July 31, 2023

Hon. Merrick Garland  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue NW  
Washington, DC 20530

Hon. Alejandro N. Mayorkas  
Secretary of Homeland Security  
U.S. Department of Homeland Security  
2707 Martin Luther King Jr. Avenue, SE  
Washington, DC 20528

Dear Attorney General Garland and Secretary Mayorkas,

The undersigned organizations write to urge your respective agencies to utilize existing authorities to provide much-needed relief and stability to children in mixed-status immigrant families. Today children of immigrants represent a quarter of all U.S. children, and 5.2 million children—the vast majority of whom are U.S. citizens—live in mixed-status families with at least one undocumented parent.1 As organizations dedicated to the health and well-being of infants, children, and youth, we believe it is critical to protect these children from the threat of being separated from their parents due to deportation. Specifically, we urge you to pursue joint rulemaking to implement procedural changes to streamline cancellation of removal and fully consider the best interests of the child in these cases.

While we understand that Congress has thus far left this issue unattended, there are administrative steps your agencies can take now to provide relief. Although there may not be a single sweeping policy solution, a series of targeted solutions can begin to make a meaningful difference in the lives of these families. One such discreet option, which was outlined in a letter sent to the Biden administration by a group of Senators on May 31, 2023, is to streamline existing cancellation of removal processes.2

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Cancellation of removal currently offers a path to legal status for individuals who have resided in the U.S. for at least 10 years, have a qualifying U.S. citizen or lawful permanent resident family member, and meet several strict requirements like exhibiting good moral character, passing a criminal background check, and demonstrating “exceptional and extremely unusual hardship” to the qualifying family member. However, the additional requirement that cancellation of removal applications be filed once an individual is in removal proceedings creates unnecessary barriers, preventing many eligible and deserving individuals from seeking this form of relief. Indeed, the very factors that may make long-time undocumented residents strong candidates – that they are low priorities for enforcement and have strong equities in the U.S. – often prevents even the most sympathetic applicant from having access to this relief and contributes to them remaining undocumented. Thus, we recommend that your Departments work together on joint rulemaking to implement process changes to allow more individuals eligible for cancellation of removal to affirmatively apply for this important form of relief.

While there are limits on the number of people who can receive cancellation of removal per year, current law allows important reprieve for those who are awaiting the outcome of their case, including the ability to support themselves and their families. Undocumented parents who care for approximately 4.4 million U.S. citizen children, including children with disabilities and special needs, are among those who could ultimately benefit from cancellation of removal. These proposed changes could also benefit a considerable share of the 300,000 U.S. citizen children of DACA recipients and 360,000 U.S. citizen children of individuals with TPS, both programs that provide only temporary relief.

Additionally, we recommend incorporating frameworks of scientific and behavioral understanding into the cancellation of removal review process, aligning it with the “best interests of the child.” In many cases, the deportation of a primary caregiver is likely to result in “exceptional and extremely unusual” hardship to their U.S. citizen or LPR children. Child development research consistently points to the important role of stable and loving caretakers, especially for young children and those with special needs. Parents play a vital role in providing essential care, from scheduling medical appointments and arranging transportation to securing additional resources in schools and providing emotional support. Young children faced

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3 Immigration and Nationality Act (INA) § 240A(b)(1).
7 INA § 240A(b)(1)(D).
with the potential deportation of a relative endure significant instability and severe emotional trauma that result in toxic stress accumulation and alteration in their neurobiology, harming their brain development and long-term health.9

Research on the impact of deportation on children similarly has found that the trauma of parental separation has short and long-term negative impacts on children’s physical, developmental, mental, and economic well-being.10 Numerous studies demonstrate that following the detention or deportation of their primary caretakers and financial supporters, children are likely to experience severe hardships, including anxiety, depression, acute stress disorders, behavioral issues and developmental disorders, decreases in household income, poor educational outcomes, and housing instability, and homelessness following the deportation of their primary caretakers and financial supporters.11 Even the fear of being separated from their parents causes extreme anxiety and newly aggressive behaviors among children of immigrants.12 Separation from a parent due to any reason is considered an Adverse Childhood Event, or ACE, and ACEs are linked with increased risk of long-term health problems, including but not limited to heart disease, hypertension, and mental health issues.13 About 765,000 children of undocumented parents may have special needs, such as Type 1 diabetes and autism spectrum disorder, and have higher ACEs than children without special needs, making them particularly vulnerable to the harms of parental separation.14 Moreover, the risk of increased distress and other adverse mental health issues persists even if children accompany their parents to the country to which they are deported.15

Every child deserves the stability and peace of mind to grow up with dignity, hope, and joy, and to achieve their full potential. By streamlining cancellation of removal and explicitly centering the needs of children in the process, your agencies can help a significant number of families

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9 Hing and Bird, 2020.
12 Cervantes et al., 2018.
access long-term relief. Should you have questions or wish to discuss this matter further, please contact Wendy Cervantes, Director of Immigration and Immigrant Families at the Center for Law and Social Policy, at wcervantes@clasp.org. We thank you for your time and consideration.

Sincerely,

Center for Law and Social Policy
CHILDREN AT RISK
Children’s Defense Fund
Children’s Healthwatch
First Focus on Children
The Children’s Partnership