



REDACTED

January 13, 2016

U.S Immigration and Customs Enforcement (ICE)
Detention and Removal Office
26 Federal Plaza, 9th Floor, Suite 9-110
New York, New York 10278

**Re: XXXX XX XXXX [A#XXXXXXXXXX]
Request for Stay of Removal**

Dear Sir/Madam:

We write on behalf of our client, XXXX XX XXXX (“Mr. XXXXX”), in the above captioned matter, to respectfully request a Stay of Removal. Please find supporting documents for this request attached.

Mr. XXXXX’s case presents exceptional circumstances that warrant the exercise of prosecutorial discretion. First, he has extensive family ties in the United States, and is the sole breadwinner for his three young United States citizen sons, who are six years old, sixteen months old, and five days old, the youngest having been born the night Mr. XXXXX was taken into ICE custody. These children have been suffering emotionally and physically since Mr. XXXXX’s arrest; the oldest child is inconsolable, the second child cannot sleep or keep down food, and the newborn—who is being breastfed—has started having diarrhea, which can be fatal for children his age. Second, Mr. XXXXX has lived in the United States for thirty years, his entire adult life; throughout his three decades in the United States, he has been consistently employed, and he pays taxes. Third, Mr. XXXXX suffers from diabetes and must be able to continue the medical treatment he has been receiving in New York. Fourth, Mr. XXXXX faces deportation to El Salvador, a country where he has no family ties and which is one of the most dangerous countries in this hemisphere. Finally, Mr. XXXXX is not a threat to national security, border security, or public safety. Additionally, if Mr. XXXXX is removed he will be barred from the United States for 10 years, and will be prevented from being with his children as they grow up, and from supporting them and their mother financially and emotionally. He is therefore more

than willing to comply with any conditions of release that the Department of Homeland Security (“DHS”) deems appropriate or necessary.

Mr. XXXXX is an excellent candidate for a Stay of Removal under current DHS policy, as set forth in the November 20, 2014 Memorandum from Jeh Johnson, *Policies on the Apprehension, Detention and Removal of Undocumented Immigrants* (“Johnson Memo”); the August 23, 2013 ICE Memorandum on Facilitating Parental Interest in the Course of Civil Immigration Enforcement Activities (“Parental Guidance Memo”); and the November 17, 2000 Memorandum from Doris Meissner, *Exercising Prosecutorial Discretion* (“Meissner Memo”). Under the guidance set forth in these memoranda, individuals who are not a threat to national security, border security or public safety should not be prioritized for removal. *See* Ex. H.1, Johnson Memo. Further, enforcement operations should take into consideration the welfare of U.S. citizen children who have non-citizen caretakers. *See* Ex. H.2, Parental Guidance Memo. Finally, the exercise of prosecutorial discretion should take into account mitigating factors in an individual case. *See* Ex. H.1, Johnson Memo at 6; Ex. H.3, Meissner Memo at 7-8.

Mr. XXXXX should not be prioritized for removal because he is not a threat to national security, border security, or public safety. In his three decades in the United States, he has never been convicted of a felony, nor of any violent offense. A review of his criminal record conducted by Brooklyn Defenders Services on January 11, 2016 reveals that more than ten years have elapsed since his last criminal conviction. Moreover, Mr. XXXXX voluntarily participated in a three-month STOP-DWI program at the end of 200X, which enabled him to rehabilitate himself and move his life in a positive direction. *See* Ex. E.1, Letter from XXXXX County Correctional Center. Later that year, he met his current partner, XXXXX XXXXX, and they subsequently created a family together. Since then, Mr. XXXXX has dedicated himself to his family completely. *See* Ex. B.1, Ms. XXXXX’s Declaration. Because he poses no threat to national security, border security or public safety, Mr. XXXXX should not be removed. *See* Ex. H.1, Johnson Memo, at 5.

An administrative stay of removal will also allow Mr. XXXXX to continue to provide financial and emotional support to his family, including his United States citizen sons, XXXX XX XXXX XXXXX, XXXXX XXXX XXXXX XXXXX, and XXXXX XXXXXXXXXXXX XXXXX, as well as his Lawful Permanent Resident sister, XXXXX XXXX, and his mother, XXXXX XXXXXXXXXXXX, who has Temporary Protected Status and a pending application for Lawful Permanent Residency. *See* Ex. B.1, Ms. XXXXX’s Declaration; Ex.B.2-4, Birth Records of Mr. XXXXX’s sons; *see also* Ex. C, Evidence of Mr. XXXXX’s Crucial Support for His Mother. Thus, granting a stay of removal in Mr. XXXXX’s case is consistent with ICE’s goal of promoting the welfare of U.S. citizen minor children of noncitizens in its exercise of prosecutorial discretion. *See* Ex. H.2, Parental Guidance Memo at 1.

Mr. XXXXX’s case presents additional factors that warrant prosecutorial discretion pursuant to the Johnson Memo, which took effect on January 1, 2015, and the Meissner Memo,

which remains in effect.¹ The Johnson Memo directs DHS personnel to consider a noncitizen's 1) family ties in the United States; 2) length of residency in the United States; 3) length of time elapsed since a criminal conviction; and 4) "humanitarian factors" including poor health and the presence of young children. Ex. H.1, Johnson Memo at 6. In addition to these factors, the Meissner Memo directs immigration authorities exercising prosecutorial discretion to consider evidence of rehabilitation following a criminal conviction, lack of ties to the country of removal, country conditions in the country of removal, and the impact of removal on future admissibility. See Ex. H.3, Meissner Memo at 7-8.

For these reasons, we respectfully request that Mr. XXXXX removal be stayed to allow him to continue to provide for his family and remain in the United States, the country that has been his home for the last thirty years.

A. Mr. XXXXX does not pose a threat to national security, border security or public safety.

On November 20, 2014, Jeh Johnson, Secretary of the Department of Homeland Security outlined new immigration enforcement priorities in a memorandum entitled "Policies for the Apprehension, Detention and Removal of Undocumented Immigrants." See Ex. H.1, Johnson Memo. This memorandum directed DHS to use its limited resources to remove categories of persons who can be presumed to pose a threat to national security, public safety, and border security, either because they have been convicted of certain crimes or because have been found to have violated certain immigration laws. Nevertheless, the Johnson Memo states that an individual who falls into these enforcement priority categories should not be removed if there are factors indicating that he or she is not a threat to national security, public safety, or border security. *Id.* at 5. Mr. XXXXX does not pose a threat to national security, border security or public safety. Therefore, he should not be considered a priority for the purposes of enforcement and removal.

Mr. XXXXX has never been convicted of a felony, nor of any violent offenses. He poses no threat to the wider community or to those closer to him. Between 199X and early 200X, Mr. XXXXX did not live near his family members and, without their support, struggled with drinking. During that time, he pled guilty to several Vehicle and Traffic Violations, and another misdemeanor. However, in the last eleven years, Mr. XXXXX has rehabilitated himself. In 200X, he completed a STOP-DWI program. See Ex. E.1, Letter from XXXXX County Correctional Center. He subsequently met his current partner, XXXXX XXXXX, and they started a family together. From 2005 onwards, Mr. XXXXX has dedicated himself to Ms. XXXXX and their family; his record shows no criminal history since then. Thus, Mr. XXXXX poses no threat to national security, border security or public safety. On the contrary, he is a

¹ While the Johnson Memo expressly revoked and superseded certain prior memos regarding enforcement priorities and the exercise of prosecutorial discretion, it did not take action with respect to the Meissner Memo.

responsible father who works hard to provide for his partner and children, who love and depend on him. Therefore, Mr. XXXXX should not be prioritized for removal.

B. Removing Mr. XXXXX would undermine the welfare of his three young U.S. Citizen children and therefore is contrary to the stated policy of Immigration and Customs Enforcement.

Mr. XXXXX has three very young U.S. citizen children. They and their mother rely on Mr. XXXXX both emotionally and financially. If Mr. XXXXX is deported, his children will suffer materially and psychologically. Already, his youngest son was born early, after Ms. XXXXX—who expected to give birth on January 13, 2015—experienced the emotional stress of seeing Mr. XXXXX taken into ICE custody. Their two older children have also been distraught since their father was taken. This stress on the family has had a physical impact on the children as well. XXXXX, who is 16 months old, has trouble sleeping and eating, and has been vomiting the food that he does ingest. The newborn, XXXXX, has also started to have diarrhea, which can be fatal for such young children. Ms. XXXXX does not know how she will be able to support and care for her family or keep them from becoming homeless without Mr. XXXXX’s support. *See* Ex. B.1, Ms. XXXXX’s Declaration. An administrative stay of removal would allow Mr. XXXXX to continue to support his sons and would fulfill ICE’s goal of exercising prosecutorial discretion in order to promote the welfare of U.S. citizen families, including minor children. *See* Ex. H.2, Parental Guidance Memo.

ICE internal guidance documents encourage the use of prosecutorial discretion where, as here, the rights and interests of U.S. citizen or LPR family members, including minor children, are impacted. An administrative stay of removal in Mr. XXXXX’s case will allow him to exercise his rights and fulfill his responsibilities with respect to his U.S. citizen sons. Such an exercise of prosecutorial discretion would therefore serve the purpose and policy goals of ICE’s recent Parental Guidance directive. *See* Ex. H.2, Parental Guidance Memo (“ICE seeks to enforce immigration laws fairly and with respect for a parent’s rights and responsibilities The Directive is particularly concerned with the placement [and] monitoring . . . of alien parents . . . who are primary caretakers of minor children . . . [and] whose minor children are U.S. citizens or lawful permanent resident. ICE personnel should ensure that the agency’s immigration enforcement activities do not unnecessarily disrupt the parental rights of . . . alien parents.”).

Mr. XXXXX has worked extremely hard to regularly provide as much financial and emotional support as possible to his U.S. citizen sons, XXXXX, XXXXX, and XXXXX. He has tried to balance his work so that he can both earn enough money and be present to care for them. Removing Mr. XXXXX from the United States would make it very difficult for his sons to survive, as Ms. XXXXX would be charged with earning money for the family and caring full time for three children, who are X years old, X months old, and 5 days old. Indeed, they are

already experiencing severe difficulties. *See* Ex. B.1, Ms. XXXXX's Declaration. Thus, while Mr. XXXXX's removal would violate his parental rights by making him unable to parent his U.S. citizen children, exercising prosecutorial discretion by issuing a stay of removal in this case would further ICE's policy goals.

C. The circumstances of Mr. XXXXX's case warrant the favorable exercise of prosecutorial discretion under current DHS policy.

Mr. XXXXX's case presents factors that favor the exercise of prosecutorial discretion pursuant to the November 20, 2014 Johnson memorandum regarding DHS enforcement priorities, and the November 17, 2000 Meissner memorandum addressing the exercise of prosecutorial discretion, generally. Both these memoranda direct officials charged with immigration enforcement to consider the individual circumstances of a case when determining whether to exercise prosecutorial discretion. In particular, they emphasize the importance of family ties in the United States, length of residency in the United States, the length of time elapsed since criminal convictions, and humanitarian factors such as poor health of the individual subject to removal or his or year family members, and the presence of young children. Ex. H.1, Johnson Memo at 6; Ex. H.3, Meissner Memo, at 7. In addition, the 2000 Meissner memorandum directs officials to consider evidence of rehabilitation following a criminal history, lack of ties to the country of removal, country conditions in the country of removal, and the impact of removal on future admissibility. *See* Ex. H.3, Meissner Memo at 7-8.

As noted above, Mr. XXXXX has strong family ties in the United States. With his partner XXXXX XXXXX, he has three U.S. citizen sons: XXXXX, who is 6 years old; XXXXX, who is 16 months old; and XXXXX, who is 5 days old. They depend on Mr. XXXXX financially and emotionally, and Ms. XXXXX does not know how they will be able to survive if he is deported to El Salvador. In addition, Mr. XXXXX's sister, XXXXX XXXX, is a Lawful Permanent Resident, and his mother, XXXXX XXXXXXXXXXX, who relies on Mr. XXXXX's support, has Temporary Protected Status, and a pending application for Lawful Permanent Residency. *See* Ex. C, Letter from Mrs. XXXXX and Evidence of Her Status and Health Needs; *see also* Ex. D, Additional Letters of Support from Family and Friends.

Moreover, Mr. XXXXX has resided in the United States for three decades. He came to this country in 1986, at the age of 20, to escape the civil war that was ongoing in his country at the time. He has lived and worked in the United States since then, his entire adult life. Although he struggled for a time while he was living far from his family, in the past ten years, he has built a family with Ms. XXXXX. It has been eleven years since his last criminal conviction, after which he completed a three-month STOP-DWI program. *See* Ex. E.1, Letter from XXXX County Correctional Center. Since 2005, Mr. XXXXX has been paying taxes. *See* Ex. E.2, Mr. XXXXX's Tax Returns.

Humanitarian concerns also weigh against deporting Mr. XXXXX to El Salvador. He has no family ties there, as his father has passed away. Further, deporting him to El Salvador would expose him to rampant violence. *See* Ex. G.2, U.S. Department of State 2014 Human Rights Report. Mr. XXXXX must also be able to stay in the United States with his family in order to maintain his health. Ten years ago, Mr. XXXXX was diagnosed with diabetes, and he has been receiving insulin injections ever since to keep it under control. In 2014, Mr. XXXXX had to go to the emergency room after a bad episode caused by his diabetes. Without the support of his family and access to the treatment he receives in New York, Mr. XXXXX's health will deteriorate further. *See* Ex. G.1, World Health Organization Country Report on El Salvador.

Furthermore, removing Mr. XXXXX would undermine the welfare of his mother, who is a TPS beneficiary with a pending application for Lawful Permanent Residency. Mr. XXXXX's mother, XXXXX XXXXXXXXXXX, is 70 years old, and resides in Los Angeles, California. Mrs. XXXXX has a close relationship with her son despite their geographic distance, and is in regular contact with him. Mr. XXXXX supports her by giving her \$100 each month from his earnings to supplement her income. This contribution is important for Mrs. XXXXX as she must use an epic tissue heart valve to treat her heart condition. Her health problems have required Mrs. XXXXX to be hospitalized and undergo surgery, and her doctors have told her she will need a second surgery in the future. Because her heart condition has prevented her from working, Mr. XXXXX's financial contribution is critical. *See* Ex. C, Letter of Support from Mrs. XXXXX and Documents Relating to Her Status and Medical Condition.

Finally, if Mr. XXXXX is deported to El Salvador, he will be barred from admission to the United States for ten years. The thought of being separated for so long is unthinkable for both Mr. XXXXX and his family. He would not be able to watch his children grow up, and Ms. XXXXX would have to raise and support them on her own. Any alternative is better than that. Consequently, Mr. XXXXX is willing and prepared to comply with any conditions of release that DHS deems appropriate and necessary.

Conclusion

In light of the above, we respectfully request that Mr. XXXXX's removal be stayed. He poses no threat to the United States and his deportation would cause permanent harm to his family. In addition, the totality of the circumstances in his case warrants a stay of removal, under current DHS policy.

Thank you for your consideration of this request. Please do not hesitate to contact us should you require additional information. I can be reached at (917) 841-3006 or at yasmine.farhang@maketheroadny.org.

Sincerely,

Yasmine Farhang, Staff Attorney
Natalia Renta, Immigrant Justice Corps Fellow
Antonia House, Immigrant Justice Corps Fellow
Make the Road New York
1090 Suffolk Avenue
Brentwood, NY 11717