligible for naturalization and present compelling factors to instead be detained and deported.

*Case Example: Joe Tuitavake*

Joe, a Tongan citizen, has lived in the United States as a Lawful Permanent Resident since 1968, when he was a one year old child. He struggled with alcohol and substance abuse issues for much of his life resulting in a number of convictions for possession of drugs. However, in 2007, he became sober after Sania, his six year old son, suffered a brain hemorrhage resulting in paralysis along half his body. Since then, he has been a devoted parent to Sania and his other three children, a loving husband to his citizen wife of eighteen years, volunteered coaching football for at risk youth, running his church’s bingo night for seniors, and working full time at a county shelter for individuals with mental health issues. Years after his last conviction and after he became sober, he was placed in removal proceedings. He requested termination to allow him to naturalize, his only form of relief. USCIS expressly refused to issue a decision regarding his naturalization eligibility. He is currently in removal proceedings.

1. 8 U.S.C. § 1160(a)(3)(B)(ii)(II). [↑](#footnote-ref-1)
2. http://www.ice.gov/doclib/detention-reform/pdf/detainer-policy.pdf [↑](#footnote-ref-2)
3. 24 I. & N. Dec. 687 (A.G. 2008). [↑](#footnote-ref-3)
4. <http://www.urban.org/UploadedPDF/412928-Immigrant-Legal-Aid-Organizations-in-the-United-States.pdf> (In some states, non-profits would need to serve over 120,000 people to meet demand.) [↑](#footnote-ref-4)
5. http://www.ilw.com/immigrationdaily/news/Blumenthal14-%28MDM13533%29.pdf [↑](#footnote-ref-5)
6. http://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-process/frequently-asked-questions [↑](#footnote-ref-6)
7. Name changed to protect client confidentiality. [↑](#footnote-ref-7)
8. http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static\_Files\_Memoranda/NTA%20PM%20%28Approved%20as%20final%2011-7-11%29.pdf [↑](#footnote-ref-8)
9. Name changed to protect client confidentiality. [↑](#footnote-ref-9)