



Statement of the National Immigration Law Center

House Judiciary Subcommittee on Immigration and Citizenship

“Why Dont They Just Get in Line? Barriers to Legal Immigration”

Wednesday, April 28, 2021 at 2:15 PM

Dear Members of the House Judiciary Subcommittee on Immigration and Citizenship,

The National Immigration Law Center (“NILC”) is pleased to submit this statement to the House Judiciary Subcommittee on Immigration and Citizenship for the April 28, 2021 hearing, “Why Dont They Just Get in Line? Barriers to Legal Immigration.”

Founded in 1979, NILC is an organization exclusively dedicated to defending and advancing the rights and opportunities of low-income immigrants and their families. We believe that all people should have the opportunity to achieve their full human potential – regardless of their race, gender, immigration, and/or economic status. Over the past 40 years, NILC has won landmark legal decisions protecting fundamental human and civil rights and advocated for policies that reinforce our nation’s values of equality and justice for all. Furthermore, we engage in policy analysis and advocacy, strategic communications, and provide technical assistance to partner organizations across the country.

Immigrants are essential to the fabric of who we are as a nation. We applaud the subcommittee for conducting this much-needed hearing to explore the barriers to legal immigration and we’re calling on Congress to act quickly, using all available means, to pass inclusive legislation that builds a fair and humane immigration system, creating pathways to U.S. citizenship for Deferred Action for Childhood Arrivals (DACA) recipients and others who have grown up here, Temporary Protected Status (TPS) grantees, essential workers, and the millions of undocumented immigrants who live, work, and are an integral part of the U.S..

Why we need bold immigration reform now

Our country is facing the enormous challenge of trying to heal from the brutality of immigration enforcement under the prior administration and its catastrophic handling of the worst global pandemic we have faced in a century. The Trump administration used blunt instruments to inflict harm on immigrant communities and U.S. citizens alike – with intentionally cruel policies such as the discriminatory Muslim and African bans; decimation of our refugee resettlement program; a morally bankrupt family separation policy that continues to separate over 600 children from their parents;¹ destabilizing the future of millions of people who have relied on the protections under the DACA and TPS policies remain in limbo; and gutting legal immigration channels through numerous discriminatory bans; bars to accessing asylum and the refugee program; and the creation of a wealth test for accessing our immigration system. These tactics were

¹ Shear, Michael D., “Trump and Aides Drove Family Separation at Border, Documents Say,” New York Times, Jan. 14, 2021, <https://www.nytimes.com/2021/01/14/us/politics/trump-family-separation.html>.

nothing short of an attack on the soul of our nation and among the most dangerous attempts to redefine what it means to be an American, to divide us and to undermine and threaten our democracy.

While it is crucial to emphasize the distinctive cruelty of the Trump Administration it is important to acknowledge that the approach of the past four years was also possible because Congress has failed to seize opportunities to enact permanent solutions and protections for noncitizens and has let past immigration reform efforts and federal Department of Homeland Security (DHS) spending be defined by the massive expansion of harmful interior enforcement and border militarization. We are long past due in taking corrective action.

Millions of aspiring citizens have lived and worked in this country for decades but there are several barriers preventing access to existing status and/or citizenship. Polling nationwide shows that more than two-thirds of American voters support immigration reform, including a path to legal status, permanent residency, and eventually citizenship for the estimated 11 million undocumented persons living in the country.² We have an opportunity and a mandate to act now.

Congress must significantly reduce immigration enforcement funding

Immigrant communities have endured decades of escalating immigration enforcement and instead of spending billions of dollars on detention and deportation, we should be passing policies of inclusion that place the 11 million undocumented immigrants who are part of our families and communities on a pathway to citizenship. Federal immigration enforcement policies and practices, including increased reliance on state and local agencies for information about non-U.S. citizens, have swept an unprecedented number of asylum seekers and community members into the detention and deportation system.³ Since 2016, the U.S. Immigration Customs Enforcement's (ICE) budget has grown by about 40 percent while U.S. Custom and Border Protection's (CBP) budget has grown by 30 percent.⁴ Despite patterns of abuse, lack of accountability, and mismanagement of funds, the federal government continues providing an influx of funding to immigration enforcement agencies.⁵

Congress must repeal the three- and ten-year bars

One of the key barriers that often prevents individuals from being able to pursue a pathway to citizenship in the U.S. are the three- and ten-year bars. People who enter the U.S. without being “inspected” and “admitted” (entered without inspection “EWI”) by a U.S. immigration officer—or in other words, who enter without government authorization—and who have been in the U.S. without authorization for a certain amount of time are generally not able to adjust to becoming lawful permanent residents while in the U.S., regardless of whether they have an approved family or employment-based petition, for example, filed on their behalf. Instead, they must first leave the U.S. and apply for a waiver of their being unauthorized in the U.S., and pursue their lawful permanent resident (aka “green card”) application at a U.S. embassy or consulate abroad, a time- and cost-intensive process that entails risk of not being able to re-enter the U.S..

² Narea, Nicole, “Poll: Most Americans support a path to citizenship for undocumented immigrants,” Vox, Feb. 4, 2021, <https://www.vox.com/policy-and-politics/2021/2/4/22264074/poll-undocumented-immigrants-citizenship-stimulus-biden>.

³ “Justice-Free Zones: U.S. Immigration Detention Under the Trump Administration,” the American Civil Liberties Union (ACLU), Human Rights Watch (HRW), and the National Immigrant Justice Center (NIJC), December 2020, <https://www.aclu.org/report/justice-free-zones-us-immigration-detention-under-trump-administration>.

⁴ See “The Defund Hate Coalition responds to scarcity language in DHS memo, calls for significant cuts in funding to ICE and CBP,” Defund Hate Coalition, Jan. 21, 2021, <https://defundhate.org/2021/01/21/the-defund-hate-coalition-responds-to-scarcity-language-in-dhs-memo-calls-for-significant-cuts-in-funding-to-ice-and-cbp/>.

⁵ Cantú, Aaron, “How Democrats Abetted Trump’s Bloated Border Regime,” The New Republic, Jan. 7, 2020, <https://newrepublic.com/article/156116/democrats-abetted-trumps-bloated-border-regime>.

After a 1996 change in immigration law created what is known as the “unlawful presence bars,” pursuing a green card abroad for those who EWI and for those who accrued unlawful presence in the U.S. has become much more daunting. Under the unlawful presence bars, people who have been in the U.S. without permission for six months are barred from reentering the U.S. for three years once they leave and anyone who has been in the U.S. without permission for one year or more is barred from reentering the country for ten years, unless the person applies for and is granted a waiver.

In 2013, as immigration reform efforts stalled in Congress, and the Obama administration made headway in at least reducing some of the stress from having to consular process by permitting green card applicants to initiate the unlawful presence waiver process from the U.S. Those who have U.S. citizen family members may apply for a “provisional waiver” of the three- or ten-year unlawful presence bars before departing the U.S. if they can show that a U.S. citizen immediate family member would suffer “extreme hardship” should they be separated. Therefore, instead of having to wait for the waiver application to be adjudicated abroad, applicants can at least be with their family members until the application is approved, which can take years. Upon approval, they can then travel abroad for consular processing of their “green card” application, knowing that a waiver has already been granted for the “unlawful presence bar,” reducing both the time away from home and the risk that they would be denied reentry. The waiver was expanded at the end of the Obama Administration in 2016 through USCIS policy guidance, which allowed lawful permanent residents to also avail themselves of the provisions waiver process, and clarifying the “extreme hardship” standard.

However, there are still thousands of people with strong ties in the U.S. who have been unable to move forward with the green card process because they don’t want to risk years of separation from their loved ones should they leave the country and be denied reentry. Congress must take immediate steps to repeal this barrier which would allow thousands of otherwise undocumented immigrants living in the country today to pursue a pathway to citizenship.

Relief is long-overdue for undocumented youth whose home is here.

While NILC supports broad reforms to address our dysfunctional and increasingly cruel immigration system, we have worked together with immigrant youth for more than two decades to urge Congress to pass legislation to provide undocumented youth who came to the U.S. as children with a pathway to citizenship. The first version of the Dream Act was introduced in 2001 but Congress has been unable to pass the Dream Act into law.⁶ After years of Congressional inaction, President Barack Obama announced on June 15, 2012 the Deferred Action for Childhood Arrivals (DACA) program, which grants eligible immigrant youth temporary protection from deportation for a two-year renewable period and provides them work authorization. More than 700,000 young immigrants have been granted DACA and are able to pursue educational and professional opportunities, purchase homes, and remain with their families. However, DACA does not provide permanent lawful status and it must be renewed every two years. As a result, DACA recipients must continually pay the high renewal fees every two years to retain their work authorization and protection from being deported.

Until Congress acts to provide permanent protections for this population, immigrant youth will rely on DACA but this program has its own set of barriers and remains in a precarious situation due to litigation.

Barriers to DACA

⁶ NILC was thrilled to see the House pass the Dream and Promise Act in March of 2021 and we urge the Senate to pass a more inclusive version of the Dream and Promise Act that does not include harmful criminalizing provisions. See NILC, National Immigration Law Center Celebrates House Passage of the Dream and Promise Act, (Mar. 18, 2021), <https://www.nilc.org/2021/03/18/nilc-celebrates-house-passage-of-dream-and-promise-act/>.

1. One of the main barriers to applying for DACA is the cost (\$495 fees) for both initial and renewal requestors. These increased fees may block some recipients from being able to renew their DACA and cut off this crucial pathway to opportunity for immigrant youth and their families. Past research has shown that the applying for and getting DACA already presents barriers for immigrant youth and their families. Many young people who've applied for DACA come from low-income backgrounds.⁷ Research shows that DACA recipients struggle to pay the fees and not being able to afford the fees has delayed renewals. Lack of affordability has prevented some people from applying or renewing at all.⁸ In addition to having to pay the fees, many DACA recipients retain paid legal assistance to submit renewal applications. We know that participation in DACA is lower in communities that have high unemployment and low levels of economic opportunity.⁹ In other words, the people who have the most to gain from DACA may be prevented from accessing its benefits because of these exorbitant fees.
2. Another barrier that prospective DACA applicants face is the amount of evidence the initial requestor has to submit. As the DACA policy has existed since 2012, applicants are having to document 14 years of continuous residence. Gathering such evidence has been difficult and made even more challenging during this pandemic. Additionally, several places, like schools and health care clinics from which applicants are requesting records, do not keep records for more than 10 years. DHS should be flexible on the volume of documentation that is needed from applicants when they request DACA for the first time, while preserving a broad range of documents that are acceptable.

Litigation

The Trump administration abruptly terminated DACA on September 5, 2017 which has threatened immigrants with DACA protections. Several lawsuits were filed challenging the termination, and the U.S. Supreme Court concluded, on June 18, 2020, that the Trump administration had terminated DACA unlawfully. The Trump administration again tried to dismantle DACA on July 28, 2020, by shortening the duration of work authorization and protection from deportation from two years to one year for renewal applicants and eliminating DACA for first-time applicants. NILC and our partners challenged that change, and a federal district court set the change aside. Nevertheless, DACA remains under threat, as there is ongoing litigation brought by the Texas and other states challenging its legality.

Multiple Pathways to Swift Reform

The consequences of political inaction on immigration reform have been severe and we have the moral authority to work together to update our cruel and outdated immigration system. With each passing day, the uncertainty for millions of immigrants causes unnecessary suffering and costs all of us. There is no silver bullet or any singular legislative path to bring us closer to our vision of an immigrant inclusive

⁷ Caitlin Patler, Jorge A. Cabrera, and Dream Team Los Angeles, From Undocumented to DACAmented: Impacts of the Deferred Action for Childhood Arrivals (DACA) Program, (June 6, 2015), <https://escholarship.org/uc/item/3060d4z3>.

⁸ Tom K. Wong, In Their Own Words: A Nationwide Survey of Undocumented Millennials, Center for Comparative Immigration Studies, In Their Own Words: A Nationwide Survey of Undocumented Millennials, (Oct. 18, 2017), <https://escholarship.org/uc/item/1db6n1m2#author>.

⁹ Tom K. Wong and Angela S. Garcia, Does Where I Live Affect Whether I Apply? The Contextual Determinants of Applying for Deferred Action for Childhood Arrivals, International Migration Review, <https://journals.sagepub.com/doi/10.1111/imre.12166>.

society, and so we urge Members to continue to pursue swift passage of multiple bills that advance our collective agenda.¹⁰

NILC looks forward to continuing to work with members of this subcommittee to ensure that Congress acts quickly, using all available means, to pass inclusive legislation that builds a fair and humane immigration system, creating pathways to U.S. citizenship for the millions of undocumented immigrants who live, work, and are an integral part of the U.S..

We thank you for your time on this important matter.

Sincerely,
The National Immigration Law Center

¹⁰ For more information NILC's positions on legalization bills, please see Marielena Hincapié's statement submitted to the House Judiciary Committee's Subcommittee on Immigration and Citizenship for the hearing entitled, "The U.S. Immigration System: The Need for Bold Reforms," <https://docs.house.gov/meetings/JU/JU01/20210211/111174/HHRG-117-JU01-Wstate-HincapiM-20210211.pdf>.