

U.S. Department of Homeland Security
Dallas Field Office
8101 N. Stemmons Fwy
Dallas, TX 75247



U.S. Immigration
and Customs
Enforcement

FEB 3 2015

Immigrant Mother or Father
123 Main Street
Dallas, TX USA

NOTICE OF DENIAL OF APPLICATION FOR A STAY OF DEPORTATION OR REMOVAL

Prosecutorial Discretion

Dear Mr. and Mrs. [Name Redacted]:

The Dallas ICE Office of Enforcement and Removal Operations is in receipt of your client's Application for a Stay of Deportation or Removal (Form I-246) filed on behalf of your client, Jane Doe on January 21, 2015.

On February 2, 2015, your client was ordered to be removed from the United States. The decision was appealed to the Board of Immigration Appeals (BIA) on March 22, 2015. On April 1, 2015, the BIA has issued its final decision.

DENIED

After a careful review of the application and supporting documentation you submitted, it has been determined that, as a matter of discretion, ICE will not stay the removal in this case. Your request for a Stay of Deportation or Removal is denied. Should you have any questions, please feel free to contact Deportation Officer [Name Redacted].

April 2015

Scincerely,

ICE

U.S. Immigration & Customs
Enforcement



Prosecutorial Discretion Denied

April 2015

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Credit and Acknowledgements

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About the Organizations

United We Dream Network (UWD) is the largest immigrant youth-led organization in the nation, a powerful non-partisan network made up of 52 affiliate organizations in 25 states. We organize and advocate for the dignity and fair treatment of immigrant youth and families, regardless of immigration status. UWD's current priorities are to stop deportations and advocate for policy changes that would provide full equality for the immigrant community in the U.S. In 2011, UWD initiated the Education Not Deportation (END) program, which focuses on organizing and advocating against deportations on a case-by-case basis. The work of this program has prevented over 500 deportations nationwide.

The National Immigration Project is a national nonprofit that provides legal assistance and technical support to immigrant communities, legal practitioners, and advocates working to advance the rights of non-citizens. We seek to promote justice and equality of treatment in all areas of immigration law, the criminal justice system, and social policies related to immigration. For over forty years, the National Immigration Project has served as a progressive source of advocacy-oriented legal support on issues critical to immigrant rights. The National Immigration Project works to protect the rights of the most disenfranchised and vulnerable populations, including women who are victims of domestic violence, people with HIV/AIDS, children, and non-citizen criminal offenders. We develop cutting-edge strategies to respond to unlawful enforcement against immigrants. We work both independently and collaboratively with immigration advocacy organizations throughout the U.S. in order to educate and strengthen the capacity of immigration professionals while promoting public policy change through direct advocacy. Our work is built upon a foundation of committed members, whose support and contributions are integral to the success of the National Immigration Project.

Introduction

On January 5, 2015, the Department of Homeland Security (DHS) activated a new memorandum called *Policies for the Apprehension, Detention and Removal of Undocumented Immigrants (Enforcement Memo)*. This new memorandum replaced select 2011 prosecutorial guidance.¹ The November 20th *Enforcement memo* created three priority categories for deportation and provides detailed guidance on how DHS agencies and its employees should exercise prosecutorial discretion for individuals subject to removal or detention. Specifically, under this memo, DHS will pursue removal of an individual who has engaged in conduct or have been convicted of crimes identified as a priority, *unless* mitigating factors or conditions apply, in which case the person is no longer an enforcement priority at all.

These exception clauses within the priority categories allowed people to make the argument that they should not be considered an enforcement category because of individual circumstances or equities. The Enforcement Memo describes some of the factors DHS personnel should consider:

- extenuating circumstances involving the offense of conviction;
- extended length of time since the offense of conviction;
- length of time in the United States; military service;
- family or community ties in the United States;
- status as a victim, witness or plaintiff in civil or criminal proceedings; or
- compelling humanitarian factors such as poor health, age, pregnancy, a young child, or a seriously ill relative.

Over the last four months, reports collected by the United We Dream (UWD) and the National Immigration Project of National Lawyers Guild (NIPNLG) suggest that these factors continue to be ignored by many local ICE offices. Long time residents, veterans, business owners, grandparents, parents, people with severe health problems who submitted evidence of their equities experienced little or no review of their requests for a positive exercise of prosecutorial discretion.

These complaints are particularly worrisome because DHS assured immigrant communities that the new Enforcement priorities memo would address the overall failure of previous prosecutorial discretion enforcement policies issued by former ICE director John Morton in 2011.² Similarly, during that time, advocates complained that ICE did not consider factors such

¹ Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens, March 2, 2011; John Morton, Exercising Prosecutorial Discretion Consistent with the Civil Enforcement Priorities of the Agency for the Apprehension, Detention and Removal of Aliens, June 17, 2011; Peter Vincent, Case-by-Case Review of Incoming and Certain Pending Cases, November 17, 2011.

² For a discussion of these policies, see “The Failure of Prosecutorial Discretion and the Deportation of Oscar Martinez,” by Bill Ong Hing, *The Scholar: St. Mary's Law Review on Race and Social Justice*, Vol. 15, 2013; Univ. of San Francisco Law Research Paper No. 2013-10.

as family, education, military service, and other community ties and, that these mitigating equities very rarely overcame any criminal history or record.

Some preliminary observations

Based on the stories we collected and reviewed, we have seen the following patterns in ICE reviews of prosecutorial discretion requests:

1. ICE Field Offices treat arrests and convictions as the dispositive factor and give little weight to or ignore other supporting evidence presented by the attorney or advocate. This is especially true in requests for an administrative stay of removal.
2. While ICE Field Offices often inform the advocate about the priority category triggering the enforcement action, they do not apply the correct standard nor the exceptions clauses to the individual's case.
3. Prosecutorial discretion requests receive a truncated review, if they are reviewed at all. The short period of time allotted to the review - sometimes a few hours - strongly suggests that ICE is not considering evidence in support of the requests for prosecutorial discretion. One page boilerplate denial letters are common, but in one case, an ICE Field Office provided a detailed denial letter two weeks after the person was deported.
4. Transfers and removals happen very quickly, sometimes within 48 hours, making advocacy efforts extremely difficult and rendering it nearly impossible for family members to seek legal counsel.

Types of Cases

This report highlights cases from advocates and legal representatives across the country. UWD collected a total of 31 cases from a hotline, which was set up after the executive action announcement last November to gather information about individuals in detention and others facing deportation. NIPNLG collected 22 cases from their membership after inquiring about prosecutorial discretion decisions post November 2014. The cases described in this report are included after obtaining permission from attorneys and families. This report examines three types of cases: 1) individuals who are not priorities under the new memo; 2) individuals who appear to be priorities but qualify for exceptions under the *unless* clauses; and 3) individuals who are detained because they have not received a fair review by the agency. Some of the names have been modified for confidentiality purposes. Below is a list of the cases:

1. Luis Sanchez Ponce, DACA applicant in detention
2. Pablo Fabian Cardenas, Philadelphia father and business owner
3. Manuel Roman, DAPA-eligible father of 2 U.S. citizens
4. Susana Cabrera Silva, DAPA-eligible grandmother
5. Leonel Ayala, father and business owner, detained during Operation Cross Check
6. Sonia Belouniss, Married to U.S. citizen and eligible for adjustment
7. Arturo Molina, father and reconstruction worker
8. Ana M., former legal permanent resident in detention

9. Nicoll Hernández-Polanco, transgender women in detention with a passed credible fear interview
10. Nubia P. Trafficking victim placed in proceedings
11. Mr. & Mrs. P, couple in Texas where DHS continues to oppose closing case
12. Mr.X, step-father of U.S. citizens in detention with an approved U-visa certification
13. Miguel Angel Aguilar-Aguilar, Deported father, grandfather and construction worker
14. Antonino Santos Candela, father of five minors with moderate to severe medical conditions
15. Gustavo Gallardo Hernandez, Deported father of two U.S. citizen children

Acronyms & Abbreviations

DACA	Deferred Action for Childhood Arrivals
DAPA	Deferred Action for Parents of Americans and Lawful Permanent Residents
DUI	Driving Under the Influence
DHS	Department of Homeland Security
END	Education Not Deportation
HQ	Headquarters
ICE	Immigration and Customs Enforcement
LPR	Legal Permanent Resident
NTA	Notice to Appear
PD	Prosecutorial Discretion
TPS	Temporary Protected Status
USCIS	United States Citizenship and Immigration Services
U visa	Victims of Criminal Activity Visa
UWD	United We Dream

Susana Cabrera Silva, (Texas)

Grandmother and mother to two U.S. citizens

A grandmother and mother to two U.S. citizens, Mrs. Silva also has a daughter who is in college and was granted DACA. Susana has lived in the United States since 1991 and cares for her young U.S. citizen grandchild with special needs. Her son-in-law who is a U.S. citizen is petitioning for her daughter.



In 2005, Mrs. Silva received community supervision deferred adjudication for a felony theft charge for stealing clothes from a department store. This disposition does not count as a conviction under Texas state law. This is her only record.

Her stay of removal request, renewed in January 2015, was 202 pages long. She submitted twenty letters of support from her community and co-workers, tax documents, and an evaluation for recidivism, which found her to be very low risk. She also submitted evidence of her active

involvement in St. Ann Catholic Parish in Coppel, Texas. In February 2015, ICE notified Mrs. Silva her stay request was denied and that she must depart the United States on March 19, 2015.

Mrs. Silva has been public about her predicament and that she could be considered a priority under the new DHS memo. She spoke with Al Jazeera on November 20, 2014 in response to the President's announcement. She was previously granted a stay of removal from ICE in 2014. The only change in her circumstances had to do with a removal order that became administratively final when she received a decision from the Board of Immigration Appeals. ICE's February 2015 denial letter did not refer to a single piece of evidence submitted by her attorney. On March 18, 2015, the local ICE office informed Susana her stay had been reconsidered and granted.

Nuvia P., (Illinois)

Trafficking victim placed in proceedings



Nuvia was apprehended June 15, 2013 at a checkpoint near the border. Although she has lived in the US since 1995, she left for Guatemala for approximately 18 months. She has two U.S. citizen daughters who are 18 and 11, as well as 2 other children who are DACA eligible. Nuvia has no arrests or criminal convictions. She was sexually assaulted and subjected to forced labor and qualifies for a U visa. In July 2013, she was issued an NTA and was asked to report to ICE periodically. She complied with all requests from ICE. This year, at her last check-in, she was advised that the Notice to Appear was filed with the Court. The attorney does not know why ICE elected to initiate removal proceedings against her at this time, especially since she is not a priority under any of the categories of the memo.

“Local DHS offices do not feel bound by national policy. DHS is not exercising favorable discretion on cases that are clearly outside of their priorities. Families are being separated everyday and these cases are only the tip of the iceberg given that the majority of people do not have legal representation.” Mony Ruiz-Velasco, Mrs. Nuvia’s attorney

Luis Sanchez Ponce, (Tennessee)

24-year-old father and DACA applicant in detention



“They ignored those guidelines in October 2014; and they continue to ignore them nearly 6 months later. Instead, the government has adopted shifting and increasingly indefensible interpretations of its own policies in a transparent attempt to cover up the fact that its officers failed to exercise discretion in accordance with their binding policy memos.” Andrew Free, Mr. Sanchez-Ponce’s attorney

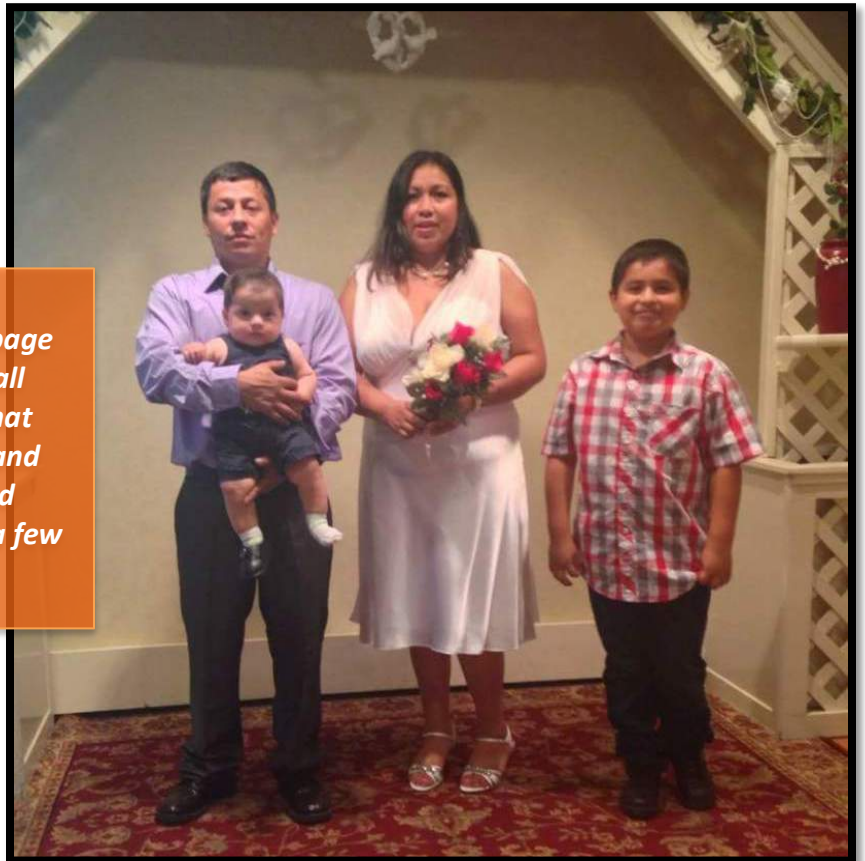
Luis is a 24-year-old DACA applicant and father of a 7-year-old US citizen daughter, Ileana. A construction worker from Tennessee, he and his family have lived in the state since 2000. He graduated from Heritage High School in Maryville, Tennessee. Luis has supported his mother and his brother Omar in his efforts to obtain a college education. In 2013, he was convicted for misdemeanors simple possession of marijuana and paraphernalia possession (a bong). Luis complied with the terms of his sentence. His one violation, which was later resolved, involved traveling out of state for a job. For the last six months, Luis has been detained by ICE. As a result, he has missed all his biometric requests required for his DACA application. ICE continues to deny all requests by his attorney to release him or administratively close his case.

**Pablo Fabian Cardenas, (Pennsylvania and Louisiana)
Philadelphia father and business owner**

Mr. Cardenas is a beloved father and member of his community in South Philadelphia. He was arrested during Operation Cross Check on the basis of a 2009 DUI conviction. He had not had any other interaction with the law since 2009. After his arrest, ICE transferred him to Jena, Louisiana - hundreds of miles from his family, community, and attorney.

Mr. Cardenas had lived in the United States since 2000. He and his wife have two US citizen children, ages 9 and 1, who lived with him. He was a local business owner of an auto repair shop with his US citizen brother. His auto repair business made him the sole financial provider for his family. Mr. Cardenas received a removal order in 2014. On March 19, his attorney filed a 60-page stay of removal. Within hours, the officer informed the attorney that the stay was denied. He was deported on March 20, 2015. On April 6, 2015, ICE sent a letter to the attorney detailing the reasons for his deportation and cited to standards not referenced in the Enforcement memo.

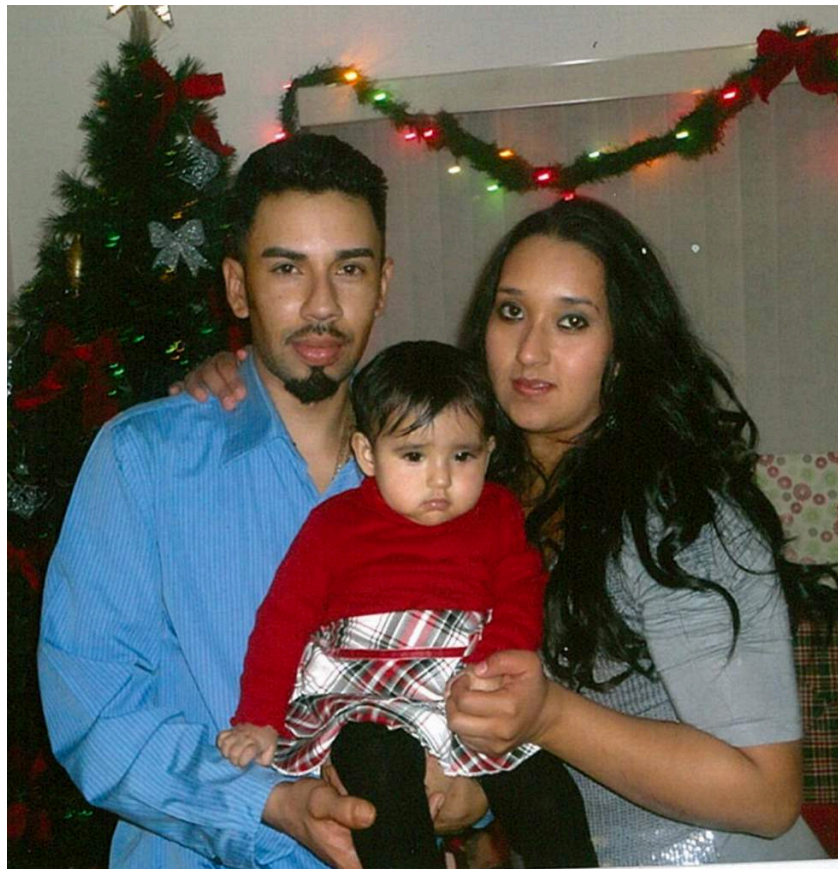
"My attorney filed my husband's stay of removal on March 19, 2015. He sent a 60-page stay of removal and he received a phone call within two hours from ICE Officer saying that my husband was a threat to public safety and that he will be deported. I don't understand how someone's life can be decided in just a few hours. It is not fair to my family."



Manuel Roman, (Illinois)

Father of 2 young U.S. citizens and construction supervisor

Mr. Roman came to the United States in 1999 when he was 16 years old. Before he was detained three months ago, he lived with his partner, Martha Avila and his 2 young U.S. citizen children, ages 4 months and 4 years. Mr. Roman was a home improvement supervisor for Roman construction, where he supervised four employees in their completion of home projects. One reason ICE denied the request to release Mr. Roman from detention was that they refused to believe he was the father of his children despite information provided by the mother, Head Start school records, and medical records. Counsel felt compelled to initiate a paternity claim to resolve this issue. Since his detention, his wife was forced to seek mental health services for her four-year-old daughter, who is desperately missing her father. In 2006, Mr. Roman was convicted of misdemeanor possession of cocaine and has another drug possession charge pending. Criminal defense counsel recently informed his immigration attorney that a plea deal regarding his pending drug possession matter will result in a misdemeanor conviction, likely with little or no jail time. None of these convictions trigger or will trigger the enforcement priorities. A prosecutorial discretion request filed on February 11, 2015 was denied. Mr. Roman would have been eligible for DAPA.



Mr. Arturo Molina, (Louisiana)

Father and reconstruction worker

Mr. Arturo Molina has deep family and community ties in New Orleans. He has lived in the U.S. for over 23 years, arriving in 1991 as a minor escaping the brutal war in El Salvador and reuniting with his late mother who was legal permanent resident.

Mr. Molina's deportation would devastate his family. Mr. Molina is the father of three US citizen children, two of whom—Justin (age 6) and Kayle (age 4)—rely on him as their primary financial and emotional support. Moreover, his son Justin has a learning disability and Mr. Molina is solely responsible for his young son's medical care. Mr. Molina is also a reconstruction worker and member of the New Orleans-based civil rights organization, the Congress of Day Laborers.



In January 2015, Mr. Molina was stopped after leaving a Latino restaurant in Houma, a rural town in Louisiana. He was arrested and charged with a DUI. The City of Houma, as a matter of policy, does not provide indigent individuals charged with municipal traffic offenses, including DUI charges, with a public defender. Nor does the court provide translation services to limited English speakers. In late February 2015, Mr. Molina, still detained, was brought before the court. Without counsel or a full understanding of the proceedings, he was ferried through the system and urged by the judge to take a guilty plea even though he told the court that he did not understand enough English and legal terminology to represent himself. Mr. Molina was held on an ICE hold for an additional 4 days until he was transferred to ICE custody.

Mr. Molina retained counsel who filed a motion to vacate his DUI conviction and reset his case for trial based on violation of his constitutional rights. A hearing is pending. Moreover, Mr. Molina has an in absentia order from 2012 due to ineffective assistance of counsel, and he has also retained counsel that is seeking to reopen his order so he can apply for available relief.

Despite Mr. Molina's efforts to pursue his due process and protect his constitutional rights, ICE continues to seek his deportation and deny him the ability to reunite with his family and community.

Mr. and Mrs. P, (Texas)

Married couple and parents of U.S. citizens in removal proceedings

This couple has resided here for three decades and are the parents of three United States citizen sons, ages 17, 24 and 25. One of the adult sons is in college and working and the other is working. The youngest is a junior in high school, is in a special program to prepare high school students for college, and is a star on his high school football team. The husband has a business cutting lawns and his wife is a homemaker. The husband has a lawful permanent resident brother who has end-stage renal disease that lives with them and is partially supported by them. They pay their taxes and are buying their home. They are devout church members.

In 1985 at the age of 18, Mr. Perez was arrested for DWI and was given a sentence of 9 days in jail. He has no other criminal record. Another basis for the denial is multiple entries into the United States.

Miguel Angel Aguilar-Aguilar, (Michigan)

Deported father, grandfather, long time resident and construction worker

Mr. Aguilar-Aguilar has resided in the United States since 1997 with his wife and four U.S. citizen children. All of his children had been granted DACA. He worked at a construction company, paid taxes and owns his own home. His son, who was granted DACA, was diagnosed with chronic renal failure and faced medical problems related to the rejection of a transplanted kidney. All his children and his wife lived with him. Mr. Aguilar-Aguilar paid for all medical expenses related to his son's chronic condition. His deportation has devastated this family, who had just moved out of a trailer park into a new home. In a motion, DHS designated him an enforcement priority without specifying the basis. The attorney appealed the denial of a withholding of removal case to the 6th Circuit Courts of Appeal. He also testified that in the 1990s, he was arrested for being drunk in a parked car. There is no record of a conviction or arrest, but he said he was in the police station overnight. ICE again called Mr. Aguilar-Aguilar while he was in detention to confirm the drunkenness incident. He was deported on January 8, 2015.

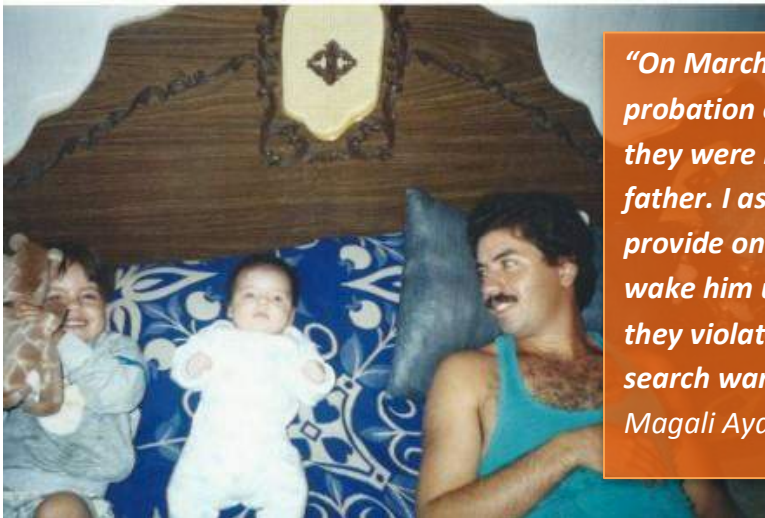
Despite the attorney's multiple attempts to obtain the government's agreement to close the case or stay the removal, ICE refused.

Leonel Ayala, (Georgia)

Father and business owner, detained during Operation Cross Check



Magali Ayala, a United We Dream leader and DACA recipient, reported that her father was arrested at their home in the early morning of March 2, 2015 as a result of Operation Cross Check. Mr. Ayala and his family have been living in the US for fifteen years, and he has paid taxes promptly all of this time. He raised Magali and his 12-year-old U.S. citizen daughter with the values of education and hard work. In addition, he tried to fix his status and has a pending I-130 petition by his U.S. citizen brother. His body shop, Fast Car, is now a successful business. He is an active parishioner at St. George Catholic Church, and has received close to 3,000 signatures on UWD's online petition. Mr. Ayala has a DUI-related charge from California in 2000 and was completing his sentence for a DUI charge he incurred in 2014.



“On March 2, 2015, five uniformed men claiming to be probation officers raided my house at 6 a.m. They said they were here to perform a “random” drug test on my father. I asked to see a warrant and they refused to provide one and proceeded to enter my father’s room, wake him up and told him to get dressed. Not only did they violate our rights by entering our home without a search warrant, they also lied about who they were.”
Magali Ayala, Leonel’s daughter

Antonino Santos Candela, (North Carolina)
Father of five children with severe medical conditions



Mr. Candela is a father to four U.S. citizen and two DACA eligible children. He has lived in North Carolina for nine years. Five of his kids have serious health problems, and Mr. Candela is the main financial provider for his children and their medical care. Reina, an 18-year-old DACA recipient who has epilepsy is only 4'8" in height and suffers from abnormal brain and nervous system development. His 10-year-old daughter has a congenital heart anomaly and is unable to dorsiflex her hand or fully extend her fingers. His 5-year-old son has cerebral palsy, paralysis on one side of his body, and contracture of ankle and foot joint that necessitates the wearing of a foot brace. His 13-year-old son and 12-year-old daughter both have asthma.

Mr. Candela has paid taxes. Mr. Candela does have several misdemeanor convictions: a 2007 conviction for larceny, a 2012 DUI conviction, and two convictions for federal illegal entry in 2010.

There is no doubt that his children, many of whom have serious medical problems, will survive without their father. He has done a tremendous job taking care of all of them.

"It has been a month since my husband was detained. My children are very sad, they no longer want to play after school and they keep asking when will Papá come back home. For me, I have had to borrow money from friends and neighbors to afford this month's rent and bills. I am working weekdays 6 to 9 p.m. when my brother can watch my children for a while. I don't want to be homeless and alone with my children; that is my worst nightmare." – wife of Antonio Candela

His stay of removal prepared by his current attorney includes letters from multiple physicians stating that Mr. Molina and his wife have done an exceptional job at taking care of their kids.

DHS offered no explanation for changing their position on the stay of removal, which had been previously granted in early 2014.

Gustavo Gallardo-Hernandez, (North Carolina)

Deported father of two US citizen children

Gustavo is young father to two USC children, one of whom is a step-child. He has lived here for several years. He paid his taxes and regularly worked to support his family. His prosecutorial discretion submission to ICE included evidence of taxes he filed and letters of support from his children and friends. In 2014, he was arrested for driving under the influence and eventually pled guilty in February 2015. After his arrest, he was apprehended by ICE and complied with all conditions. At his check-in on March 3, 2015, ICE arrested him. He was deported two weeks later.

Nicoll Hernández-Polanco, (Arizona)

Transgender detainee passed credible fear interview

Nicoll is a Guatemalan transgender woman currently being detained at an ICE all-male facility in Florence, Arizona. In October 2014, Nicoll presented herself to a US port of entry in Arizona to seek asylum from the violence she faced in her home country due to her gender identity. Before her detention Nicoll submitted and passed a credible fear interview. **ICE has disregarded this factor as well as Nicoll's experiences inside detention and has refuses to release her.**

In detention, Nicoll experiences sexual harassment and abuse at the hands of Florence staff for being a transgender woman. In her first month in detention, Nicoll reported that male guards groped her breasts and buttocks 6-8 times a day during routine pat-downs, made offensive sexual comments and gestures, and sometimes pulled her hair. Verbal abuse is rampant and witnesses have heard a female guard refer repeatedly to Nicoll as "it".

Nicoll is also particularly vulnerable to abuse from male detainees. She is required to shower with, use the restroom with, and sleep in the same room as men. As a result, in early December 2014, another detained person sexually assaulted Nicoll. Despite immediately filing a complaint that facility staff has purportedly been investigating, the conclusions of any investigation have not been disclosed to Nicoll.

The danger to Nicoll as a result of her detention presents urgent concerns to her safety and health. Offering to transfer her to the GBT pod in Santa Ana Jail is not a solution because it would isolate her from her community of support and legal representation in Arizona.

*Nicoll inside her
detention cell at Eloy,
photo credit to
Fernanda Echevarria,
Arizona Public Media*



Cases from new sources

Sonia Belouniss, (Colorado)³

Married to U.S. citizen and eligible for adjustment



Photo by Shaun Stanly at Durango Herald, durangoherald.com

A former teen skiing prodigy who competed in the U.S. Pro Ski Tour, Ms. Belouniss is a French national nurse who is married to a U.S. citizen. In January 2014, she was arrested for domestic violence and harassment, but everything was dismissed. However, these arrests brought her to the attention of ICE. She has no convictions and has been with her partner, David Wyatt for nearly two decades. **ICE designated her a priority because she overstayed her period of authorized stay under the visa waiver program.** According to several news outlets, a week after her case was brought to the attention of Senator Bennett and Representative Tipton; she received a one-year stay to resolve her status.

³ <http://www.durangoherald.com/article/20150310/NEWS01/150319959/Durango-nurse-facing-deportation>

Adam Crasper is the father of two young U.S. citizen children. He entered the US as an adoptee from South Korea. He endured horrific abuse from his adopted parents and foster parents, leading him to become homeless. He was later convicted of a burglary offense, an aggravated felony under immigration law. News outlets report that ICE has added additional immigration charges to his Notice to Appear.



Omar Lopez is married to a U.S. citizen, Tali Lopez, and has a U.S. citizen stepdaughter, Mila. He was designated a priority because he violated the visa waiver program through his overstay. Arrested after a traffic stop, he was detained and subsequently deported days after his arrest. In a newspaper article, the attorney complained, "ICE's letter rejecting Lopez's motion was almost identical to the letter it had previously sent informing her of the decision to deport him."

⁴ <http://www.buffalonews.com/city-region/federal-court/despite-hardship-plea-by-wife-man-is-being-deported-in-visa-case-20150325>

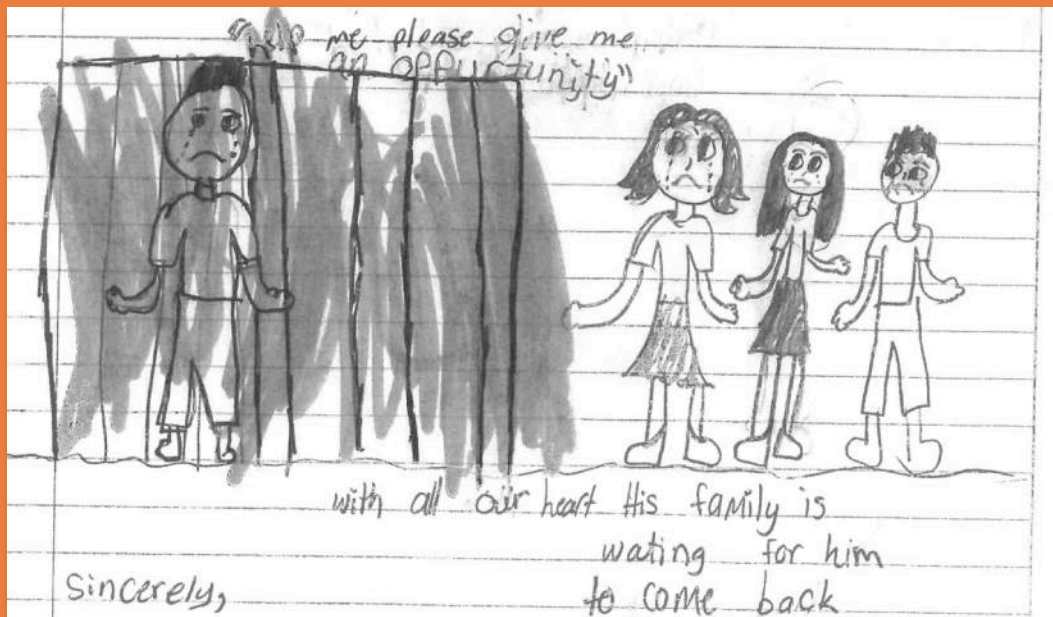
⁵ <http://www.kgw.com/story/news/politics/2015/04/02/crasper-korea-adopt-deportation-portland/70824432/>

Mr. X, (California)

U.S. citizen fiancé, approved U-visa certification and passed a reasonable fear interview

Mr. X has resided in the United States since 2000 and has several family members who have status in the United States. A well-regarded auto mechanic, Mr. X was apprehended in December 2014 after a tip to immigration authorities. In his 176-page submission in support of his prosecutorial discretion request, Mr. X included letters from his US citizen fiancée, and forty-three letters of support from family members, friends, and the children of his U.S. citizen fiancée. Mr. X has a U visa certification he obtained as a result of being the victim of a 2004 machete attack. Moreover, he received a positive reasonable fear finding. Mr. X has a DUI conviction from 2001 and a complicated immigration history involving several attempts to reinstate prior removal orders. His most recent entries are related to a sexual assault that he endured in Mexico, which also serves as the basis for his withholding of removal application. ICE provided conflicting information to the attorney about its decision to continue detaining Mr. X- at one time stating it was the reinstatement issue then switching to the old DUI conviction. It is not clear whether the office considered the *Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs* memorandum in making its decision.

Picture by Mr. X's niece contained in the prosecutorial discretion request.



Conclusion

This is a preliminary report, but we believe DHS must promptly change its practices in assessing evidence in support of a request for a positive exercise of discretion. Over the past few months, communities report feeling skeptical that the President and DHS will sincerely engage DHS rank and file employees about the new changes. DHS must commit to a new screening process that systemically elevates ties to the community and family and must commit to an outside review process. Moreover, DHS must develop a new calculus that explicitly factors in individual circumstances and equities for each priority category.