January 28, 2015

Laura Dawkins
Chief of Regulatory Coordination Division
USCIS Office of Policy and Strategy
20 Massachusetts Avenue NW
Washington D.C. 20529

Re: Modernizing and Streamlining the Legal Immigration System
(DHS Docket No. USCIS-2014-0014)

Dear Ms. Dawkins:

The National Queer Asian Pacific Islander Alliance submits this comment in response to the Notice for Request for Information on Recommendations to Streamline and Improve the Legal Immigration System published in the Federal Register (FR Doc 2014-30641). We commend President Obama and his Administration for taking bold action to protect immigrants and their families through executive action. We also appreciate that the President has created a Visa Modernization Task Force to identify ways to update and streamline our legal immigration system. Thank you for the opportunity to provide recommendations for modernizing the backlogged visa system to promote family unity and alleviate the suffering of families waiting to be reunited. We look forward to seeing the recommendations in action.

The National Queer Asian Pacific Islander Alliance is a federation of 40 grassroots Lesbian Gay Bisexual and Transgender (LGBT) Asian American, South Asian, Southeast Asian, and Pacific Islander (AAPI) organizations. NQAPIA seeks to build the capacity of local LGBT AAPI organizations, invigorate grassroots organizing, develop leadership, and challenge homophobia, racism, and anti-immigrant bias. Our ongoing immigrants’ rights campaign speaks to the need for an all-encompassing immigration agenda and promotes understanding of the real experiences of diverse LGBT AAPIs. NQAPIA has been working on immigrants’ rights and has engaged the national dialogue on immigration for a number of years. Since 2010, in collaboration with local LGBT AAPI organizations and allies, NQAPIA has hosted dozens of community forums, educational events, and actions on immigrants’ rights in various cities across the country. Our Uncovering Our Stories campaign put a real face to LGBT APIA immigrants struggling with the current immigration system. People shared their hurdles of being undocumented, denied asylum, or separated from their partners or families.

Our country has a long history of reuniting families who are looking for new and prosperous opportunities or seek protection in the United States. This includes LGBTQ families who may not currently be legally recognized under current laws in various states and countries. Our current flawed system has limited families from reunification. LGBTQ families without legally binding relationships are barred from applying for visas or parole for their families. Even when
they can prove legal familial ties, the current system keeps too many families apart for years or decades. Muslim, South Asian, and Middle Eastern communities often face longer wait times due to specific background checks based on profiling based on their names or countries of origin. This is unacceptable. These devastating wait times impact diverse immigrant communities. As of November 2014, more than 4.3 million loved ones have been waiting in the family visa backlogs.¹ Six Asian countries (Philippines, India, Vietnam, China, Bangladesh, and Pakistan) make up another quarter of the visa backlogs.

Prolonged separation hurts families and, by extension, entire communities. Intact families can provide economic support and stability for each other, including pooling resources to start small businesses, purchase homes, or provide childcare, so other family members can work, which make the United States more successful overall. Family members also provide important emotional support as newer Americans establish new lives in our communities. Many family members are unable to apply for visas due to long backlogs and are also separated due to immigration enforcement targeting their communities for detention and deportation. Those waiting for visas abroad are also unable to receive tourist visas. In effect, they cannot visit loved ones in the United States, if they could even afford to travel here, and they miss many important life events during the long waits.

We have several proposed changes the Administration can make now using executive authority to improve our legal immigration system.

**Streamlining the Legal Immigration System**

**RFI Question No. 1: What are the most important policy and operational changes that would streamline and improve the processing of immigrant visas at U.S. Embassies and Consulates, for both family-sponsored and employment-based immigrant visas?**

In processing immigrant visas, the Department of State (DOS) should allow applicants to submit their paperwork and be interviewed in a third country that is safe for LGBT people. LGBT individuals in hostile and non-hostile countries are often afraid of being outed during the visa process in their home countries. In countries that are hostile to LGBT people, individuals fear for their lives, livelihood, and families. By allowing people to travel to a third country to apply for immigrant visas, this takes away the fear of being seen or reported on in their own country of origin.

Additionally, the Department of Homeland Security (DHS) should provide the ability to parole a partner for an LGBT asylee since many LGBT families do not qualify for follow-to-join benefits as their relationships are not legally recognized in their country of origin.

In immigration applications, individuals must choose between two gender categories. As many countries around the world, including India, Nepal, and Pakistan, have a third gender/sex category in their government identifications, the DHS and DOS should consider allowing individuals to self-identify on U.S. government forms, and provide for greater flexibility in

accepting documentation with conflicting gender information (this comment also applies to questions 2 and 3 in this section).

RFI Question No. 3: What are the most important policy and operational changes that would streamline and improve U.S. Citizenship and Immigration Services (USCIS) processing of the following types of immigrant and nonimmigrant visa petitions?

a. Family-sponsored immigrant visa petitions

Release all people in U.S. immigration detention center who have U.S. citizen partners including same-sex couples who may not have legally recognized relationships due to hostile laws in specific U.S. states.

e. H-1B temporary worker visa petitions, specifically, ways to reduce burdens on employers and workers engaging in the H-1B petition process, consistent with protections for U.S. and temporary foreign workers. (Note that employment authorization for certain H-4 dependent spouses of H-1B nonimmigrants was a part of the President's November 20 announcement described above, and recommendations regarding that topic should not be submitted here.)

Allow H-1B visa holders who have same-sex partners in other countries to apply for parole for their partners to join them in the U.S.

c. Nonimmigrant petitions

OPT should be expanded from one to three years for all individuals that qualify for OPT regardless of their field of study. Extended time should not be limited to those in the science, technology, engineering or math (STEM) as there are numerous fields of study including women, gender and LGBT Studies that cannot be found outside of the U.S. The knowledge shared by international students in these fields with U.S. programs and the knowledge taken back to educate people in the country of origin are as important as those in STEM.

RFI Question No. 6: What are the most important policy and operational changes that would streamline and improve the inspection of arriving immigrants and nonimmigrants at U.S. ports of entry?

A number of South Asian, Muslim, and Middle Eastern communities face unfair profiling based on their race, religion or country of origin within the immigration system, both when applying for immigration and upon arrival at U.S. ports of entry. Many people have reported unnecessary questioning, secondary screening, and being detained at airports due to targeting of their Muslim last names or so called “behavioral recognition” tools used to identify suspects under national security concerns. In order to decrease the risk of profiling and civil liberties violations, we recommend the following policy and operational changes:

- Ensure that data from the former NSEERs program has not been incorporated into the immigration system database as a means to screen people either in the immigration visa process or at U.S. ports of entry. The data collected under the biased NSEERS program should be eliminated and not used in any immigration processes. In the future, we should
never implement any racial profiling programs, like NSEERS, using the Priority Enforcement Program.

- CBP should not be exempt from the Department of Justice Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity. The flawed exceptions for anything deemed national security or border security concerns enables CBP to continue profiling individuals at ports of entry. It also continues to keep the possibility for profiling during the visa processing period open. In particular, members of Muslim, Arab, and South Asian communities are facing unacceptably and inhumanely long delays and backlogs for their visas to be processed.

- Allow individuals the right to challenge their inclusion on the “No Fly List.”

CBP should not have jurisdiction to enforce the immigration laws beyond the port of entry. By allowing CBP to enforce immigration laws within 100 miles of any port of entry, it is expanding their jurisdiction to a majority of the U.S. and therefore taking away resources that could be used to expedite processes at U.S. Ports of Entry.

**Ensuring the Use of All Immigrant Visa Numbers**

Since the family visas allocated by Congress are so limited, it is critical that the Administration take every action to ensure that all available visas are used as Congress intended.

**RFI Question No. 15: What are the most important policy and operational changes, if any, available within the existing statutory framework to ensure that administrative policies, practices, and systems fully and fairly allocate all of the immigrant visa numbers that Congress provides for and intends to be issued each year going forward?**

To ensure available visas are maximized in the future, we recommend counting dependent family members as part of the same family unit for purposes of the visa cap. This includes LGBT couples applying for fiancée visas or parole for their partners. Current practice counts both the principal visa beneficiaries and their derivatives (i.e., spouses and minor children) against the visa caps. This method of assigning each and every family member a visa has the effect of creating even greater demand for the already limited number of visas available each year. However, this current practice is not required by statute (e.g., INA § 203(d), 8 U.S.C. §1153(d)). Prior to 1990, immigration law required the current practice of counting principals and derivatives, but changes to immigration law in 1990 eliminated the language that required counting both principals and derivatives for purposes of the numerical limits.

**Response to RFI Question No. 16: What are the most important policy and operational changes, if any, available within the existing statutory framework to ensure that administrative policies, practices, and systems fully and fairly allocate all of the immigrant visa numbers that Congress provided for and intended to be issued, but were not issued in past years?**

To address the problem of visas that went unused in prior years (RFI Question No. 16), we recommend “recapture” of previously unused visas and issuing them to individuals currently in the backlog. It is estimated that there are hundreds of thousands of previously authorized but
unused family-based (and employment-based) green cards. These green cards were unused not because of a temporary lull in demand but because of administrative and processing issues that occurred during the fiscal years they were made available. To help ease the current backlog, we recommend the administration “recapture” unused visas from prior years and issue them to individuals waiting for visas.

**Using Parole to Promote Family Unity**

Finally, we urge the Administration to continue using the parole power under Section 212(d)(5) of the INA to reunite certain family members of U.S. citizens and lawful permanent residents. The Secretary of Homeland Security has the discretion to parole temporarily into the United States, under such conditions as he or she may prescribe, any non-citizen applying for admission. The Secretary may exercise this discretion on a case-by-case basis for “urgent humanitarian reasons” or “significant public benefit.”

Reuniting families quickly would have significant public benefit for individual families and our community overall. As described above, intact families can provide economic and emotional support and stability for one another as immigrants establish new lives in our communities. Family reunification helps new Americans succeed and thrive.

Indeed, the Obama Administration has already used the parole power in four previous situations to promote family unity. There is no reason why the current Administration cannot use the discretionary parole power to assist family members who are waiting on the oversubscribed family preference categories with immigrating to the United States.

In the first instance, parole was used to enable Haitian orphans abroad to join their prospective and adoptive parents in the U.S. In the second instance, the Administration extended parole-in-place (PIP) to the spouse, child, or parent of an individual who is currently a member of the U.S. Armed Forces or the Selected Reserve (or who previously served in the U.S. Armed Forces or Selected Reserve). More recently and upon the request of the Department of Defense, the Administration also extended the use of parole-in-place to spouses, children, and parents of U.S. citizens and lawful permanent residents seeking to enlist in the U.S. Armed Forces. Finally, in late 2014, DHS announced the Haitian Family Reunification Parole Program to expedite family reunification for certain eligible Haitian family members of U.S. citizens and lawful permanent residents. We applaud the Administration’s decision to use its executive power to keep families

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3 2010 WL 1368925 (D.O.J).
6 91 NO. 41 Interpreter Releases 1925.
together, and we urge the Administration to use parole for families of other countries with severely impacted backlogs such as Mexico, China, India, and the Philippines.\(^7\)

**Modernizing IT Infrastructure**

**RFI Questions No. 18:** Which existing government-collected data and metrics would be most valuable to make available to the public, consistent with privacy protections and national security, in order to improve oversight and understanding of the legal immigration system?

To help improve oversight, it would be beneficial to have public data of how long people with Muslim last names or people from countries of origin that were part of the former NSEERS programs are in the system due to national security concerns.

Thank you for the opportunity to provide these comments to assist the Visa Modernization Task Force. These modest proposals would provide small but important relief for the economy and immediate and substantial relief for tens of thousands of immigrant families.

Sincerely,
The National Queer Asian Pacific Islander Alliance

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\(^7\) Department of State, Annual Report of Immigrant Visa Applicants in the Family-sponsored and Employment-based preferences Registered at the National Visa Center as of November 1, 2014, *available at* http://travel.state.gov/content/dam/visas/Statistics/Immigrant-Statistics/WaitingListItem.pdf