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League of United Latin American Citizens

Mexican American Legal Defense and Educational Fund

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National Institute for Latino Policy

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SER Jobs for Progress-National

Southwest Voter Registration Education Project

United States Hispanic Chamber of Commerce

United States Hispanic Leadership Institute

United States-Mexico Chamber of Commerce

United States-Mexico Foundation

National Hispanic Leadership Agenda

July 29, 2014

The Honorable Barack H. Obama
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Re: NHLA Proposals for Administrative Relief and Executive Actions

Dear President Obama:

We write on behalf of the National Hispanic Leadership Agenda (NHLA), a coalition of 37 leading national Latino nonpartisan civil rights and advocacy organizations, to urge you to undertake robust and aggressive executive action to provide administrative relief for the nation's long-term undocumented immigrant population. Bold executive action is warranted in light of Speaker Boehner's comments that the House of Representatives will not vote on immigration legislation this year.

NHLA's mission calls for unity among Hispanics nationwide to provide the Latino community with greater visibility and a stronger voice in our nation's affairs, including the pressing need to overhaul our broken immigration system. NHLA recognizes that over the course of the last year your Administration put forth a strong, good-faith bipartisan effort to work with Congress to enact immigration reform. Unfortunately, the bipartisan legislation produced by the Senate and continued entreaties to the House of Representatives have failed to yield a path forward for reform. NHLA would prefer the permanence of legislative action to reform our nation's immigration system. However, the House of Representatives' failure to pass immigration reform leaves the NHLA no choice but to call on your Administration to enact a series of executive actions to provide bold and wide-ranging administrative relief to the nation's undocumented population.

Your Administration has presided over a record-breaking number of deportations that have separated families, instilled fear in communities, and fundamentally destabilized the notion of fairness and justice that our nation was founded upon. Nowhere are these effects felt more acutely than in the Hispanic community. While we understand that your Administration, as the arbiter of the Executive, helms a dysfunctional immigration system that predates your Administration, NHLA strongly believes that your Administration has the legal and moral authority to reduce the suffering of the nation and its Latino community. Congress had its opportunity to act and failed. It is now your Administration's opportunity to rectify that grievous inaction.

NHLA's recommendations for affirmative relief reflect two central tenets: (1) the creation and expansion of affirmative relief programs that would provide temporary protection and employment authorization to the nation's undocumented population; and (2) the use of your authority to transition individuals into more permanent forms of relief.

These actions build upon the incredibly successful Deferred Action for Childhood Arrivals (DACA) program that your Administration announced in June of 2012 and renewed in June of 2014. While enforcement reforms are critical—and in fact must be accomplished in tandem with any type of affirmative relief—this letter primarily focuses on the need for additional affirmative relief. NHLA will issue its recommendations on enforcement reforms in the coming weeks.

After careful consideration, NHLA identified a multitude of areas where your Administration can act to end the moral crisis stemming from our nation's flawed and unjust immigration system. The below recommendations are the floor—and not ceiling—of what your Administration has the legal authority to accomplish. Finally, NHLA strongly urges your administration to ensure that the administrative reforms set forth below are fully and uniformly implemented at the employee and agent level.

I. TEMPORARY AFFIRMATIVE RELIEF

A. Create an affirmative relief process that allows certain categories of undocumented immigrants currently residing in the country to apply for four year grants of deferred action and employment authorization.

Affirmative Relief Process. Your Administration should create an affirmative relief process modeled after DACA that would allow certain categories of individuals to affirmatively apply for relief from removal and receive an employment authorization document. This program would essentially provide Deferred Action for Low-Priority Individuals (DALPI).

Categories for relief should include:

1. Parents of citizens, lawful permanent resident (LPR) holders, and individuals eligible for DACA;
2. Siblings of citizens, LPR holders, and individuals eligible for DACA;
3. Spouses of citizens, LPR holders, and individuals eligible for DACA;
4. Individuals eligible for relief under S.744;
5. Individuals who have resided in the country for three or more years;
6. Individuals who are "regularly employed," including agricultural and seasonal workers;
7. Individuals eligible for DACA but for the upper-age limit; and
8. Individuals that entered the country after the age of 18 but satisfy the DACA educational requirement.

Specifically, your Administration should create a mechanism—based on length of physical presence—to grant relief for individuals who may not necessarily have "equities" based on or heavily reliant on citizen children or "spouses" recognized under federal law. A failure to create an independent grant of relief based solely on residency would disproportionately and negatively affect undocumented LGBTQ individuals, especially those in states that do not recognize same-sex marriage, or who do not have children.

Continuous Presence and Entry Requirements. Your Administration should extend DALPI to individuals that can demonstrate they have been continuously present in the country since December 31, 2011. S.744 established this date as a result of a bipartisan compromise, and while over a year has passed

since the Senate passed S.744, this date still represents a workable and pragmatic cut-off that would include the vast majority of the undocumented population.

Criminal Background Eligibility. DALPI should require individuals to meet the criminal background requirements enumerated by S.744 along with the associated exceptions (e.g., convictions must arise on different days and from different schemes, and exclude immigration-related, state-based, juvenile, expunged, and minor traffic violations). Furthermore, DALPI should *not* adopt the bar for individuals with "significant misdemeanors" first enumerated by DACA. That concept has no basis in criminal or civil law and serves to further criminalize and unfairly penalize individuals who have already served their time and paid their debt to society.

Procedural Recommendations. The implementation of a new affirmative relief program affecting millions of individuals is a serious undertaking that will require significant logistical and procedural considerations. Accordingly, NHLA makes the following recommendations to ensure that this process is implemented successfully:

1. **Online Submission.** In light of the large number of expected requests, U.S. Citizenship and Immigration Services (USCIS) should allow individuals to optionally submit requests through the USCIS Electronic Immigration System (ELIS) in order to streamline requests and reduce adjudication times.
2. **Combined Requests.** USCIS should enable individuals to submit requests for themselves and their dependents (spouses and children) using a single form, reducing cost and processing time.
3. **Confidentiality Protections.** To maximize the number of individuals that submit requests, your Administration should employ robust confidentiality protections for all affirmative relief programs that prevent USCIS from referring affirmative relief requests to U.S. Immigration and Customs Enforcement (ICE) for removal purposes.
4. **Flexible Documentation Requirements.** Undocumented immigrants often work in the underground economy and often have difficulties obtaining official documentation and records. DHS must provide flexibility (including allowing affidavits and similar evidence) in the type of documentary evidence required of individuals seeking to request affirmative relief.

Fee and Cost Recommendations. Affordability is a consistent and serious obstacle for DACA-eligible individuals and will likely continue to be a barrier for individuals applying for DALPI. Accordingly, your Administration should:

1. **Reasonable Fee.** Set a reasonable fee to cover the cost of implementation and adjudication of DALPI requests.
2. **Fee Exemptions.** Provide a robust fee exemption option that would exempt individuals suffering hardships from paying the filing fee.
3. **Fee Waivers.** Allow individuals to request a fee waiver using framework established by Form I-912.

Federal Interagency Taskforce. Documentary evidence verifying an individual's eligibility for affirmative relief is often held by federal agencies in the form of employment, tax, benefit, education, and labor records. Your Administration should create an Interagency Taskforce with representatives from all federal

agencies, whose responsibility it is to identify steps each agency can take to assist individuals in obtaining relevant documentary evidence from each agency. At a minimum, your Administration should:

1. **USCIS and Alien Files.** Direct USCIS to update, streamline, and publicize the process for individuals to self-request their entire alien file through a Freedom of Information Act, Privacy Act, or other request, and allocate additional resources to reduce production delays.
2. **IRS and Tax Transcripts.** Direct the Internal Revenue Service to promulgate language-appropriate guidance for individuals seeking to obtain transcripts of past tax returns, including guidance for individuals who filed using Individual Tax Identification Numbers.
3. **SSA and Wage Statements.** Direct the Social Security Administration to promulgate: (a) language-acceptable guidance for individuals seeking to obtain records of past wage and withholding information; and (b) policies to assist individuals in obtaining past wage records under erroneous or mismatched social security numbers.
4. **ED and MSIX Records.** Direct the U.S. Department of Education to develop a framework to allow individuals to more easily access records held by the Migrant Student Records Exchange Initiative while at the same time maintaining robust privacy protections.

State and Local Government Cooperation. In addition to federal agencies, many records are held by state or local agencies. Your Administration should work with state and local governments and agencies, especially those that distribute federally-funded means-tested benefits, to encourage them to formulate streamlined processes for the release of these records.

Federal Outreach. Providing affirmative relief for millions of individuals will be the largest grant of immigration relief that the United States has undertaken in the last half century. Accordingly, your Administration must develop and implement a far-ranging and comprehensive outreach program that will inform eligible individuals of this relief and encourage them to apply. Among this outreach, your Administration should:

1. **USCIS and DACA Notices.** Direct USCIS to issue all current DACA-holders electronic or physical notices sharing information regarding the new affirmative relief process so that DACA-holders may share the information with eligible family members, friends, and community members.
2. **DHS Stakeholder Meetings.** Conduct regular meetings between federal agencies—especially USCIS, ICE, and U.S. Customs and Border Protection—and stakeholder groups to improve the eligibility criteria and implementation of the Administration's various affirmative relief programs.
3. **DOE and Public Libraries.** Direct the Department of Education to develop partnerships with local libraries to provide resources, educational materials, and access to internet for individuals to prepare and complete requests for affirmative relief.
4. **DOL, USDA, and Migrant Workers.** Direct the U.S. Departments of Labor and Agriculture to develop outreach programs to target hard-to-reach populations, including migrant and seasonal farmworkers.
5. **DOL and Labor Disputes.** Direct the U.S. Department of Labor to develop outreach programs to eligible individuals currently in labor or wage disputes with employers, especially in situations where employers referred employees to an immigration enforcement agency as a result of those employees exercising their labor rights.

6. **USCIS, DOS and, Consular Network.** Direct USCIS to develop partnerships with the consular network to provide access to legal services and representation, issuance of official documents and other support for individuals to prepare and complete requests for affirmative relief.

B. Changes to Deferred Action for Childhood Arrivals

Expand Eligibility for DACA. DACA has been one of the most successful undertakings of your Administration, in large part due to the tireless efforts of Deputy Secretary Mayorkas both as Director of USCIS and Deputy Secretary at DHS. DACA's success, however, has been tempered by arbitrary eligibility criteria that excludes a significant portion of those whom DACA was meant to help—individuals who were brought to the country as children. As part of your Administration's exercise of executive authority, NHLA recommends that your Administration:

1. Eliminate the educational requirement for initial requests or, alternatively, eliminate the burden that requestors prove the "demonstrated effectiveness" of their educational program;
2. Eliminate the upper age limit;
3. Eliminate the lower age limit;
4. Raise the age-at-entry requirement to under 18 years of age;
5. Expand grants of deferred action and employment authorization to four years;
6. Change the cut-off date requirement to September 1, 2012;
7. Change the continuous presence requirement to look back two-years; and
8. Provide an option for individuals to apply for advance parole concurrently with an initial or renewal request.

Maintain DACA as a Separate Program. To insulate DACA from potential legal challenges to the broader affirmative relief program your Administration will administer, DHS should maintain DACA as a separate and independent program. You have stated that you hope to craft an affirmative relief program that extends to the maximum legal authority that your office wields. While NHLA strongly supports this expansive view of affirmative relief, it is likely that the new affirmative relief program will be targeted by legal challenges. In order to prevent any legal challenges filed against DALPI from negatively affecting DACA, your Administration should maintain DACA as a separate program and instead use it as a model for new affirmative relief programs.

C. Employ Humanitarian Parole to Reunite Families.

Humanitarian Parole for Removed Individuals. Humanitarian Parole allows DHS to parole individuals into the country on humanitarian grounds where there is a "significant public benefit." While immigration reform has stalled over the past decade, millions of families have been separated and torn apart due to excessive removals. Your Administration has a unique opportunity to employ Humanitarian Parole to reunite some of these families by allowing individuals who have previously been removed to re-enter the country and reunite with their families. Accordingly, NHLA strongly supports allowing citizen and LPR relatives to re-enter the country and reunite with their families.

II. Transition to Permanent Relief

While only Congress can enact comprehensive immigration reform that would allow the majority of the undocumented population to obtain citizenship, your Administration has the ability to transition some of the undocumented population to more permanent legal statuses. These actions all fall within established law and would serve to eliminate the uncertainty and temporary nature inherent in affirmative relief.

A. Parole in Place and Humanitarian Parole. Your Administration should employ Parole in Place and/or Humanitarian Parole to allow individuals currently in the country—including those with no status, and other forms of lawful presence such as Temporary Protected Status—to adjust status without being subject to the 3- and 10-year inadmissibility period on the grounds that family reunification represents a "significant public benefit." Additionally, your Administration should also re-interpret Parole in Place to apply to individuals that originally entered the country on a valid visa and not just those that entered the country without inspection.

B. Fully Implement *Arrabally.* The court in *Matter of Arrabally*, 25 I&N Sec. 771 (BIA 2012), held that individuals which obtained Advance Parole were "paroled" for the purposes of the Immigration and Nationality Act and could therefore adjust status. USCIS must fully and finally implement the *Arrabally* decision to allow individuals who obtain advance parole to adjust status upon their return to the United States without being subject to the 3- and 10- year inadmissibility bars.

C. Re-interpret INA Section 203(d) to Reduce Visa Backlogs. Historically, DHS interpreted INA Section 203(d) to count dependents of principals against the overall visa cap on employment and family-based immigration. This interpretation, coupled with country caps, has led to egregious waiting times for individuals from certain countries, including Mexico. Congress did not intend Section 203(d) to count dependents of otherwise eligible principals toward the statutory cap for family and employment-based immigrant visas. Fulfilling the legislative intent of Congress—made possible by the ambiguity of the statute and associated legislative history—would dramatically reduce wait times for visas and transition individuals with temporary relief to a more permanent status.

D. Reforms to Department of Defense.

Your Administration has the ability to allow individuals with deferred action and other forms of lawful presence to enlist in the Armed Forces. This action would allow individuals who have wanted to serve their country to finally enlist in the Armed Forces and also provide an expedited path to citizenship if those individuals complete their full term of enlistment.

Enlist Individuals with Deferred Action. Your Administration should direct the Department of Defense to allow individuals with deferred action and other forms of lawful presence to enlist in the Armed Forces under 10 USC § 504's "vital to the national interest" provision. Your administration should not limit enlistment solely to the Military Accessions Vital to the National Interest (MAVNI) program. This past summer, the Pentagon planned on announcing a program that would allow individuals with deferred action to enlist in the MAVNI program. That policy, however, would fall substantially short and would have little to no effect on the ability of individuals with deferred action to enlist. The MAVNI program has a substantial waiting list and is only open to individuals with specialized skills—skills that

many deferred action holders are unlikely to possess. NHLA, therefore, strongly recommends that you allow deferred action holders to enlist in all branches of the Armed Forces and not just the MAVNI program.

Rescind Enlistment Prohibitions. Your Administration should direct the Department of Defense to rescind the enlistment regulations in various branches of the Armed Forces that prohibit the enlistment of individuals with dependents who are undocumented. The U.S. Department of the Navy and Marine Corps have regulations which prohibit the enlistment of U.S. citizens or LPR holders with undocumented dependents, such as a spouse or child. Other branches of the Armed Forces have similar unwritten policies. These policies must be rescinded in order to maximize the number of individuals who may enlist in the Armed Forces.

The above recommendations represent temporary and permanent steps that your Administration can take to fulfill its promise of reforming our immigration system. Your Administration has a unique opportunity to cement its place in history as the administration that placed our nation on a trajectory to finally address our longstanding immigration crisis. NHLA—and the Latino community—will hold your Administration accountable to ensure that it seizes that opportunity.

Please contact NHLA through James A. Ferg-Cadima, at MALDEF, at jferg-cadima@maldef.org or 202-293-2828 ext. 11, or Bertha Guerrero, at the Hispanic Federation, at bguerrero@hispanicfederation.org or 202-641-7186. Thank you for your time and consideration.

Sincerely,

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CC:

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