



July 31, 2023

**RECEIVED**

**By ESEC at 8:03 am, Aug 01, 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.<sup>1</sup> 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.<sup>2</sup>

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<sup>1</sup> Randy Capps et al., “Unauthorized Immigrants in the United States, Stable Numbers, Changing Origins.” Migration Policy Institute (December 16, 2020) <https://www.migrationpolicy.org/research/unauthorized-immigrants-united-states-stable-numbers-changing-origins>.

<sup>2</sup> “Cortez Masto & Colleagues Call on Administration to Streamline Cancellation of Removal Process | U.S. Senator Catherine Cortez Masto of Nevada (senate.gov),” (July 2023) <https://www.cortezmasto.senate.gov/news/press-releases/cortez-masto-and-colleagues-call-on-administration-to-streamline-cancellation-of-removal-process>.

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.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

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.”<sup>6</sup> 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.<sup>7</sup> Child development research consistently points to the important role of stable and loving caretakers, especially for young children and those with special needs.<sup>8</sup> 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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<sup>3</sup> Immigration and Nationality Act (INA) § 240A(b)(1).

<sup>4</sup> Randy Capps, Julia Gelatt, Ariel G. Ruiz Soto, Jennifer Van Hook, “Unauthorized Immigrants in the United States, Stable Numbers, Changing Origins,” Migration Policy Institute (December 16, 2020) <https://www.migrationpolicy.org/research/unauthorized-immigrants-united-states-stable-numbers-changing-origins>.

<sup>5</sup> Nicole Prchal Svajlenka and Trinh Q. Truong, “The Demographic and Economic Impacts of DACA Recipients: Fall 2021 Edition,” Center for American Progress (November 24, 2021), <https://www.americanprogress.org/article/the-demographic-and-economic-impacts-of-daca-recipients-fall-2021-edition/>; “Fact Sheet: Temporary Protected Status (TPS),” First Focus on Children (January 31, 2021), <https://firstfocus.org/resources/fact-sheet/temporary-protected-status>.

<sup>6</sup> Bill Ong Hing and Lizzie Bird, “Curtailing the Deportation of Undocumented Parents in the Best Interest of the Child,” *Georgetown Immigration Law Review*, 35, no. 1 (2020): 113-179 <https://www.law.georgetown.edu/immigration-law-journal/wp-content/uploads/sites/19/2021/04/03-Curtailing-the-Deportation-of-Undocumented-Parents-in-the-Best-Interest-of-the-Child.pdf>.

<sup>7</sup> INA § 240A(b)(1)(D).

<sup>8</sup> “Parents and Caregivers Are Essential to Children’s Healthy Development,” American Psychological Association (June 2023) <https://www.apa.org/pi/families/resources/parents-caregivers>.

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.<sup>9</sup>

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.<sup>10</sup> 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.<sup>11</sup> Even the fear of being separated from their parents causes extreme anxiety and newly aggressive behaviors among children of immigrants.<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup> 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.<sup>15</sup>

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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<sup>9</sup> Hing and Bird, 2020.

<sup>10</sup> Nicole Chávez, Suma Setty, Hannah Liu, and Wendy Cervantes, “Still at Risk: The Urgent Need to Address Immigration Enforcement’s Harms to Children,” Center for Law and Social Policy (June 2023) <https://www.clasp.org/publications/report/brief/urgent-need-address-immigration-enforcement-harm-children/>.

<sup>11</sup> Zayas, Luis H., Sergio Aguilar-Gaxiola, Hyunwoo Yoon, and Guillermina Natera Rey. “The Distress of Citizen-Children with Detained and Deported Parents.” *Journal of Child and Family Studies* 24, no. 11 (November 1, 2015): 3213–23 <https://doi.org/10.1007/s10826-015-0124-8>; Wendy Cervantes, Rebecca Ullrich, and Hannah Matthews, “Our Children’s Fear: Immigration Policy’s Effects on Young Children,” Center for Law and Social Policy (March 2018) [https://www.clasp.org/sites/default/files/publications/2018/03/2018\\_ourchildrensfears.pdf](https://www.clasp.org/sites/default/files/publications/2018/03/2018_ourchildrensfears.pdf).

<sup>12</sup> Cervantes et al., 2018.

<sup>13</sup> Vincent J. Felitti, Robert F. Anda, Dale Nordenberg, et al., “Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults: The Adverse Childhood Experiences (ACE) Study,” *American Journal of Preventive Medicine* 14, no.4 (1998): 245-258, [https://www.ajpmonline.org/article/S0749-3797\(98\)00017-8/fulltext](https://www.ajpmonline.org/article/S0749-3797(98)00017-8/fulltext); Hing and Bird, 2020.

<sup>14</sup> Lauren M. Cycyk and Lillian Durán, “Supporting Young Children With Disabilities and Their Families From Undocumented Immigrant Backgrounds: Recommendations for Program Leaders and Practitioners,” *Young Exceptional Children* 23, no. 4 (2020): 212–24 <https://doi.org/10.1177/1096250619864916>.; Deborah Seok, David Murphey, and Fadumo M. Abdi, “Children with Special Health Care Needs Are More Likely to Have Adverse Childhood Experiences,” *Child Trends* (December 10, 2019) <https://www.childtrends.org/blog/children-with-special-health-care-needs-are-more-likely-to-have-adverse-childhood-experiences>.

<sup>15</sup> Luis H. Zayas and Laurie Cook Heffron, “Disrupting Young Lives: How Detention and Deportation Affect US-Born Children of Immigrants,” *CYF News*, American Psychological Association (November 2016) <https://www.apa.org/pi/families/resources/newsletter/2016/11/detention-deportation>.

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](mailto: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



U.S. Citizenship  
and Immigration  
Services

September 11, 2023

Wendy Cervantes  
Director of Immigration and Immigrant Families  
Center for Law and Social Policy  
[wcervantes@clasp.org](mailto:wcervantes@clasp.org)

Dear Ms. Cervantes:

Thank you for your July 31, 2023 letter to the Department of Homeland Security (DHS) concerning cancellation of removal and coordination between DHS and the U.S. Department of Justice (DOJ). I am responding on behalf of DHS.

We appreciate the concerns you shared and your interest in providing relief and stability to children in mixed-status immigrant families. In your letter, you endorse a recommendation by a group of Senators for a joint rulemaking by DHS and DOJ to streamline the cancellation of removal process. DHS is considering their recommendations.

In your letter, you also make some specific suggestions (distinct from the Senators' recommendations) for regulatory and policy revisions to the adjudication of cancellation of removal requests and the consideration of "exceptional and extremely unusual hardship" to U.S. citizen and lawful permanent resident children. Given current regulations, DHS defers to DOJ on these suggestions, as DOJ has sole jurisdiction over the adjudication of cancellation of removal requests.

Thank you again for your letter and interest in these important issues. Please share this response with the other organizations that cosigned your letter. Should you require any additional assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Ur M. Jaddou" followed by a long horizontal flourish.

Ur M. Jaddou  
Director