



Testimony of

**Marielena Hincapié, Esq.
Executive Director
National Immigration Law Center**

**Hearing on the
“President Obama’s Executive Overreach on Immigration”**

**Before the
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C.**

December 2, 2014

I. Introduction

Chairman Goodlatte, Ranking Member Conyers, and members of the committee:

Thank you for the opportunity to appear before the committee today and provide testimony on behalf of the National Immigration Law Center (NILC).

I am Marielena Hincapié, the Executive Director of the National Immigration Law Center, the primary organization in the United States exclusively dedicated to defending and advancing the rights and opportunities of low-income immigrants and their families. At NILC, we believe that all people who live in the U.S. – regardless of their race, immigration, and/or economic status – should have the opportunity to achieve their full human potential and contribute their very best to our nation. Over the past thirty-five years, NILC has won landmark legal decisions protecting fundamental civil rights and advocated for policies that reinforce our nation’s values of equality, fairness, and justice for all.

NILC utilizes a core set of integrated strategies – litigation, advocacy, and strategic communications – to focus on key program areas that affect the lives and well-being of low-income immigrants and their families, including: access to justice, education, healthcare and economic opportunities, and immigration reform. We also conduct trainings, publish educational materials, and provide legal counsel and strategic advice to inform a wide range of audiences about complex legal and policy matters affecting immigrants and to help strengthen other groups’ advocacy work.

On November 20, 2014, President Obama announced the Immigrant Accountability Executive Actions which amount to significant immigration policy changes aimed at bringing about fairness and accountability to a dysfunctional immigration system. Among other new policy directives, the Department of Homeland Security (DHS) will “implement a new department-wide enforcement and removal policy that places top priority on national security threats, convicted felons, gang members, and illegal entrants apprehended at the border; the second-tier priority on those convicted of significant or multiple misdemeanors and those who are not apprehended at the border, but who entered or reentered this country unlawfully after January 1, 2014; and the third priority on those who are non-criminals but who have failed to abide by a final order of removal issued on or after January 1, 2014.”¹ Although the plan is comprehensive in that it establishes these more targeted border and interior enforcement priorities, among other policy changes, much of the public debate is focused on the Deferred Action for Parental Accountability (DAPA) program, and the changes made to the Deferred Action for Childhood Arrivals (DACA) program. Under the new DAPA program, individuals who have been continuously residing in the U.S. since January 1, 2010 and who can establish they are the parents of a U.S. citizen or lawful permanent resident, will be able to come forward and affirmatively apply for a temporary reprieve from deportation. If after an adjudication conducted on a case-by-

¹ Memo from Jeh Charles Johnson, Secretary, “Policies for the Apprehension, Detention and Removal of Undocumented Immigrants,” November 20, 2014.

case basis, including a national security and criminal background check, the DHS determines that the individual meets the criteria and merits a grant of deferred action, she will be able to also obtain an Employment Authorization Document if she has an economic necessity.

In the absence of House consideration of the Senate bipartisan legislation, S. 744, or similar immigration reform bills, the president's new executive actions on immigration bring a measure of much-needed order, fairness, and sanity to a system that everyone agrees is broken. Soon, many of our family members, friends, and loved ones will finally go about their daily lives knowing they can live, work, and remain united with their family members in this country without the fear of deportation. They will be able to work lawfully, pay more taxes, and participate more fully in their communities. Parents will be able to actively contribute to their children's education by attending school activities, freely participating in their place of worship, and engaging in their local communities. Fewer workers will be subjected to abuse by employers who retaliate against them for lack of work authorization. There will be increased workplace fairness as the economic incentive for unscrupulous employers to hire undocumented workers will have been removed.

While the DAPA and the expanded DACA programs are not a legalization program and only provide a temporary reprieve from deportation, one cannot understate the significant impact this policy change will have on the estimated 4.4 million individuals who might qualify. Most importantly, this will lift the traumatic and paralyzing experience of living in fear of deportation that has robbed individuals with deep ties to our country of their humanity and dignity. In sum, these mothers, fathers, and young immigrants who are already here, working, part of the social fabric of our country, will be able to contribute even more fully to our great nation. Until Congress finally establishes a long-term solution that addresses the needs of 11 million immigrants currently living on the margins of society, President Obama's administrative changes represent a partial and temporary, but necessary, measure.

Latinos, Asian Pacific Islanders, Afro-Caribbean and other immigrant communities have been calling on the Obama administration to adopt much-needed administrative reforms and restore a sense of balance and fairness to the immigration system. Americans who care deeply about civil rights and civil liberties have criticized the Obama administration for the aggressive detention and deportation policies which have been well documented in the Migration Policy Institute's *Immigration Enforcement in the United States: The Rise of a Formidable Machinery* report.² Spending for the federal government's two main immigration enforcement agencies surpassed \$17.9 billion in fiscal year 2012 which amounted to 15 times the spending level of the Immigration and Naturalization Service when the Immigration Reform and Control Act was passed in 1986.³ Despite the dramatic increase in funding for immigration enforcement, the nation's laws have not been updated to address failing aspects of the nation's immigration system. Despite several attempts to pass comprehensive

² Meissner, Doris; Kerwin, Donald; Chisti, Muzaffar and Bergeron, Claire, "Immigration Enforcement in the United States," Migration Policy Institute, January 2013.

³ *Id.* at 2.

immigration reform, America's system has not been significantly updated in over twenty years. This has led to a situation where our nation focuses solely on enforcement rather than addressing the system as a whole.

Accordingly, the president's announcement is welcome news not only to the estimated 4.4 million eligible Americans in waiting but to their U.S. citizen and lawful permanent resident family members who have been enduring the instability that a broken immigration system has created. Moreover, the much-awaited immigration policy changes have been applauded by Latinos, 89 percent of whom approve of the President's executive action.⁴ Faith, business, and civil rights leaders lauded the move, calling it an important step toward fixing a system that has long failed to meet our economic and societal needs.

II. Commonsense Temporary Solution

These much-needed immigration policy changes are a commonsense – albeit temporary – solution that 1) is constitutional and rests on solid legal ground, 2) represents good sound policy, and 3) benefits our economy.

1. Legal Authority

The title of this hearing suggests that there are constitutional concerns related to the president's actions. The fact is the president has strong legal and historical precedent to act. This legal authority of the executive branch is derived from statutes, regulations, Supreme Court decisions, and historic precedence.

a. Executive officials have wide latitude to engage in prosecutorial discretion

As chief prosecutor, the president and his administration not only have a duty to enforce laws, but also the authority to decide how to do so. Every law enforcement agency, including the agencies that enforce immigration laws, has "prosecutorial discretion" – the power to decide whom to investigate, arrest, detain, charge, and prosecute. Agencies properly may develop discretionary policies specific to the laws they are charged with enforcing, the population they serve, and the problems they face.

There is a great deal of agreement in the courts about the wide latitude that Executive officials have when determining whether to prosecute apparent violators of the law. For hundreds of years, the judicial branch has been reluctant to permit judicial review over prosecutorial discretion.⁵ Since the Confiscation Cases in the nineteenth century, the

⁴ "National Poll Finds Overwhelming Support for Executive Action on Immigration," Latino Decisions, November 24, 2014, available at <http://www.latinodecisions.com/blog/2014/11/24/new-poll-results-national-poll-finds-overwhelming-support-for-executive-action-on-immigration/>.

⁵ Wadhia, Shoba S., "The Role of Prosecutorial Discretion in Immigration Law" (2010). *Scholarly Works*. Paper 17.

Supreme Court has been reluctant to permit courts to review prosecutorial discretion.⁶ More recently, in *Heckler v. Chaney*, the Supreme Court held that an agency’s decision to enforce or prosecute, in either a civil or criminal matter, is a matter of the agency’s “absolute discretion,” noting that the agency was “better equipped” to handle the balancing of its own resources and interests.⁷ Similarly, in *Lincoln v. Vigil*, the Court explained that “the allocation of funds from a lump sum appropriation is another administrative decision traditionally committed to agency discretion.”⁸ The Court has repeatedly affirmed the long-standing principle that the Executive Branch has virtually unfettered discretion in deciding how and whether to enforce the law against individuals.

The *Heckler* Court also stated that the “agency’s decision not to take enforcement action should be presumed immune from judicial review,” unless a substantive statute “has provided guidelines for the agency to follow in exercising its enforcement powers.”⁹ As summarized below, this exception in *Heckler* does not control in the immigration context as the Immigration and Nationality Act (INA) does not include relevant guidelines for the agency to follow in enforcing the law.

Recent federal cases have noted the Executive’s broad powers to exercise prosecutorial discretion. In a recent case from the DC Circuit Court of Appeals, Judge Kavanaugh’s opinion, in dicta, stated that “[o]ne of the greatest unilateral powers a President possesses under the Constitution, at least in the domestic sphere, is the power to protect individual liberty by essentially under-enforcing federal statutes regulating private behavior.”¹⁰ The court went on to state that the Executive Branch has the power not to initiate criminal charges against violators of controversial laws, such as federal marijuana or gun possession laws, just as the President may pardon violators of these laws.¹¹ No matter how controversial or unpopular the lack of enforcement, the only remedy “comes in the form of public disapproval, congressional ‘retaliation’ on other matters, or ultimately impeachment in cases of extreme abuse.”¹²

In the area of immigration enforcement, the power of deportation, which is a civil matter, has been treated similarly to a prosecutor’s power to pursue criminal charges. In *Reno v. American-Arab Anti-Discrimination Committee*, the Supreme Court stated that the concerns that make prosecutorial discretion “ill-suited to judicial review” are “greatly magnified in the deportation context.”¹³ The AADC Court expressly referenced deferred action as a long-standing practice, and noted that the purpose of §242(g) of the INA was in part to shield immigration authorities from judicial review of their decisions about whether to grant deferred action.¹⁴

⁶ Pierce, Richard J. Jr., *Administrative Law Treatise* 1252 (4th ed. 2002) (citing to the Confiscation Cases, 74 U.S. 454 (1868)).

⁷ *Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

⁸ *Lincoln v. Vigil*, 508 U.S. 182, 192 (1993).

⁹ *Id.* 470 U.S. at 832-33.

¹⁰ *In re Aiken County*, 725 F.3d 255, 264 (D.C. Cir. 2013).

¹¹ *Id.* 725 F.3d at 265.

¹² *Id.* 725 F.3d at 266.

¹³ 525 U.S. 471, 489-90 (1999).

¹⁴ *Id.* 525 U.S. at 500.

In *Arizona v. United States*, the Supreme Court also recently weighed in on the scope of prosecutorial discretion. The Court stated:

A principal feature of the removal system is the broad discretion exercised by immigration officials [citations omitted]. Federal officials, as an initial matter, must decide whether it makes sense to pursue removal at all.... Discretion in the enforcement of immigration law embraces immediate human concerns. Unauthorized workers trying to support their families, for example, likely pose less danger than alien smugglers or aliens who commit a serious crime. The equities of an individual case may turn on many factors, including whether the alien has children born in the United States, long ties to the community, or a record of distinguished military service.¹⁵

Stopping or suspending the deportation of immediate family members certainly seems encompassed within the “immediate human concerns” discussed in *Arizona*.

b. Prosecutorial discretion to stop or suspend the deportation of immediate family members of U.S. citizens and lawful permanent residents is consistent with the Take Care Clause of the Constitution

The Take Care Clause of the Constitution states that the Executive “shall take Care that the Laws be faithfully executed.” When evaluating whether this requirement has been met, courts ask if the Executive has “adopted a general policy which is in effect an abdication of its statutory duty.”¹⁶ No court, however, has struck down an Executive policy of non-enforcement on Take Care Clause grounds.¹⁷

Some commentators argue that the number of people who are affected by the lack of enforcement is a factor when determining if an Executive’s lack of enforcement is an abdication of statutory duty.¹⁸ For example, in *Crane v. Napolitano*, the Plaintiffs argued that because an estimated 1.76 million people would be eligible for deferred action under DACA, the Executive’s decision not to enforce the INA for this group of people constituted an abdication of its duty.¹⁹ However, in *Heckler v. Chaney*, the Supreme Court stated that “faithful[.]” execution of the law does not necessarily entail “act[ing] against each technical violation of the statute.”²⁰

Moreover, because the Executive is rarely provided enough funding to enforce the law against all whom the law could be enforced, “[t]he President performs his full constitutional duty, if, with the means and instruments provided by Congress and

¹⁵ 132 S. Ct. 2492, 2499 (2012).

¹⁶ *Adams v. Richardson*, 480 F.2d 1159, 1162 (D.C. Cir. 1973).

¹⁷ Manuel, Kate and Garvey, Tom, Congressional Research Service, “Prosecutorial Discretion in Immigration Enforcement” (January 17, 2013) at 17.

¹⁸ *Id.* at 17 (discussing the 1.76 million people who would be eligible to receive deferred action under DACA).

¹⁹ *Crane v. Napolitano*, No. 3:12-cv-03247-O, Amended Complaint (filed N.D. Tex., Oct. 10, 2012), at ¶ 101.

²⁰ *Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

within the limitations prescribed by it, he uses his best endeavors to secure his faithful execution of the laws enacted.”²¹ As in any law enforcement context, some immigration enforcement activities are far more costly than others and some discretion must be exercised. The large gap between the number of people who could be removed and the resources required to remove them demonstrates the inherent necessity for the Executive to develop enforcement priorities. Enforcement priorities, in the context of immigration, have been used for decades for this very reason. The President can continue to prioritize serious criminals and still use the resources that Congress has appropriated.

c. Prosecutorial discretion to stop or suspend the deportation of immediate family members of U.S. citizens and lawful permanent residents is consistent with the INA

Under *Heckler*, as mentioned above, prosecutorial discretion may be limited “where the substantive statute has provided guidelines for the agency to follow in exercising its enforcement powers.”²² However, the INA does not require immigration officials to initiate removal proceedings against all individuals unlawfully present in the United States. Section 103(a) of the INA expressly delegates to the Secretary of Homeland Security the “administration and enforcement of the INA and all other laws relating to immigration and naturalization of aliens.”²³ Moreover, the Homeland Security Act of 2002 expressly charged the Secretary of Homeland Security with the responsibility of “establishing national immigration enforcement policies and priorities.”²⁴ In determining whom to remove, DHS is entitled to *Chevron* deference, which only requires an agency’s reasonable interpretation of the statute. Under this level of deference, the Executive’s decision to stop or suspend deportation of these groups will be permissible. The president’s executive actions are therefore simply a matter of statutory interpretation in accordance with the Homeland Security Act.

d. Previous administrations have utilized this authority

In addition to the broad authority granted by the courts and immigration statutes, there is ample historical justification for Executive action in this area. In fact, every president since Dwight Eisenhower, including Ronald Reagan, George H.W. Bush, and George W. Bush, have taken similar action to protect immigrants.

Administrations have often granted relief to groups of individuals including those who could benefit from potential legislation or who were considered for relief from deportation by Congress: for example, DACA recipients in 2012 who would have benefited from enactment of the DREAM Act; Deferred Enforced Departure (DED) to Haitians in 1997 before the Haitian Refugee Immigration Fairness Act passed in 1998, allowing Haitian nationals in the country since before 1995 to apply for a green card²⁵;

²¹ *Myers v. United States*, 272 U.S. 52, 84 (1926) (Brandeis, J., dissenting).

²² *Heckler*, 470 U.S. at 832-33.

²³ INA Section 103(a).

²⁴ Homeland Security Act of 2002, Sec. 402(5), codified at 6 U.S.C. § 202(5) (emphasis added).

²⁵ U.S. Citizenship and Immigration Services, “Green Card for a Haitian Refugee,” March 22, 2011.

deferred deportation of unauthorized spouses and children of individuals legalized under IRCA in 1987, and then expanded in 1990, before the Legal Immigration Family Equity, or LIFE, Act, which allowed certain people without status to adjust to permanent residence, passed later in 2000²⁶; and Nicaraguans in 1987, ten years before the Nicaraguan Adjustment and Central American Relief Act, which allowed certain people from Guatemala, El Salvador, and other countries to apply for permanent residence, passed in 1997.²⁷

The Family Fairness program implemented by Presidents Reagan and H.W. Bush provides important historical precedent for the program announced by President Obama. The “family fairness” policy that the former Immigration and Naturalization Service adopted from 1987-1990 after the 1986 Immigration Reform and Control Act (IRCA) provided indefinite voluntary departure to spouses and children of people who legalized under IRCA even though they themselves were left out of the statutory amnesty program signed into law by President Reagan. In announcing an expansion of the program in 1990, then INS Commissioner McNary said “It is vital that we enforce the law against illegal entry. However, we can enforce the law humanely. To split families encourages further violations of the law as they reunite.”²⁸ The Family Fairness program required individuals to apply affirmatively and included the creation of a new form, just as the DACA program requires.²⁹ Just months later, Congress enacted The Immigration Act of 1990 that essentially codified the executive action and granted protection from removal and employment authorization by statute.

2. Sound public policy

It has been nearly thirty years since Congress has reformed our legalization system. And since that time, we have witnessed an explosive growth in immigrant enforcement, detention and deportation. The United States now spends \$3.5 billion more on immigration and border enforcement than it does on all other federal law enforcement combined.³⁰ The impact on communities, businesses and the economy of the United States is severe. Two-thirds of all unauthorized immigrants currently living in the United States have resided here for more than a decade and are long settled and well integrated into our communities.³¹ Yet immigrants are being deported in record numbers: More than 4 million people have been removed from the United States since

²⁶ U.S. Citizenship and Immigration Services, “Green Card Through the Legal Immigration Family Equity (LIFE) Act,” March 23, 2011.

²⁷ U.S. Citizenship and Immigration Services, “Immigration Through the Nicaraguan Adjustment and Central American Relief Act (NACARA) Section 203,” April 7, 2011.

²⁸ 67 Interpreter Releases 153 (Feb. 5, 1990).

²⁹ 67 Interpreter Releases 204 (February 26, 1990).

³⁰ In FY 2012, the combined budget for Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) was almost \$18 billion. In stark contrast, the combined budget for the Federal Bureau of Investigation (FBI), Drug and Enforcement Administration (DEA), Secret Service, U.S. Marshals Service, and Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) was \$14.4 billion for the same year.

³¹ Taylor, Paul, and others, “Unauthorized Immigrants: Length of Residency, Patterns of Parenthood, Pew Hispanic Center, 2011.

2001, with 2 million people removed during the Obama administration alone.³² The removal of these 2 million people is numerically equivalent to wiping out the entire combined populations of Boston, Miami, Seattle, and St. Louis.³³

Uprooting these communities takes a tremendous toll on churches and other religious institutions, schools, businesses and families. U.S. citizen and lawful permanent resident children are often separated from one or both parents who may be subject to deportation. This leads children to seek care from extended relatives placing a burden on many families as they struggle to care for children who remain in the U.S. without a parent. Tearing children away from their parents also strains the foster care system at the state level, all while a parent is able and willing to care for the child if only he/she was not deported.

Some of the interior enforcement has been directed at increasing collaboration between immigration agents and local and state law enforcement authorities. As a result, non-citizens pulled over for a simple traffic stop could end up fighting for their right to be able to remain in the country. Moreover, this has resulted in undermining community policing as many undocumented immigrants fear that coming forward to report a crime as a victim or witness will result in their deportation.

While the Obama administration sought to enforce a broken immigration system, the administration recognized the failure of the system to account for individuals who had lived in the U.S. for years and contributed to the community. As an initial step toward addressing the impact of deportations on individuals and families, President Obama announced the DACA program over two years ago. Since that time, statistics have proven that this program is an undeniable success. Young adults who participated in DACA are more integrated into the nation's economic and social institutions.³⁴ DACA beneficiaries work at levels comparable to or higher than their peers. 45 percent of DACA beneficiaries have increased their earnings.³⁵ Before DACA, their ability to pursue a career and educational opportunities was severely limited.³⁶ Additionally, work permits allow this population to better provide for themselves and their families and pay taxes.

The benefits of the DACA program will only be magnified in the newly expanded DACA and DAPA programs. The new programs will allow even more individuals will be able to engage in steady employment, contributing to our gross domestic product (GDP) and our tax base. Better working conditions for non-citizen workers who will now be able to pursue healthy work environments means American workers will also be treated better by employers and wages for everyone will rise. Employers who have employed immigrant workers for decades, investing in their workforce and providing training, will

³² U.S. Department of Homeland Security, Yearbook of Immigration Statistics: 2012, Table 39, Aliens Removed or Returned, Fiscal Years 1892 to 2012, 2012.

³³ U.S. Bureau of the Census, "Annual Estimates of the Resident Population for Incorporated Places Over 50,000, Ranked by July 1, 2010," June 2014.

³⁴ Immigration Policy Center, "Two Years and Counting: Assessing the Growing Power of DACA," June 2014, p. 2.

³⁵ *Id.* at p. 5.

³⁶ *Id.*

now have made a secure investment in workers who are able to remain in the U.S., putting their training and knowledge into growing the U.S. economy. Moving workers from the informal economy to the formal economy will ensure that America's competitiveness, GDP and tax base continues to grow. Moreover, the president's executive action included important elements to allow businesses to more easily retain high-skilled talent and it also included important provisions to allow entrepreneurs grow new businesses in the United States.³⁷

3. The economic case for executive action

Not only will expanding deportation relief and work authorization bring millions of people out of the shadows thereby enhancing our national security, it will also inject positive growth in our local, state and national economies. When immigrants are able to work legally, they can better shield themselves from workplace abuses and move freely across the labor market. According to a study by the Center for American Progress (CAP), expanding deferred action for 4 million people will raise an additional \$3 billion in payroll taxes in the first year alone, and \$22.6 billion over five years, as workers and employers get on the books and pay more taxes. Individual states will experience similar tax gains for the same reasons. In Virginia, CAP estimates that expanding deferred action will lead to a \$106 million increase in tax revenues, over five years. In Texas, tax revenue would increase by \$338 million, and in California by \$904 million.

But the economic benefits go beyond taxes. The executive actions will increase our GDP by up to 0.9 percent, or an additional \$210 billion; reduce the federal deficit by \$25 billion through increased economic growth; and raise the average wage for all U.S. workers by 0.3%. The economic benefits described here are not as robust as those predicted under the immigration reform bill passed by the Senate last year (S. 744), which would have raised the GDP by more than 5.4 percent over the next 20 years and reduced the deficit by \$832 billion but it still represents substantial economic benefits.

III. Moral Imperative

While the legal and historical grounds for executive action on immigration are very clear, the president also has the moral responsibility to act. Although reasonable minds may disagree on whether the president's actions are good public policy, what is undeniable is that the status quo is unacceptable and the President has the authority to make changes to the manner in which the immigration laws are enforced. Indeed if there is any valid criticism of the president's executive actions it is that they do not go far enough and exclude millions of aspiring Americans who also have deep ties to our country but who are not the parents of U.S. citizen or lawful permanent resident children. The current political gridlock and legislative inaction is having a devastating impact on human beings. What is truly at stake here is a fight for the soul of our nation.

³⁷ Memo from Leon Rodriguez, Director, U.S. Citizenship and Immigration Services, "Policies Supporting U.S. High-Skilled Businesses and Workers," November 20, 2014.

The number of immigrants detained and deported by U.S. immigration authorities has reached historic highs in recent years, at a time when overall migration to the U.S. has decreased. Since 2009, nearly 400,000 people have been deported from the U.S. each year, compared with just 189,000 in 2001. In early 2014, the number of individuals removed from the United States thus far under the Obama administration hit 2 million.³⁸

Significant numbers of U.S. citizen children are impacted by these enforcement activities. Data from DHS reveals that 72,410 parents of U.S. citizen children were removed in 2013.³⁹ This data only reflects those parents who reported having U.S. citizen children and therefore fails to account for those individuals who did not voluntarily report parental status out of fear that they would lose their children. Using deportation data, researchers estimate that at least 152,000 U.S. citizen children experience the deportation of a parent each year.⁴⁰ Children suffer immensely when a parent is arrested or deported, facing years of separation, decreased economic support, and social and psychological trauma. For some, the trauma of separation can have even more devastating consequences: as of 2011, 5,100 children were living in our foster care system due to their parents' detention or deportation.⁴¹

Lupita, a brave young lady who is in the audience today, understands the stress and psychological trauma the threat of deportation can cause. I met her more than eight years ago after she watched the news, horrified as she saw her father being detained in a large Los Angeles-area workplace raid. During the stressful months that followed, Lupita, a US citizen, struggled in school, and her grades plummeted (however, I should note that Lupita has worked hard since then and now has a 4.0 GPA).

Last summer, Lupita asked me to deliver a letter to Speaker Boehner. The letter asks the Speaker to grant her a birthday wish: a vote on pending immigration reform legislation, which would allow her mother and father to earn their citizenship. I promised Lupita that I would deliver the letter, but I also warned her that the Speaker was unlikely to act on immigration any time soon. She reflected, and said, "That's OK. If Boehner doesn't vote for immigration reform, I'll tell the president about my birthday wish. He has two daughters, so I'm sure he'll understand."

³⁸ Caplan-Bricker, Nora, *The New Republic*, "Who's the Real Deporter-in-Chief, Bush or Obama?", April 17, 2014 .ICE Press Release. (December 18, 2013) FY2013: ICE announces year-end removal numbers. Retrieved from <https://www.ice.gov/news/releases/1312/131219washingtondc.htm>; Print edition. (2014, February 8). *The Great Expulsion: Barack Obama has presided over one of the largest peacetime outflows of people in America's history. The Economist*. Retrieved from <http://www.economist.com/news/briefing/21595892-barack-obama-has-presided-over-one-largest-peacetime-outflows-people-americas>.

³⁹ Foley, E. "Deportation Separated Thousands of U.S. Citizen Children from Parents in 2013." *Huffington Post*, June 25, 2014.

⁴⁰ Farhang, Lili; Heller, Jonathan; Hu, Alice; and Satinsky, Sara, "Family Unity, Family Health: How Family-Focused Immigration Reform Will Mean Better Health for Children and Families," June 3, 2013 at i.

⁴¹ *Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System*, Race Forward, the Center for Social Justice Innovation, November 2, 2011.

President Obama, along with most Americans, understand that U.S. citizen children like Lupita need their parents to help them grow into successful, responsible community members. Current immigration laws that threaten to tear Lupita's mother from Lupita and her younger sister aren't just immoral, they hurt our society and economy. This is why I am so hopeful that Isabel, Lupita's mother, who is also here today will qualify under the new DAPA program so that she can be there for Lupita and Marisol, her 8-year old sister who was born just days after that workplace raid. Every daughter needs her mother, and our nation's laws should help support strong families rather than rip them apart.

Our nation's workforce will also benefit from the president's expansion of deferred action. By allowing all people who came to the U.S. as children to apply for relief, we will unlock the earning and innovation potential that many of these immigrants, who were raised in this country and educated in American schools, possess. Jong Min You, also in the audience today, came to the U.S. when he was just one year old. A stellar student, Jong Min excelled in school and graduated from college with honors. He dreams of one day becoming a federal judge, but his immigration status stymied him in these efforts, and he currently works in his family's grocery store.

Jong Min, like so many other aspiring Americans, narrowly missed the cutoff date for the DACA program that was announced in June 2012. Now, he'll be able to use his education and ambition to pursue his passions and improve our economy. His family's good news doesn't end there: his parents, who have a lawful permanent resident son, will be able to apply for DAPA and finally visit Korea, which they left more than thirty years ago.

The policy announced in November will affect members of every segment of our society. Aly Wane, for example, came to the U.S. from Senegal to finish high school at the prestigious Georgetown Prep and earned his B.A. from Le Moyne College in Syracuse, New York. Aly is a passionate community organizer who spends his time fighting to improve living conditions for the homeless and those suffering from HIV or AIDS. This New Yorker will finally be able to come forward and apply to work legally in the country he has called home for more than 25 years.

As Americans have learned over the last years about the shattered lives and broken dreams that are the real victims of our dysfunctional immigration system, there has been increasing support for solutions and changes. This is not about numbers or political parties but about our core values as a nation and what it means to be an American – including Americans in waiting.

IV. Conclusion

The president's action, while much needed, is only a partial and temporary solution to a complex problem. The DAPA and expanded DACA programs outlined by the Obama administration do not lead to permanent residence or a path to citizenship. They will have clear, defined limits with strict cut-off dates and eligibility criteria. There is no adjustment of status process, only a deferral of deportation. The only way to fix the

broken immigration system once and for all is for Congress to pass and the President to sign comprehensive immigration reform legislation. We at the National Immigration Law Center look forward to working with members of this committee and others in Congress to make that a reality.

In the interim, President Obama has announced a deferred action program for millions of immigrants who are American in every way except on paper. I commend the president for taking this action, and look forward to working with his administration and community stakeholders to ensure that the program is implemented fairly and fully. In order to ensure these new policy changes are implemented successfully and benefit our country, it will take every institution – schools, employers, policymakers, state and local governments, utility companies, and many others – to help these 4.4 million community members be one step closer towards realizing the American Dream. I believe this will lead to stronger families, economic benefits for our country, more taxes paid, and stronger national security.

Thank you again for the opportunity to testify today. I look forward to answering any questions you may have.