



August 21, 2014

The Honorable Barack Obama
President
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Re: Affirmative Relief for Undocumented LGBTQ Immigrants

Dear President Obama:

We, the undersigned national LGBTQ, Latino, and Asian-American advocacy and civil rights organizations, urge you to ensure that any affirmative relief for undocumented immigrants does not unfairly exclude members of the LGBTQ community. In light of congressional inaction, you announced that your Administration is exploring avenues to provide affirmative relief for many members of the nation's long-term undocumented immigrant population.

While we commend these ongoing efforts, we write to ensure that this forthcoming affirmative relief is *inclusive* of the LGBTQ community. We strongly believe that affirmative relief must be done in tandem with enforcement reforms, including the elimination of solitary confinement and greater protections for LGBTQ individuals in detention. This letter, however, primarily addresses affirmative relief.

Specifically, we write to strongly urge your Administration to: **(1) provide affirmative relief for individuals who have long-term residency in the United States but may not have state-recognized familial relationships with citizens, lawful permanent residents (LPR), or Deferred Action for Childhood Arrivals (DACA) holders; and (2) promulgate flexible criminal**

background requirements in light of the high conviction rates of undocumented LGBTQ immigrants for “survival crimes.” These measures would represent significant strides in alleviating the threat of deportation for the over 267,000 undocumented LGBTQ individuals that currently reside in the country.

Media reports and conversations with your Administration reveal that you are considering providing affirmative relief for certain categories of undocumented immigrants, specifically those with “equities” such as familial ties to citizens, LPRs, or DACA holders. While we strongly support affirmative relief for these individuals, we urge you to expand affirmative relief through a second track for individuals who have strong, long-standing ties with their communities as demonstrated through long-term residency.

Requiring individuals to have qualifying relatives, such as children or spouses, disproportionately and negatively excludes undocumented LGBTQ individuals who may reside in states that do not recognize same-sex marriage or that enacted formal or informal barriers to LGBTQ adoption, and whose family ties are considered “legal strangers” in many states. This flexibility recognizes that certain types of equities—such as marriage and child-rearing—are significantly harder for undocumented LGBTQ immigrants to have accumulated since their arrival in this country or during recent legal developments in the past few years.

Furthermore, while we recognize that your Administration must require certain criminal eligibility standards for those seeking affirmative relief, we urge your Administration to promulgate flexible criminal eligibility requirements that reflect the unique circumstances of many in the LGBTQ community. Many undocumented LGBTQ immigrants have convictions—oftentimes felonies—for “survival crimes,” such as sex work. This problem is particularly acute in the transgender community.

The National Transgender Discrimination Survey (NTDS) points out that eleven percent of transgender individuals reported participating in sex work, significantly higher than the one percent for all women in the United States. Moreover, the NTDS, through its Public Use Data Set, notes that twenty-three percent—nearly one in four—of undocumented transgender individuals have at some point engaged in sex-work to support themselves and their families.

Participation in the street economy stems from persecution, abuse, and lack of stable housing and economic stability. Many undocumented LGBTQ individuals often have no choice but to turn to survival crimes to provide the basic necessities for their families. By disqualifying individuals for survival crimes, any affirmative relief program enacted by your Administration would disproportionately exclude undocumented members of the LGBTQ community. We ask that your Administration look beyond a static criminal ineligibility framework and ensure that sex work and other survival crimes do not unfairly and unjustly disqualify otherwise eligible undocumented LGBTQ immigrants.

We strongly support your Administration's efforts to provide affirmative relief to the nation's undocumented population. We hope that your Administration shapes these efforts to recognize and embrace the undocumented members of the LGBTQ community.

Please contact us through Harper Jean Tobin, at the National Center for Transgender Equality, at hjtobin@transequality.org or 202-903-0112, or James A. Ferg-Cadima, at MALDEF, at jferg-cadima@maldef.org or 202-293-2828 ext. 11. Thank you for your time and consideration.

Sincerely,

Asian Americans Advancing Justice
Immigration Equality
Familia: Trans Queer Liberation Movement
Lambda Legal
League of United Latin American Citizens
Mexican American Legal Defense and Educational Fund
National Center for Lesbian Rights
National Center for Transgender Equality
National Gay and Lesbian Task Force
National Latina Institute for Reproductive Health
National Latino GLBT History Project
National Queer Asian Pacific Islander Alliance
Presente.org

CC:

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