



Practice Advisory Series
TEMPORARY PROTECTED STATUS

LOOKING FORWARD: REMEDIES FOR TPS
RECIPIENTS
Seventh Installment

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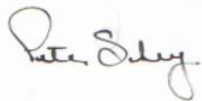
Practice Advisory Forward

The Center for Human Rights and Constitutional Law is a non-profit, public interest legal foundation dedicated to furthering and protecting the civil, constitutional, and human rights of immigrants, refugees, children, prisoners, and the poor. Since its incorporation in 1980, under the leadership of a board of directors comprising civil rights attorneys, community advocates and religious leaders, the Center has provided a wide range of legal services to vulnerable low-income victims of human and civil rights violations and technical support and training to hundreds of legal aid attorneys and paralegals in the areas of immigration law, constitutional law, and complex and class action litigation.

The Center has achieved major victories in numerous major cases in the courts of the United States and before international bodies that have directly benefited hundreds of thousands of disadvantaged persons.

This practice advisory examines remedied and steps that Temporary Protected Status recipients may seek following the Administration's termination of TPS. There will be an analysis of applying for adjustment of status, applying for individual deferred action, and applying for asylum.

Manuals prepared by the Center are constantly being examined for improvements and updated to reflect current practices. Please feel free to email pschey@centerforhumanrights.org if you would like to suggest updates or edits to portions of this practice advisory.



Peter Schey
President and Executive Director
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Introduction

This practice advisory acts as the eighth installment in a series about the United States creation, utilization, and termination of several country's Temporary Protected Status ("TPS"). As the Trump administration has terminated Temporary Protected Status ("TPS") for Nicaraguans, Salvadorans, and Haitian immigrants, TPS recipients and immigration advocates must determine how to protect the estimated 300,000 recipients from removal and exploitation. This practice advisory will discuss several strategies to garner protection for TPS recipients. First, there will be a discussion of seeking protection by adjustment of status. Second, the advisory will discuss applying for individual deferred action status. Third, there will be a discussion of applying for asylum. Fourth, the practice advisory will lay the groundwork for filing individualized federal court actions challenging the termination of TPS. Lastly, the advisory will discuss the benefits of utilizing a self-assessment tool and carrying a protection letter.

Remedies for TPS Recipients

TPS provides protection against removal and authorizes a recipient to lawfully work in the United States but does not by itself provide a path to lawful status. It may be helpful to speak with an advocate or legal services representative to see if you qualify to adjust your status via another alternative. Some TPS recipients may be able to adjust their status based on a familial relationship, a work visa, or asylum.

A. Apply for Adjustment of Status

i. What is Adjustment of Status?

According to USCIS adjustment of status is, “the process that you can use to apply for lawful permanent resident status (also known as applying for a Green Card) when you are present in the United States. This means that you may get a Green Card without having to return to your home country to complete visa processing.”¹

TPS grantees are considered to be in lawful status from the date they apply for TPS. Although there is division among federal courts regarding whether TPS constitutes “admission” which cures a person’s initial illegal entry for purposes of qualifying for § 245(a) adjustment, the Ninth Circuit (as discussed below) held that that immigrants with TPS are “admitted” for the purpose of adjustment of status.²

ii. Statutory Authority

The Immigration and Nationality Act Section 245(a) provides that an immigrant may adjust their status to that of a lawful permanent resident if,

- (a) The status of an alien who was inspected and admitted or paroled into the United States or the status of any other alien having an approved petition for classification as a VAWA self-petitioner may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if
 - (1) the alien makes an application for such adjustment,
 - (2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and
 - (3) an immigrant visa is immediately available to him at the time his application is filed.

INA 245(a)(1)-(3).

iii. Regulatory Authority

¹ *Adjustment of Status*, U.S. Citizenship and Immigration Services (Jan. 11, 2018) <https://www.uscis.gov/greencard/adjustment-of-status>.

² *Ramirez v. Brown*, 852 F.3d 954, 957 (9th Cir. 2017).

[8 C.F.R. Section 245.1](#) states in relevant part,

Any alien who is physically present in the United States, except for an alien who is ineligible to apply for adjustment of status under paragraph (b) or (c) of this section, may apply for adjustment of status to that of a lawful permanent resident of the United States if the applicant is eligible to receive an immigrant visa and an immigrant visa is immediately available at the time of filing of the application. A special immigrant described under **section 101(a)(27)(J)** of the Act shall be deemed, for the purpose of applying the adjustment to status provisions of **section 245(a)** of the Act, to have been paroled into the United States, regardless of the actual method of entry into the United States.

iv. *Ramirez v. Brown*

In *Ramirez v. Brown*, 852 F.3d 954, 957 (9th Cir. 2017), the Court determined, “whether the grant of TPS allows an alien not only to avoid the bar under § 1255(c)(2) but also meet the “inspected and admitted or paroled” requirement in § 1255(a). We conclude that it does. . . .”

Plaintiff contended, “. . . he has been “inspected” because TPS applicants undergo a rigorous inspection process by an immigration officer.”³ The Court relied on 8 U.S.C. § 1254a(f)(4) which states,

(f) Benefits and status during period of temporary protected status. During a period in which an alien is granted temporary protected status under this section—(4) for purposes of adjustment of status under section 245 [8 USCS § 1255] and change of status under section 248 [8 USCS § 1258], the alien shall be considered as being in, and maintaining, lawful status as a nonimmigrant.⁴

The Court found, “[e]mploying the traditional canons of statutory construction at step one, we conclude that § 1254a(f)(4) unambiguously treats aliens with TPS as being “admitted” for purposes of adjusting status.”⁵ Additionally, the Court relied on a prior holding of the 6th Circuit in *Flores v. U.S. Citizenship & Immigration Servs.*, 718 F.3d 548, 551-53 (6th Cir. 2013) finding, ““exactly what § 1254a(f)(4) provides [is that a TPS recipient] is considered [as] being

³ *Id.* at 958.

⁴ 8 U.S.C. § 1254a(f)(4).

⁵ *Ramirez v. Brown*, 852 F.3d 954, 959 (9th Cir. 2017).

in lawful nonimmigrant status and thus meets the ['admitted'] requirement[] in § 1255."⁶ The Court reasoned, "by the very nature of obtaining lawful nonimmigrant status, the alien goes through inspection and is deemed "admitted."⁷

In summary, the Court of Appeals for the Sixth and Ninth Circuits have held that TPS constitutes an admission for purposes of eligibility for adjustment under INA §245(a). TPS holders who are immediate relatives of U.S. citizens can take advantage of this holding and must simply reside within the jurisdiction of the Sixth Circuit (Kentucky, Michigan, Ohio, and Tennessee) or the Ninth Circuit (California, Arizona, Nevada, Washington, Oregon, Idaho, Montana, Alaska, Hawaii, Guam, and the North Mariana Islands)

v. ***Moreno v. Nielsen***

Moreno v. DHS, No. 18-01135 (E.D.N.Y. filed Feb. 22, 2018) was filed on February 22, 2018 in the United States District court for the Eastern District of New York. This lawsuit unlike the previously filed lawsuits is a class action challenging DHS's refusal to recognize a grant of TPS as a form of inspection and admission for purposes of an application for lawful permanent resident. Plaintiffs challenge, "the U.S. Citizenship and Immigration Services and DHS policy of depriving certain TPS holders who entered the United States without inspection from adjusting their status under INA § 245(a)."⁸ Plaintiffs move the Court, "to order DHS to grant adjustment of status to TPS recipients residing in the First, Second, Third, Fourth, Fifth, Seventh, Eighth,

⁶ *Id.*

⁷ *Id.* at 960.

⁸ Mark Silverman, Ariel Brown, & Alison Kamhi, *Practice Alert on Ramirez v. Brown- November 2017 Update Adjustment Opportunities for People with TPS and People Whose TPS will Expire*, Immigrant Legal Resource Center (Nov. 2017) (available at: https://www.ilrc.org/sites/default/files/resources/tps_advisory_1108_-_ms_anb.ak_.anb_.ak_.pdf).

and Tenth U.S. Circuit Court of Appeals who have been inspected and admitted by virtue of their TPS grants and are otherwise eligible for 245(a) adjustment.”⁹

vi. *Serrano v. United States Attorney General*

In *Serrano v. United States Attorney General*, 655 F.3d 1260 (11th Cir. 2011), the Eleventh Circuit held that a grant of TPS was not an admission for purposes of adjustment under § 245(a). Thus, TPS recipients living within the states of the Eleventh Circuit are barred from adjusting if they entered without inspection, unless they can satisfy the requirements of INA § 245(i).

B. Apply for Individual Deferred Action Status

i. What is Deferred Action Status?

Deferred action status is an immigration status that could potentially bring temporary, critical relief for many TPS and DACA recipients who are in danger of losing their legal right to remain in the United States. Deferred action status provides protection from deportation for a set period of time and authorizes recipients to work lawfully in the United States. It is a discretionary status and therefore has no set criteria or prerequisite for application, however it has been most successful for immigrants with significant medical conditions or immigrants with close family members who have significant medical conditions.

A grant of deferred action status represents DHS’s decision not to seek an alien’s removal for a prescribed period of time. See generally *Reno v. Am.- Arab Anti-Discrim. Comm.*, 525 U.S. 471, 483–84 (1999) (describing deferred action). As has been recognized by the Department of Justice’s Office of Legal Counsel:

⁹ *Id.*

In immigration law, the term “deferred action” refers to an exercise of administrative discretion in which immigration officials temporarily defer the removal of an alien unlawfully present in the United States. Am.-Arab Anti-Discrim. Comm., 525 U.S. at 484 (citing 6 Charles Gordon et al., *Immigration Law and Procedure* § 72.03[2][h] (1998)); see USCIS, *Standard Operating Procedures for Handling Deferred Action Requests at USCIS Field Offices* at 3 (2012) (“USCIS SOP”); INS Operating Instructions § 103.1(a)(1)(ii) (1977). It is one of a number of forms of discretionary relief—in addition to such statutory and non-statutory measures as parole, temporary protected status, deferred enforced departure, and extended voluntary departure—that immigration officials have used over the years to temporarily prevent the removal of undocumented aliens.¹⁰

ii. Statutory Authority

The laws created by Congress in the Immigration and Nationality Act (INA) do not directly grant anyone deferred action status. However, Congress has passed laws that do reference the *administrative practice* of deferred action status. For example, in 8 U.S.C. § 1227(d)(2) - entitled *Deportable Aliens* – the law states: “The denial of a request for an administrative stay of removal under this subsection shall not preclude the alien from applying for a stay of removal, *deferred action*, or a continuance or abeyance of removal proceedings under any provision of the immigration laws of the United States.” (emphasis added).

Additionally, though not in the context of substantive legislation, Congress has spoken on the DHS’s discretionary authority through its appropriations. In appropriating funds for DHS’s enforcement activities—which are sufficient to permit the removal of only a fraction of the undocumented aliens currently in the country—Congress has directed DHS to “prioritize the identification and removal of aliens convicted of a crime by the severity of that crime.”

Department of Homeland Security Appropriations Act, 2014, Pub. L. No. 113-76, div. F, tit. II,

¹⁰ *The Department of Homeland Security’s Authority to Prioritize Removal of Certain Aliens Unlawfully Present in the United States and to Defer Removal of Others*, Memo. Op. for the Sec. of Homeland Security and the Counsel to the President (Nov. 19, 2014).

128 Stat. 5, 251 (“DHS Appropriations Act”). Nevertheless, no federal statute appears to explicitly authorize deferred action status or discuss its requirements.

iii. Regulatory Authority

8 C.F.R. § 247a.12(c)(14) states that certain immigrants may be granted employment authorization, including an immigrant “who has been granted deferred action, an act of administrative convenience to the government which gives some cases lower priority, if the alien establishes an economic necessity for employment.” This important regulation both recognizes the existence of deferred action and authorizes recipients to work in the United States². However, except for the above reference, the criteria and requirements for deferred action status are not explicitly written into regulation.

iv. Agency Policy and DHS Discretion

The most useful resource and information regarding the criteria for deferred action status comes from DHS, and its predecessor INS, policy. The former INS’s Operations Instructions (“OIs”) provided for deferred action in cases where “adverse action would be unconscionable because of the existence of appealing humanitarian factors”³ and made clear that deferred action status is “an act of administrative choice to give some cases lower priority and in no way an entitlement...”⁴. These Operation Instructions were withdrawn on June 24, 1997. However, the relief continues to be available to certain visa applicants and undocumented immigrants with significant medical conditions or close U.S. citizen or lawful resident relatives with significant medical conditions. The vast majority of cases in which deferred action is granted involve medical grounds.

With respect to removal decisions in particular, the Supreme Court has recognized that “the broad discretion exercised by immigration officials” is a “principal feature of the removal system” under the INA. Arizona v. United States, 132 S. Ct. 2492, 2499 (2012). The INA expressly authorizes immigration officials to grant certain forms of discretionary relief from removal for aliens, including parole, 8 U.S.C. § 1182(d)(5)(A); asylum, id. § 1158(b)(1)(A); and cancellation of removal, id. § 1229b. But in addition to administering these statutory forms of relief, “[f]ederal officials, as an initial matter, must decide whether it makes sense to pursue removal at all.” Arizona, 132 S. Ct. at 2499. And, as the Court has explained, “[a]t each stage” of the removal process—“commenc[ing] proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders”—immigration officials have “discretion to abandon the endeavor.” Am.-Arab Anti-Discrim. Comm., 525 U.S. at 483 (quoting 8 U.S.C. § 1252(g) (alterations in original)). Deciding whether to pursue removal at each of these stages implicates a wide range of considerations.

In their exercise of enforcement discretion, DHS and its predecessor, INS, have long employed guidance instructing immigration officers to prioritize the enforcement of the immigration laws against certain categories of aliens and to deprioritize their enforcement against others. See, e.g., INS Operating Instructions § 103(a)(1)(i) (1962); Memorandum for All Field Office Directors, ICE, et al., from John Morton, Director, ICE, Re: Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens (June 17, 2011); Memorandum for All ICE Employees, from John Morton, Director, ICE, Re: Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens (Mar. 2, 2011); Memorandum

for Regional Directors, INS, et al., from Doris Meissner, Commissioner, INS, Re: Exercising Prosecutorial Discretion (Nov. 17, 2000).

Indeed, there are several agency memos from ICE that provide guidance for how DHS Officers should utilize their prosecutorial discretion with regard to deferred action. In its April 2011 “Toolkit for Prosecutors,” ICE explains that:

Deferred Action (DA) is not a specific form of relief but rather a term used to describe the decision-making authority of ICE to allocate resources in the best possible manner to focus on high priority cases, potentially deferring action on cases with a lower priority. There is no statutory definition of DA, but federal regulations provide a description: “[D]eferred action [is] ‘an act of administrative convenience to the government which gives some cases lower priority. . . .’” There are two distinct types of DA requests: (i) those seeking DA based on sympathetic facts and a low enforcement priority, and (ii) those seeking DA based on his/her status as an important witness in an investigation or prosecution. Basically, DA means the government has decided that it is not in its interest to arrest, charge, prosecute or remove an individual at that time for a specific, articulable reason.

U. S. Immigration and Customs Enforcement, *Protecting the Homeland: Toolkit for Prosecutors*. April 2011. p. 4

In his June 7, 2011 memorandum ICE Director, John Morton, further describes exercising prosecutorial discretion, such as deferred action, consistent with civil immigration enforcement priorities:

One of ICE's central responsibilities is to enforce the nation's civil immigration laws in coordination with U.S. Customs and Border Protection (CBP) and U.S. Citizenship and Immigration Services (USCIS). ICE, however, has limited resources to remove those illegally in the United States. ICE must prioritize the use of its enforcement personnel, detention space, and removal assets to ensure that the aliens it removes represent, as much as reasonably possible, the agency's enforcement priorities, namely the promotion of national security, border security, public safety, and the integrity of the immigration system...

Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens. June 7, 2011.

Factors to Consider When Exercising Prosecutorial Discretion:

When weighing whether an exercise of prosecutorial discretion may be warranted for a given alien, ICE officers, agents, and attorneys should consider all relevant factors, including, but not limited to

- the agency's civil immigration enforcement priorities;
- the person's length of presence in the United States, with particular consideration given to presence while in lawful status;
- the circumstances of the person's arrival in the United States and the manner of his or her entry, particularly if the alien came to the United States as a young child;
- the person's pursuit of education in the United States, with particular consideration given to those who have graduated from a U.S. high school or have successfully pursued or are pursuing a college or advanced degrees at a legitimate institution of higher education in the United States;
- whether the person, or the person's immediate relative, has served in the U.S. military, reserves, or national guard, with particular consideration given to those who served in combat;
- the person's criminal history, including arrests, prior convictions, or outstanding arrest warrants;
- the person's immigration history, including any prior removal, outstanding order of removal, prior denial of status, or evidence of fraud; whether the person poses a national security or public safety concern;
- the person's ties and contributions to the community, including family relationships;
- the person's ties to the home country and condition~ in the country;
- the person's age, with particular consideration given to minors and the elderly;
- whether the person has a U.S. citizen or permanent resident spouse, child, or parent;
- whether the person is the primary caretaker of a person with a mental or physical disability, minor, or seriously ill relative;
- whether the person or the person's spouse is pregnant or nursing;
- whether the person or the person's spouse suffers from severe mental or physical illness;
- whether the person's nationality renders removal unlikely;
- Whether the person is likely to be granted temporary or permanent status or other relief from removal, including as a relative of a U.S. citizen or permanent resident;
- whether the person is likely to be granted temporary or permanent status or other relief from removal, including as an asylum seeker, or a victim of domestic violence, human trafficking, or other crime; and
- whether the person is currently cooperating or has cooperated with federal, state or local law enforcement authorities, such as ICE, the U.S. Attorneys or Department of Justice, the Department of Labor, or National Labor Relations

Board, among others.

This list is not exhaustive and no one factor is determinative. ICE officers, agents, and attorneys should always consider prosecutorial discretion on a case-by-case basis. The decisions should be based on the totality of the circumstances, with the goal of conforming to ICE's enforcement priorities.

That said, there are certain classes of individuals that warrant particular care. As was stated in the Meissner memorandum on Exercising Prosecutorial Discretion, there are factors that can help ICE officers, agents, and attorneys identify these cases so that they can be reviewed as early as possible in the process.

The following positive factors should prompt particular care and consideration:

- veterans and members of the U.S. armed forces;
- long-time lawful permanent residents;
- minors and elderly individuals;
- individuals present in the United States since childhood;
- pregnant or nursing women;
- victims of domestic violence; trafficking, or other serious crimes;
- individuals who suffer from a serious mental or physical disability; and
- individuals with serious health conditions.

In exercising prosecutorial discretion in furtherance of ICE's enforcement priorities, the following negative factors should also prompt particular care and consideration by ICE officers, agents, and attorneys:

- individuals who pose a clear risk to national security;
- serious felons, repeat offenders, or individuals with a lengthy criminal record of any kind;
- known gang members or other individuals who pose a clear danger to public safety; and
- individuals with an egregious record of immigration violations, including those with a record of illegal re-entry and those who have engaged in immigration fraud.

Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens. June 7, 2011.

Deferred action as a form of prosecutorial discretion is thus an extremely well-established practice in US immigration law and procedure. However, given that the deferred action status

program has never been formalized into agency regulations, and exists only as DHS's administrative discretion to give some cases lower priority, it is widely understood there is virtually no judicial review of decisions concerning deferred action status. See Reno v. American Arab Anti-Discrimination Comm., 525 U.S. 471 (1999).

v. Applying for Deferred Action Status

As evidenced above, ICE can consider both positive and negative factors when determining whether to grant deferred action. It is important that applicants argue all the **positive factors** in their case. Applicants should include a, “**history of the case, ... a full discussion of all positive factors of [their] case, and all relevant documents ...**” (ie. medical documents).¹¹

A. Points that Should be Included in your Letter to ICE Requesting Deferred Action Status

- i. Basic facts about you and your family
 - How long you have lived in the US
 - Family members in the US
 - Whether you were a lawful permanent resident or had other immigration status
 - Brief description of how you came to the US
- ii. **Facts that show why deportation would be hard for your family**
 - How will your deportation affect your family's ability to pay for housing, food, medical care, or other basic needs in the U.S.?
 - How will your deportation affect your family emotionally?
- iii. **Facts that show why being sent home would be hard for you**
 - Any medical conditions you might have that would not be treated
 - Any difficulties you would have speaking their language
 - Fear of going back
 - Any difficulties you would have getting a job
- iv. **Facts that show that you are important to your community**

¹¹ ILRC Staff Attorneys, *A Guide for Immigration Advocates Unit Sixteen U and T Visas, Registry, Legalization, Family Unity and Discretionary Relief*, Immigrant Legal Resource Center (March 2016).

- Your involvement in community organizations
- Your job history, current employment, future job opportunities
- History of paying your taxes
- Your education or your support for your family's education
- Your U.S. military service or that of your immediate family
- Whether you have been a victim of domestic violence, were held or forced to work against your will in the United States, or have been a victim of other violent crimes

v. Facts that show that you are not a threat to the community

- A brief, honest description of your criminal convictions.
- The number of years that have passed since your last conviction
- Your age when the convictions occurred, if you were young
- Any evidence of rehabilitation, such as anger management, drug programs, or counseling

Eric Baum, Morgan France-Ramirez, Kathleen Schulman, *A Guide For Haitians In Immigration Detention How to Ask ICE to Release You From Detention and Allow You to Stay in the U.S. Until Post-Earthquake Conditions in Haiti Improve*, University of Miami School of Law Immigration Clinic (2011).

B. Helpful Documents to Include, but are Not Limited to:

- Birth certificates of U.S. citizens children, spouse, or parents
- Marriage license
- School transcripts
- School degrees, honors, awards
- Medical records
- Proof of long-term residence in the US (ie. taxes, bank statements, bills, pay stubs)
- Letters of support
- Evidence of rehabilitation (if you have a criminal record)

Pro Se Guide to Prosecutorial Discretion, Florence Immigrant & Refugee Rights Project (May 13, 2013).

vi. Effect of Deferred Action Status

A grant of deferred action serves to effectively postpone the removal of an alien from the United States by establishing a period of time, usually one year, in which ICE will not pursue removal proceedings.

Additionally, as summarized by the DOJ's Office of Legal Counsel:

Under longstanding regulations and policy guidance promulgated pursuant to statutory authority in the INA, deferred action recipients may receive two additional benefits. First, relying on DHS’s statutory authority to authorize certain aliens to work in the United States, DHS regulations permit recipients of deferred action to apply for work authorization if they can demonstrate an “economic necessity for employment.” 8 C.F.R. § 274a.12(c)(14); see 8 U.S.C. § 1324a(h)(3) (defining an “unauthorized alien” not entitled to work in the United States as an alien who is neither an LPR nor “authorized to be . . . employed by [the INA] or by the Attorney General [now the Secretary of Homeland Security]”).

Second, DHS has promulgated regulations and issued policy guidance providing that aliens who receive deferred action will temporarily cease accruing “unlawful presence” for purposes of 8 U.S.C. § 1182(a)(9)(B)(i) and (a)(9)(C)(i)(I). 8 C.F.R. § 214.14(d)(3); 28C.F.R. § 1100.35(b)(2); Memorandum for Field Leadership, from Donald Neufeld, Acting Associate Director, Domestic Operations Directorate, USCIS, Re: Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Act at 42.” (May 6, 2009) (“USCIS Consolidation of Guidance”) (noting that “[a]ccrual of unlawful presence stops on the date an alien is granted deferred action”); see 8 U.S.C. § 1182(a)(9)(B)(ii) (providing that an alien is “unlawfully present” if, among other things, he “is present in the United States after the expiration of the period of stay authorized by the Attorney General”).

The Department of Homeland Security’s Authority to Prioritize Removal of Certain Aliens Unlawfully Present in the United States and to Defer Removal of Others, Memo. Op. for the Sec. of Homeland Security and the Counsel to the President (Nov. 19, 2014).

vii. CHRCL’s Deferred Action Status

a. Political Advocacy

There are a number of policy changes that should be incorporated into the advocacy platforms of immigrants’ rights organizations and entities. Immigrants’ rights advocates should lobby for the immediate extension of temporary protected status and deferred action status to the largest population possible, including all immigrants who would be eligible to apply for legalization under the latest iterations of the comprehensive immigration reform legislation. Additional consideration should be given to particular sub-groups of immigrants with special equities and long-term residence in the United States, including:

- Immigrants residing in the United States with already approved family and work-related visa petitions: These persons are unable to receive permanent resident status only because of visa backlogs or because of the zero tolerance 1996 bars to legalization. Neither the backlogs nor the 1996 bars have caused these immigrants with approved visa petitions to “self-deport.” Instead they simply remain in the United States in undocumented status, unable to take advantage of their approved visa petitions. These immigrants are already “in the USCIS system.” DHS knows why they are, where they live, their social security numbers, criminal histories, etc. Since they are already in the system, are not likely to leave the country, are highly unlikely to be apprehended, and have largely played by the rules, granting this population deferred action status would be rational policy.

- Parents of U.S. citizens: The parents of U.S. citizen children are unable to be petitioned for lawful permanent resident status until the child turns 21 years of age. Even then, 99.99% of these immigrants face a ten-year-bar for being present in the United States for one year or longer in undocumented status, even if they have no criminal record. Under the 1996 amendments wrought by IIRAIRA, there is no waiver of the unlawful presence bar for parents who have raised U.S. citizen children over the course of twenty-one years in the United States, despite the fact that there is a waiver for an individual who has a two-week-old marriage arranged over the internet. Like other groups in this list, these immigrant parents have largely been here for many years, are unlikely to self-deport, and may but are unlikely to be apprehended and removed unless they commit crimes. Without employment authorization, the vast majority of these immigrants are working for workers who prefer undocumented workers over equally qualified U.S. workers.

- Immigrants with administratively closed cases: Under the ICE Morton Memo, several thousand immigrants with special equities have had their removal cases administratively closed but have not been granted temporary employment authorization. They are “in the system,” ICE knows who they are, where they live, their social security numbers, etc. Releasing them indefinitely without employment authorization forces the vast majority of these immigrants to work in violation of federal law and encourages their employers to exploit them and prefer them over more expensive U.S. workers.

- Immigrants with pending employment-related claims: Sound policy suggests that workers with employment-related claims, which often impact U.S. workers and working conditions, should not fear removal if they come forward to bring illegal employment practices to the attention of the authorities. These immigrants, whether involved in pending labor disputes, union drives, or with pending labor complaints should be granted Deferred Action Status to encourage workplace compliance with federal and state labor, health and safety, and anti-discrimination laws.

- Unaccompanied abused and abandoned minors: Under present policy, all unaccompanied minors apprehended by DHS are placed in removal proceedings. Absent any mandate that these minors be provided counsel at government expense, as in other civil matters involving children, the majority of these children face adversarial removal hearings without any type of advocate representing their interests. The number of unaccompanied

children arriving to the U.S., having fled violence and trauma in their home countries, has increased to historic levels. Until such time that the “best interests of the child” principle can be upheld with respect to this group of children, DHS should cease to subject them to the harsh rigors of removal proceedings. To do so would benefit the already overburdened and backlogged immigration courts and allows these children to seek administrative remedies outside the time constraining context of removal proceedings.

□ Parents of immigrants granted DACA status: By definition this group has lived in the United States continuously for many years, in most cases, over 20. They have raised children here and those children have now been granted temporary status. This group is highly unlikely to voluntarily depart the United States and be separated from their children, and probably over 90% will never be apprehended or deported, other than for criminal reasons. Most are likely eligible to seek stays of removal proceedings under ICE’s so-called Morton memo, however that memo does not enable stay recipients to receive employment authorization. Without employment authorization, the vast majority of these immigrants will be forced to work for employers who prefer undocumented workers over equally qualified U.S. workers.

Granting deferred action status and temporary employment authorization to immigrants would immediately benefit U.S. workers, by removing the unfair incentive of unscrupulous employers to hire undocumented migrants over equally or better qualified U.S. citizens, as well as the business community which often hires undocumented workers despite full compliance with federal employer sanctions laws, only to suffer sudden and costly losses of workers as a result of ICE work-site enforcement operations.

b. Individual Cases

Immigrants’ rights advocates should seek deferred action status on behalf of immigrants who are presently ineligible for adjustment of status and can nonetheless remain and work in the United States. Although certain categories of aliens have traditionally been eligible for deferred action, while others become eligible pursuant to the publication of memos and other policies delineating enforcement priorities, advocates should continue to seek deferred action for any undocumented immigrant who is at risk of deportation.

Although there is no standard form for requesting deferred action, a well- prepared submission with a clearly articulated legal brief, supported by relevant professional evaluations and attestations to good character, will be the cornerstone of individual advocacy. Many other steps may be necessary to be successful in obtaining advance parole.

C. Apply for Asylum

Some TPS holders may also be eligible for asylum under INA §208. Asylum is a form of relief available to those who fear persecution on a protected ground in their home countries, and some citizens of other countries whose TPS is being terminated may meet that description.

A fear of future persecution is the archetypical case for asylum, but it is not the only one. David Isaacson writing for LexisNexis Legal Newsroom Immigration Law stated, “[a]s the BIA explained in *Matter of L-S-*, 25 I&N Dec. 705 (BIA 2012), pursuant to 8 C.F.R. § 1208.13(b)(1)(iii)(B), asylum can be granted to one who has suffered persecution in the past and “has established that there is a reasonable possibility that he or she may suffer other serious harm upon removal to that country.”¹²

While “other serious harm” must equal the severity of persecution, it may be wholly unrelated to the past harm.¹³ “Moreover, pursuant to the regulation, the asylum applicant need only establish a “reasonable possibility” of such “other serious harm”; a showing of “compelling reasons” is not required under this provision.” We also emphasize that *no nexus* between the “other serious harm” and an asylum ground protected under the Act need be shown.”¹⁴ *Matter of L-S-*, 25 I&N Dec. at 714.

The BIA further explained that “adjudicators considering “other serious harm” should be cognizant of conditions in the applicant’s country of return and should pay particular attention to

¹² David Isaacson, *What Comes Next: Potential Relief Options After the Termination of TPS*, Lexis Nexis Legal Newsroom Immigration Law (Jan. 18, 2018) <https://www.lexisnexis.com/legalnewsroom/immigration/b/immigration-law-blog/archive/2018/01/18/what-comes-next-potential-relief-options-after-the-termination-of-tps.aspx?Redirected=true>.

¹³ *Id.*

¹⁴ *Id.*

major problems that large segments of the population face or conditions that might not significantly harm others but that could severely affect the applicant.” *Id.*

i. How to Meet the Qualifying Past Persecution Standard

Mr. Isaacson notes, “It is important to note that this other-serious-harm asylum requires that an applicant have previously suffered qualifying past persecution on a protected ground.”¹⁵ He continues, “[t]he Second Circuit has explained in *Baba v. Holder* that to constitute persecution “conduct must rise above mere harassment” and that persecution includes “threats to life or freedom” and also extends to “non-life-threatening violence and physical abuse.”¹⁶ Under INA 208(b)(1)(B), “the applicant must establish that race, religion, nationality, membership in a particular social group, or political opinion was or will be at least one central reason for persecuting the applicant.”¹⁷

ii. Exemption for One Year Filing

Mr. Isaacson further stated, “INA §208(a)(2)(D) exempts from the one-year deadline cases in which an applicant can establish “extraordinary circumstances relating to the delay in filing the application within the period”, and the regulations at 8 C.F.R. §208.4(a)(5)(iv) clarify that such extraordinary circumstances may include maintenance of TPS or other lawful status “until a reasonable period before the filing of the asylum application.”¹⁸

¹⁵ David Isaacson, *What Comes Next: Potential Relief Options After the Termination of TPS*, Lexis Nexis Legal Newsroom Immigration Law (Jan. 18, 2018) <https://www.lexisnexis.com/legalnewsroom/immigration/b/immigration-law-blog/archive/2018/01/18/what-comes-next-potential-relief-options-after-the-termination-of-tps.aspx?Redirected=true>.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

“[C]hanged circumstances “materially affecting the applicant’s eligibility for asylum” can also excuse late filing under INA §208(a)(2)(D) and 8 C.F.R. §208.4(a)(4)(i) as long as the applicant files within a reasonable time given those changed circumstances.”¹⁹

D. Filing Individualized Federal Court Actions Challenging the Termination of TPS

i. Parties

Plaintiffs may include TPS families, TPS and other grass roots organizations, unions, faith based groups, etc. Defendants may include President Donald Trump; United States Department Of Homeland Security; Kirstjen Nielsen, Secretary, and the United States Department Of Homeland Security.

ii. Requirements for Standing to Challenge TPS termination

1) An Organization:

- a. that is made up of members who are TPS recipients; or
- b. that serves individuals who are TPS recipients; and
- c. In either instance, termination of TPS for your organization members or individuals served would reduce the organizations resources, because the organization would be allocating time and effort to combating the termination of TPS; or

2) An Individual TPS recipient

iii. Description of Potential Litigation Challenging the Termination of TPS

Plaintiffs will bring this lawsuit seeking to block DHS’s decisions to rescind Temporary Protective Status for various immigrant groups, as these reflect an egregious departure from the TPS statute’s requirements, a violation of TPS recipient’s property and liberty interests, and an intent to discriminate on the basis of race and/or ethnicity.

Hundreds of thousands of TPS recipients now face being pushed into undocumented status,

¹⁹ *Id.*

forced hunger or to work without authorization in underground exploitative jobs, and potential arrest, detention and deportation. President Trump's policy of terminating TPS programs will greatly expand the undocumented population in the United States while decreasing the willingness of these immigrants to report serious crimes, seek or obtain needed medical attention, pay taxes, or otherwise engage in the normal personal and civic functions of life.

The countries of origin of TPS recipients are ill-prepared to receive tens or hundreds of thousands of returning TPS recipients. Several of these countries continue to experience abject poverty, lack of housing, lack of access to clean potable water, inadequate resources for medical care, and randomized violence their Governments are unable or unwilling to control. In many instances TPS recipients forced to return to their home countries will face joblessness, illness, persecution, and possibly death.

The administration's decision to terminate several TPS programs is not based upon an objective review of the conditions that supported the original TPS designations. The reasons provided by the Trump administration for terminating the TPS programs are spurious, arbitrary and capricious. President Trump's true motive for terminating TPS for Haitians, Salvadorans and other Central American and African groups is his racialized view of migrants and antipathy towards non-white migrants from poorer countries.

Due process: Immigrants who are physically present in the United States are guaranteed the protections of the Due Process Clause. *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). TPS recipients, including Plaintiffs, have constitutionally protected liberty and property interests in their TPS status and the numerous benefits conferred thereunder, including the ability to re-register for TPS benefits and work authorization. In establishing and operating the TPS program under a defined framework of specific criteria the government created a reasonable expectation

among Plaintiffs and other TPS recipients that they are entitled to the benefits provided under the program, including the ability to seek renewal of their TPS, as long as they and their home country meets the program's nondiscretionary criteria for renewal.

Equal Protection: The Administration's decision to rescind TPS protections for Salvadorans living the United States also violates the equal protection guarantee of the Fifth Amendment because the Administration intended to discriminate against TPS immigrants because of their race and/or ethnicity. The inference of race and/or ethnicity discrimination is supported by the Administration's departure from the normal decision-making process; the fact that the decision bears more heavily on some races than another's; the sequence of events leading to the decisions; the contemporaneous statements of decision makers; and the historical background of the decision.

Administrative Procedures Act: The Department of Homeland Security is subject to the requirements of the APA. *See* 5 U.S.C. §703. The termination of the TPS for El Salvador is final agency action subject to judicial review because it marks the "consummation of the . . . decision-making process" and is one "from which legal consequences will flow." *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (internal quotation marks omitted). Under 5 U.S.C. §706(2), courts shall "hold unlawful and set aside" agency action found to be arbitrary, capricious, and abuse of discretion, or otherwise not in accordance with law; contrary to a constitutional right, power, privilege, or immunity; in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; without observance of procedure required by law. Defendants' actions rescinding TPS are arbitrary and capricious, an abuse of discretion, and not in accordance with law because, among other things, Defendants have not identified a reasonable explanation for their decision to

do so, because Defendants did not consider all relevant factors, including the benefits provided by the program.

To join the lawsuit an organization must either (1) have TPS members or clients, or (2) claim that the termination of TPS diverts the organization's limited resources or causes it to divert its resources to assist TPS recipients.

Self-Assessment Tool and Protection Letter

TPS recipients facing deportation and termination of their work authorization should have access to a self-assessment tool to determine whether they are eligible for other immigration benefits and whether they qualify for legalization of status. 20% of TPS recipients may be eligible for some form of legalization and having access to a self-assessment tool would greatly increase their chances of being able to remain in the U.S.

DRAFT SAMPLE—Form for Self-Assessment of Eligibility for Immigration Benefit

Initial Self-Assessment of Eligibility for an Immigration Benefit

The purpose of these questions is to assess your eligibility for immigration benefits and provide information on your immigration options. Please have information about you and your family's immigration status. This form does not have questions about all immigration options and does not provide legal advice.

Name:

Address:

Phone Number:

Email:

Date of Birth:

Place of Birth:

When did you first arrive in the U.S.?

Where did you arrive in the U.S.?

How long have you been living in the U.S.?

Have you left the U.S. since your initial arrival?

If yes, please list where you departed from, when you departed, and how you departed (with or without inspection)?

<u>Where you departed</u>	<u>When you departed</u>	<u>How you departed</u>

What is your current immigration status?

- | | |
|--|--|
| <input type="checkbox"/> Undocumented | <input type="checkbox"/> Tourist or Visitor Visa |
| <input type="checkbox"/> DACA | <input type="checkbox"/> Permanent Resident |
| <input type="checkbox"/> Student Status (F1) | <input type="checkbox"/> Another Visa or Status |
| <input type="checkbox"/> Temporary Protected Status or Deferred Enforced Departure | |

Have you already filed for the following:

- | | | |
|--|------------------------------|-----------------------------|
| <input type="checkbox"/> VAWA self-petition | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| <input type="checkbox"/> Cancellation of removal | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| <input type="checkbox"/> U-visa application | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| <input type="checkbox"/> Asylum application | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| <input type="checkbox"/> T visa application | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| <input type="checkbox"/> Family petition | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| <input type="checkbox"/> Application for a work permit | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| <input type="checkbox"/> Other application _____ | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

Immigration History

- | | | |
|--|------------------------------|-----------------------------|
| Have spoken to an ICE officer? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| Have you been ordered | | |
| - Removed | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| - Deported | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| - Received Voluntary Departure | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| Have you or do you currently have a case in Immigration Court? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| Have you been stopped at the border or airport? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| Have you been arrested by Immigration or ICE? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| Have you applied for immigration status before? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| If yes, what was the outcome? | _____ | |

Employment

- | | | |
|---|------------------------------|-----------------------------|
| Are you currently employed within the U.S.? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
|---|------------------------------|-----------------------------|

Family Immigration Questions

- | | | |
|---|------------------------------|-----------------------------|
| Do you have any parents, siblings, or children in the U.S.? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| Do your parents, siblings, or children have legal immigration status? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| Are you married? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

Are you married to a U.S. citizen or lawful permanent resident? Yes [] No []

Crimes

Have you committed a crime since coming to the U.S.? Yes [] No []

Have you been convicted of a felony crime? Yes [] No []

Have you been convicted of a misdemeanor crime? Yes [] No []

Have you ever been the victim of a crime in the U.S.? Yes [] No []

If yes, did you suffer an injury (physical or psychological)? Yes [] No []

Was it a serious injury? Yes [] No []

Did you see a doctor about your injury? Yes [] No []

Did you report the crime to the police? Yes [] No []

Have you been the victim of domestic violence in the U.S.? Yes [] No []

If yes, did you suffer an injury (physical or psychological)? Yes [] No []

Was it a serious injury? Yes [] No []

Was the perpetrator a U.S. citizen or lawful resident? Yes [] No []

Did you report the crime to the police? Yes [] No []

Have you ever suffered persecution or harm in your country? Yes [] No []

If yes, do you fear going back to your country? Yes [] No []

Have you ever been the victim of work or sex trafficking? Yes [] No []

If you are under 21, were you abused, abandoned, or neglected in your Home country or in the U.S. by a parent? Yes [] No []

Letters of Protection

The Trump administration has also decreed that it wishes to arrest and deport “all” undocumented immigrants in the U.S., it has significantly increased the focus on detention and removal of immigrants (including those with strong and long standing equities in the U.S.), and it has greatly increased fear and anxiety within immigrant communities which in turn drives immigrants deeper underground and increases their exploitability.

To counter this situation, organizations have traditionally trained members of immigrant communities to exercise their right to remain silent when questioned by ICE agents, and not to consent to searches unless ICE agents possess a judicially issued search warrant. Organizations have routinely distributed “know your rights” cards to immigrants to remind them about their rights or to present to ICE agents when confronted or questioned by these agents. These trainings are typically done in person, but could increasingly be done using modern technology, including phone apps and interactive internet sites.

The heart of the program involves two parts: (1) Providing a large number of immigrants “letters of representation” to be presented to ICE agents, indicating the individual’s intent to remain silent, not consent to a warrantless search, and have an attorney present for any matters related to the ICE agent’s questioning, and (2) assisting immigrants to gather the documents that will be needed in a bond hearing should they ever be arrested, and where feasible, representing them in bond hearings to win their release from custody.

“Letters of Representation” could be issued by having members of the community visit a non-profit organization, an office associated with the City of Los Angeles (City Council members’ or Mayor’s district offices), churches, unions, etc. They may also be issued by an easy to use phone app and web site(s).

**A. DRAFT SAMPLE—Intake Form for Issuance of Representation Letter—
Confidential attorney client communication**

The purpose of these questions is to obtain information needed to issue you a Representation Letter. Prior to receiving a Representation Letter, you must also sign a Retainer Agreement attached.

As the Retainer Agreement states, giving you a Representation Letter may prevent your questioning and arrest by ICE. However, the Attorney signing the Representation Letter or any organization the Attorney works for or is associated with does not agree to represent you in anything other than questioning by an ICE officer. In other words, the Attorney is not agreeing to represent you in any interviews involving applications you have submitted or may submit in the future for immigration status, or in any bond hearings if you are ever arrested by ICE, or in any deportation hearings, or any other matters other than questioning by ICE agents.

To represent you in matters involving ICE questioning or demand to search you or your home, Attorney will provide you with a Letter of Representation a copy of which is attached. You may present this letter to ICE officers if they want to question or search you. You should keep a copy of the letter with you at all times. Also keep copies at your home close to the front door, and in your car. If you are contacted by an ICE officer, do not answer any questions and provide the officer with your Representation Letter. You may also call the Attorney who signed your Representation Letter if you wish to while an ICE officer is attempting to question you or search you or your home.

To obtain a Representation Letter you must complete this form:

Your name:

Your email: _____

You home address or a safe address where you can receive mail: _____

Do you wish to receive a Representation Letter? Yes [] No []

[Optional] Do you wish to be represented in a bond hearing to get released
If you are ever arrested by ICE? Yes [] No []

If you are approached by an ICE officer, do you wish to exercise your right to remain silent? Yes [] No []

If you are approached by an ICE officer who wants to search you or your car or home, do you want to deny permission to search you unless the officer has a valid search warrant? Yes [] No []

If you have a Representation Letter and are questioned by an ICE Officer, do you plan to show the ICE officer your Representation Letter Yes [] No []

Have you signed a Retainer Agreement (attached)? Yes [] No []

Dated: _____

Client Signature: _____

Client Name:

B. DRAFT SAMPLE—Retainer Agreement

IMMIGRANTSAFE RETAINER AGREEMENT

[NAME OF ATTORNEY] (described as “Attorney”) [if applicable: employed by or a member of X non-profit organization, union or church] agrees to represent [NAME OF CLIENT] (“Client”) during questioning by Immigration and Customs Enforcement officers.

This representation does not include interviews before USCIS on applications or petitions, deportation hearings, or any other matters other than questioning by ICE agents and, if check below, bond hearings to seek your release if you are ever arrested by ICE.

To represent the Client, Attorney will provide Client with a letter of representation limited to ICE questioning and exercising Client's right to remain silent and not to consent to a search by ICE officers, which Client may present to ICE officers if they want to remain silent and do not want to consent to be searched without a court issued search warrant.

[If applicable:] Attorney or an attorney associated with the organization identified above, will represent Client in a bond hearing if the Client is ever arrested by ICE. A bond hearing is a hearing in which an Immigration Judge decides if the person arrested should be released, with or without a bond.

[If applicable:] Client may attend certain educational and outreach programs offered by X organization about the legal rights of immigrants.

Attorney will also provide client with a separate notice of their rights. Client will present the Representation Letter during any encounter with an ICE officer if client wishes to exercise his/her right to remain silent and/or not consent to a search by ICE officers.

Client understands that Attorney is not at this time agreeing to represent client in any

deportation/removal hearing that the government may start if client is ever arrested.

[If applicable:] Client agrees to make a donation of \$___ to X Organization upon receipt of a Representation Letter.

This agreement will be interpreted under the laws of California. If there are any future disputes about this agreement, Client has the right to have the dispute(s) resolved in mediation or arbitration under California law.

Dated: _____

Client Signature: _____

Client Name: _____

Dated: _____

Organization: _____

Signature: _____

Name: _____

C. DRAFT SAMPLE—Representation Letter

[ORGANIZATION IF ANY]
[ATTORNEY NAME]
[ATTORNEY ADDRESS]
[ATTORNEY PHONE]
[DATE]

Dear ICE officer,

I, [ATTORNEY NAME], an attorney licensed in California ([ATTORNEY BAR #]), represent [NAME OF IMMIGRANT] for purposes of ICE questioning or any search of my client, my client's vehicle, or home. [Optional]: A complete G-28 Notice of Appearance form is attached.

I have instructed my client not to answer your questions unless my client voluntarily waives the right to remain silent and I am present. I have also advised my client not to consent to any searches unless you are in possession of a search warrant issued by a U.S. District Court Judge or U.S. Magistrate Judge.

I am instructing you to not question my client unless I am present to advise my client and my client consents to answer your questions. Please do not try to convince my client to waive the right to remain silent or to consent to any warrantless search. It would be a violation of the Fourth and Fifth Amendments of the U.S. Constitution for you to continue questioning my client or to seek consent to search without a valid search warrant. Should you in any way coerce or induce my client to answer your questions or to consent to a warrantless search, my client may later seek judicial remedies against you and ICE for false arrest and to suppress any statements made to you in egregious violation of the Fourth or Fifth Amendments.

In the event my client wishes to telephone me, please immediately permit my client to do so. If you would like to discuss this matter with me, you may reach me at the telephone number above. However, I will not consent to questioning or a search without first having the opportunity to discuss the matter with my client in person.

Pursuant to 8 U.S.C. § 1326(a)(1), you are only authorized without a warrant to question a person who does not exercise his or her right to remain silent if you have reason to believe the person to be an alien, and you may not rely upon racial profiling or other improper factors in making that determination. Pursuant to 8 U.S.C. § 1326(a)(2), you may not, without warrant, arrest any person unless that person is entering or attempting to enter the United States in violation of any law or regulation unless you have reason to believe that the person so arrested is likely to escape before an arrest warrant can be obtained for his or her arrest. My client is not likely to flee before a warrant can be obtained. Pursuant to 8 U.S.C. § 1326(a)(4) and (5), you may arrest without warrant if you have a reasonable suspicion the person has committed certain felonies and is likely to escape before a warrant can be obtained, or for certain criminal offenses committed in your presence.

Thank you for your consideration and compliance with federal law and the U.S. Constitution.

Thank you.

[ATTORNEY SIGNATURE]
[ATTORNEY NAME]

Conclusion

While not all of the aforementioned routes are long-term solutions, they serve to at least protect undocumented individuals from removal and enables them to support themselves through lawful employment until a better alternative is available. Each path may lead to an immediate solution that could potentially provide critical protection to hundreds of thousands of TPS and DACA recipients while immigration advocates continue to fight for a more sustainable and long-term pathway to citizenship.

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