M E M O R A N D U M

TO: The Honorable Barack Obama, President of the United States of America
FROM: Ms. Laurel Scott, Immigration Attorney
DATE: April 13, 2009
RE: Measures for immigration reform immediately available to the President

---

Introduction
Immigration reform is one of the most pressing issues facing the country. But immigration reform is also an extremely controversial issue where virtually the only thing the opposing sides agree on is that the system is broken. Ultimately, sweeping change in the Immigration and Nationality Act (INA) will be needed for maximum results. Such change requires the cooperation of Congress, which may be difficult or impossible to obtain in the political climate of the economic recession. While we campaign for change, the President need not wait to make many significant changes in the way immigration law is administratively interpreted and enforced. These changes can be made via memoranda and policy decisions handed down by the numerous agencies involved in the immigration process. The President can make significant improvements in the following areas without involving Congress: culpability of minors, standards of proof at the consulate, handling of legal questions at the consulate, treatment of aliens in custody, use of existing discretionary relief, and faster processing times.

Diminished culpability for immigration violations committed as minors:
When Congress wrote the INA, they failed to sufficiently consider a long-held fundamental legal theory: that we don't hold children to the same legal culpability as adults. Many of the harsher punishments that appear in the INA make no exceptions for violations committed as minors. Adults married to U.S. citizens, sometimes with U.S. citizen children, are kept out of the U.S. for 5 or 10 years or life under section 212 of the INA due to violations committed years before, when the alien was a child. The current prevailing policies of the Executive Branch have taken a draconian letter-of-the-law approach, blatantly ignoring overwhelming case law regarding culpability of minors. The Executive Branch can change this policy, bringing it into line with cases such as *Reno v Flores*, 507 U.S. 292 (1993), *U.S. v Knight*, 490 F.3d 1268 (11th Cir. 2007), and *Singh v Gonzales*, 451 F.3d 400 (6th Cir. 2006), among others.

More stringent standards of proof for findings of inadmissibility at the consulate
Currently, the consulate may find that an applicant has made an unrecorded, unsigned oral confession to a violation of the law during the consular interview that may keep the alien out of the U.S. forever. Visa applicants are not always allowed to see the evidence used against them so that they may contest it. Even when there is no dispute regarding the existence of a piece of evidence, the consular officer has wide latitude to draw conclusions from flimsy evidence. These decisions are not subject to review. Visa applicants and their U.S. citizen family have extremely limited opportunity to question the existence or significance of evidence. In the interest of justice, improved standards of evidence must be introduced at the consulate.

Handling of legal questions at the consulate
The current system of arguing a question of law at the consulate is woefully inadequate. Questions of law presented to the consulate are often handed over to the Advisory Opinion

office. At the risk of sounding highly undiplomatic and blunt, it is painfully apparent from the decisions presented by this office, that the decision-makers are not required to have a legal background. This needs to be changed. All decision-makers at the Advisory Opinion office should be required to have a license to practice law and should be required to render thorough, considered opinions on questions of law that it is consistent with case law. The number of decision-makers at that office is limited enough that this would not be prohibitively expensive.

Better treatment of aliens in detention within the U.S. and at the airport
Those in the physical custody of the government, whose liberty has been taken, whether for a few hours or more than a year, are easily the most vulnerable to the government and therefore require the most vigilant level of protection. By law, immigration detention facilities are required to be more comfortable than criminal detention facilities. *Jones v. Blanas*, 393 F.3d 918 (9th Cir. 2004). In practice, the opposite may be true. Respected non-profit agencies and attorneys have alleged noncompliance, neglect and outright abuse at adult detention facilities, juvenile detention facilities and airport interrogation rooms. Improved safeguards and accountability must be introduced. This is the President's moral and legal responsibility.

More widespread use of existing discretionary relief for families of U.S. citizens
It is within the discretion of the Executive Branch to allow aliens to voluntarily place themselves in removal proceedings so that they may apply for a form of relief called Cancellation of Removal. Mysteriously, the Bush administration put a halt to aliens turning themselves in. The President can and should easily change this ridiculous policy. It is also within the discretion of the Executive Branch to grant Deferred Action to those individuals who are a low priority for removal and who have compelling circumstances. This type of relief has been underutilized in the past and has poorly developed policies and procedures. With Deferred Action, the government may elect to defer placing an apparently deportable alien in proceedings, and grant him an Employment Authorization Document under 8 CFR §274a.12(c)(14) if he is a low priority for removal (i.e. no criminal history) and he has compelling factors in his case.

Faster processing of all petitions, applications and requests for records
For many cases the alien is entitled to relief and relief will certainly be granted, but the sheer amount of time it takes for the relief to be granted is harmful to aliens and their U.S. citizen families. An alien who applies for a waiver of inadmissibility abroad may have to wait outside the country for over a year (depending on location), while his U.S. citizen wife and children suffer his absence. In such a situation, justice cannot prevail because the damage is done purely by processing times. Likewise, while aliens are entitled to a copy of their alien file under the Freedom of Information Act, obtaining said file normally takes more than a year. The results of the information request often come too late to be of any use. Access to his information is therefore effectively denied due to processing times even though the law says he and his U.S. citizen family have a right to that information. Processing times are entirely the responsibility of the Executive Branch.

In summary, regardless of the timeline for Comprehensive Immigration Reform, now is the time for you to realize the power that is already in your hands. Through your executive powers, you have the authority to make many important changes in the lives of immigrants and their families. I urge you to review your existing options and make the most of them. Thank you.