

September 28, 2023

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

RECEIVED
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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,

Thank you for the opportunity to address potential process changes to a form of relief under our immigration laws known as “non-LPR cancellation of removal,” which we understand are being considered within your Departments.¹ We are advocates, scientists, and health service practitioners dedicated to promoting inclusive policies and advocating for the rights and well-being of all individuals, including youth with chronic and acute health conditions, heightened psychological needs, and disabilities. We urge you to do everything possible within your authorities to provide much needed relief for immigrants, particularly those caring for family members who have health concerns, psychological distress, and disabilities.

We believe that process changes to existing non-LPR cancellation of removal rules could unlock legal status, including work authorization and a path to citizenship, for thousands of immigrants who are providing valuable caregiving service to their families and our nation. Specifically, we ask that key agencies within your departments, chiefly U.S. Citizenship and Immigration Services (USCIS) and the Executive Office of Immigration Review (EOIR), work together to craft an administrative mechanism that would allow interested immigrants to request a meaningful preliminary review of their non-LPR cancellation claims with USCIS prior to their referral to EOIR for final adjudication. As you know, this form of relief has long existed. However, existing regulations and practices unnecessarily prevent the vast majority of those who may qualify for this form of relief by limiting their ability to apply for it until after they are placed into removal proceedings. Process changes should be made to enable more eligible individuals to access this form of relief outside of a pressurized removal proceeding setting, and afford them opportunity to consult with qualified counsel on their particular circumstances.

The potential relief that non-LPR cancellation of removal affords to caretaker relatives could be nothing less than a godsend to their qualifying U.S. citizen or LPR family members. As any family with loved ones who have significant care needs knows, the role of primary caretaker is

¹ Lauren Alder Reid, “Letter in Response to Senators regarding Streamlined Cancellation of Removal.” July 11, 2023, https://www.cortezmasto.senate.gov/imo/media/doc/response_letter_from_eoir_07112023.pdf; USCIS Director Ur M. Jaddou. “Response to Senators regarding Cancellation of Removal Procedures.” July 7, 2023, https://www.cortezmasto.senate.gov/imo/media/doc/signed_response_-_sen_cortez_masto_7723.pdf.

indispensable. This role is often filled by a parent or close family member of the person needing care. Nothing in the law prevents the administration from clearing away bureaucratic barriers and creating a more streamlined and accessible process to expand access to this form of relief. Concurrently, and for reasons described below, the administration should also update its guidance concerning the “exceptional and extremely unusual” hardship standard – which forms part of these applications – to give greater weight to the significant and detrimental impacts of disruptions in care to qualified U.S. or LPR family members as a result of losing an undocumented family member. These important changes would provide struggling caretakers the opportunity to attain legal status – and the crucial stability it provides their families.

From our perspective as a community of experts concerned with the health, psychological well-being, and development of immigrant youth, expanding access to immigration relief for caregivers would be most supportive to the overall well-being of these children. For these youth, their overall development is impacted by the lack of legal protections afforded to their caregivers and families. Harm to these children is more pronounced when significant concerns regarding health, mental health, and development are also co-occurring and intersecting with immigration-related adverse childhood experiences, such as when a caregiver experiences the threat of deportation. Disruptions in care also have severe consequences to their physical health, psychological well-being, and development. Based on recent guidelines for psychological evaluations in immigration proceedings, the conditions of detention and removal of a caregiver would impose extreme forms of hardship on immigrant youth who are U.S. citizens, especially for those who have other health, psychological, and developmental concerns.

Children with disabilities, including those with mental health or trauma-related issues, experience extreme upheaval and hardship when separated from caregiver parents. Indeed, the child’s access to the rights and resources available to U.S. citizen or LPR children with disabilities often depends *entirely* on the caregiver parent. Whether that is ensuring that the child’s disability-related school needs are met, through the creation and implementation of an Individualized Enforcement Plan (IEP), for example; or administering medicine or at-home treatment; or paying for, scheduling, and bringing the child to medical or therapeutic appointments, the role of the parent caregiver is critical. For children with language limitations, parents may be one of the only people who can understand the child’s verbal and non-verbal cues and communication. Caregiver parents also often serve as the “institutional memory” for the child’s diagnosis and care – what tests or assessments have been done, what medications have worked, what treatment options have been tried. Removing the caregiver parent from the household removes that expertise. It can also destabilize the entire family, causing the remaining family to need to move to less expensive housing or combine households.² Even moving within the same city can mean the child needs to attend a new school with a new IEP, find new medical providers, or set up new daily routines, all of which delays and interrupts their disability or health-related care and development. The removal of the caretaker parent and resulting family destabilization also puts the child at increased risk of entering foster care or otherwise being institutionalized when their needs cannot be met at home. On the whole, children with

² Urban Institute, *Health and Social Service Needs of US-Citizen Children with Detained Deported Immigrant Parents* (Sept. 2015), <http://www.migrationpolicy.org/research/health-and-social-service-needs-us-citizen-children-detained-or-deported-immigrant-parents>.

disabilities experience worse outcomes when separated from caregiver parents,³ and those harms have been a driving reason for the anti-institutionalization disability rights movement in the U.S. in the last decades.

In addition, many disability or health related treatments and services are not available, or would be prohibitively expensive, in the countries to which family members are returned, making it especially harmful for children with disabilities to accompany them.⁴ They may also experience heightened stigma,⁵ less access to school,⁶ and pressure to institutionalize⁷ in a new country, depending on the disability or health issue present.

Thank you for your immediate attention and support for this important issue. Today we join with those calling for the administration to modernize existing non-LPR cancellation of removal processes,⁸ and are confident that your commitment to promoting policies that protect the rights and well-being of individuals with disabilities and strong psychological needs will guide you in taking swift action to address this pressing matter. Through this policy change, we can move closer to upholding the principles of inclusivity, compassion, and fairness.

Sincerely,

American Psychological Association Services
Latinx Immigrant Health Alliance
National Latinx Psychological Association
Young Center for Immigrant Children's Rights
The National Disability Rights Network
The Bazelon Center for Mental Health Law

³ See, e.g., Human Rights Watch, *Children with disabilities: Deprivation of liberty in the name of care and treatment* (Mar 2017), <https://www.hrw.org/news/2017/03/07/children-disabilities-deprivation-liberty-name-care-and-treatment>.

⁴ See, e.g., Renato Alarcon, *Mental health and mental health care in Latin America*, 2 *World Psych.* 54 (Feb. 2003), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1525063/>; Jaime Carmona-Huerta et al., *Community mental health care in Mexico: a regional perspective from a mid-income country*, 15 *Int'l J. Mental Health Systems* (Jan. 2021), <https://ijmhs.biomedcentral.com/articles/10.1186/s13033-020-00429-9>; Robert Kohn et al., *Mental health in the Americas: an overview of the treatment gap*, 42 *Rev Panam Salud Pública* 1 (Oct. 2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6386160/>; Rocio Garcia-Diaz et al., *Effective access to health care in Mexico*, 22 *BMC Health Serv Res* 1027 (Aug. 2022), <https://doi.org/10.1186/s12913-022-08417-0>; Alexia Ratazzi et al., *Implementation of the Latin American autism spectrum network caregiver needs survey*, *International Society for Autism Research* (2016), <https://imfar.confex.com/imfar/2016/webprogram/Paper20939.html>.

⁵ See, e.g., Franco Mascayano et al., *Stigma toward mental illness in Latin America and the Caribbean: a systematic review*, 38 *Braz. J. Psych.* 73 (Mar. 2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7115468/>; Marcela Tenorio et al., *Stigma Toward Persons with Intellectual Disability in South America: A Narrative Review*, 17 *J. of Policy & Practice in Intellectual Disabilities* 346 (Dec. 2020), <https://doi.org/10.1111/jppi.12357>.

⁶ The World Bank, *People with disabilities in Latin America* (Dec. 7, 2021), <https://www.worldbank.org/en/news/feature/2022/01/17/personas-con-discapacidad-america-latina>.

⁷ See, e.g., Human Rights Watch, *Children with disabilities: Deprivation of liberty in the name of care and treatment* (Mar. 2017), <https://www.hrw.org/news/2017/03/07/children-disabilities-deprivation-liberty-name-care-and-treatment>; Human Rights Watch, *Mexico: Families Abuse, Neglect People with Disabilities* (June 2020), <https://www.hrw.org/news/2020/06/04/mexico-families-abuse-neglect-people-disabilities>.

⁸ Most recently, on September 11, 2023, over 100 Congressional House members wrote a letter to your Departments urging action on this matter. See, <https://www.politico.com/f/?id=0000018a-83c7-d816-a5ba-8bcf85020000>.



**U.S. Citizenship
and Immigration
Services**

November 17, 2023

Serena Dávila
Senior Director, Congressional and Federal Relations
American Psychological Association Services, Inc.
750 1st ST NE
Washington DC 20002

Dear Ms. Dávila:

Thank you for your September 28, 2023 letter to the Department of Homeland Security (DHS) regarding the process for cancellation of removal for certain non-permanent residents (cancellation of removal). I am responding on behalf of the Department.

We appreciate your suggestion that DHS and the Executive Office for Immigration Review undertake a joint effort to modernize cancellation of removal processes to make them more accessible to those who are eligible. We also appreciate your suggestion to provide information regarding how such a process would provide relief to caretaker relatives and their qualifying U.S. citizen or lawful permanent resident family members. DHS will carefully consider your proposal and how your suggested changes in the process may positively impact the qualifying relatives of noncitizen caretakers.

Thank you again for your letter and interest in this important issue. 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". The signature is written in a cursive style with a long horizontal line extending to the right.

Ur M. Jaddou
Director