



The President's Advisory Commission on Asian Americans, Native Hawaiians, and Pacific Islanders

Commission Subcommittee Summaries

September 2022



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Introduction

On May 28, 2021, President Biden signed Executive Order (EO) 14031 establishing the President's Advisory Commission on Asian Americans, Native Hawaiians, and Pacific Islanders (the Commission) within the U.S. Department of Health and Human Services (HHS). The 25-member Commission, co-chaired by HHS Secretary Xavier Becerra and U.S. Trade Representative Ambassador Katherine Tai, advises the President on ways the public, private, and non-profit sectors can work together to advance equity, justice, and opportunity for Asian American, Native Hawaiian, and Pacific Islander (AA and NHPI) communities in the United States.

At its inaugural meeting on February 3-4, 2022, the Commissioners formed six subcommittees to advance equity, justice, and opportunity for AA and NHPI communities in accordance with EO 14031:

1. Belonging, Inclusion, Anti-Asian Hate, Anti-Discrimination Subcommittee
2. Health Equity Subcommittee
3. Immigration and Citizenship Status Subcommittee
4. Language Access Subcommittee
5. Data Disaggregation Subcommittee
6. Economic Equity Subcommittee

Between February 2022 and September 2022, the six subcommittees met regularly to gather information and develop recommendations for presentation to the full Commission. The Commission's recommendations are grounded in community and stakeholder feedback and are being submitted to the President on a rolling basis. At its May 12, 2022, in-person meeting, the Commission voted unanimously to move forward 14 recommendations, which were transmitted to President Biden in August 2022.

The Commission held its third meeting, in-person, on September 28, 2022, where additional recommendations were considered and discussed. This document includes meeting summaries and final recommendations that were approved by the full Commission at the September meeting.



Belonging, Inclusion, Anti-Asian Hate, Anti-Discrimination Subcommittee

Subcommittee Membership:

- **Co-Chairs:** Luisa Blue and Dr. Kamal Kalsi
- **Members:** Emily Chen, Grace Huang, Daniel Dae Kim, Naheed Qureshi, Smita Shah, Dr. Robert Underwood
- **Designated Federal Officer:** Carol Wu

Summary of Meetings and Presentations:

The Belonging, Inclusion, Anti-Asian Hate, Anti-Discrimination Subcommittee meets bi-weekly. Following the Commission's second meeting on May 12, 2022, the subcommittee met on June 14, June 28, July 12, July 26, August 9, August 16, August 30, and September 20, 2022. The subcommittee received presentations from the following subject matter experts who helped to inform their recommendations:

- **Kiran Kaur Gill, Executive Director, Sikh American Legal Defense and Education Fund (SALDEF):** Presented on the effect that racially motivated mass shootings have had on AA and NHPI communities and spoke to policies that could help prevent and address gun violence.
- **Kareem Shora, Executive Vice President, Programs and Policy, Human Rights First (HRF):** Presented on HRF's work to address the overarching threat of white supremacy and its effect on AA and NHPI communities across the United States.
- **Chad Reifer, Chief, Domestic Terrorism Branch, Counterterrorism Mission Center, Office of Intelligence & Analysis, U.S. Department of Homeland Security (DHS):** Presented an overview of DHS's domestic terrorism strategy and data regarding incidents of racially or ethnically motivated violence.
- **Norman Chen, Chief Executive Officer, The Asian American Foundation; Aryani Ong, Senior Advisor, Anti-Hate & Belonging Program, The Asian American Foundation; and Kathy Ko Chin, Senior Advisor of Programs, The Asian American Foundation (TAAF):** Presented an overview of TAAF's work, including efforts



surrounding their Asian American Pacific Islander (AAPI) Action Centers that are combatting anti-Asian hate at the regional level by building infrastructure to improve AAPI advocacy, power, and representation.

- **Stewart Kwoh, Co-Founder and Co-Executive Director, The Asian American Education Project; Dr. Virginia Loh-Hagen, Co-Executive Director, The Asian American Education Project; and Sandy Sakamoto, Director of Creative Development and Counsel, The Asian American Education Project:** Presented on The Asian American Education Project's mission and work to combat anti-Asian hate by integrating the history of AA and NHPI communities in the United States into K-12 curricula.
- **Rosemarie Hidalgo, Special Assistant to the President and Senior Advisor on Gender-Based Violence, Gender Policy Council, The White House:** Presented on the White House Task Force to Address Online Harassment and Abuse and the disproportionate impact that online harassment and abuse has had on the AA and NHPI community.

Summary of Recommendations:

The Belonging, Inclusion, Anti-Asian Hate, Anti-Discrimination Subcommittee presented the following recommendation at the September 28, 2022, meeting, which the Commission approved in a final vote:

- **Recommendation:** Increase hate crimes reporting among AA and NHPI communities through improved language access and community town halls.



Recommendation: Improving Hate Crimes Reporting

A pathway to improving the reporting of anti-Asian hate crimes is through improved language access and community town halls, including:

- Translating the Federal Bureau of Investigation (FBI) tip form into other AA and NHPI languages such as Simplified Chinese, Traditional Chinese, Vietnamese, Korean, Tagalog, Arabic, Japanese, Urdu, Punjabi, Hindi, and Pacific Islander languages. The form must also be culturally sensitive, and the FBI must develop an engagement plan.
- Improving AA and NHPI language services for the FBI tip line by establishing standardized response times for phone calls or return calls to person(s) from five to ten minutes to avoid “cold feet” from the person(s) reporting the hate crime to the FBI tip line.
- Recommending that the FBI, and other federal agencies that address hate crimes, review data to determine the number of AA and NHPI interpreters needed to meet the five to ten minutes response time.
- Scheduling in-person and virtual town halls to provide engagement opportunities for members of AA and NHPI communities, including organizations that are currently working with victims of AA and NHPI hate crimes and incidents. These public town halls will enable this Commission, as well as federal agencies that address hate crimes and incidents and collect data, to hear directly from members of AA and NHPI communities and organizations. These public forums will also provide opportunities for federal agencies such as the FBI, Department of Justice’s Office for Civil Rights, and other pertinent agencies to share information with the community on how to file hate crimes, incidents, and complaints and to let the public know that the agencies exist to help them.
- Recommending that five cities and/or regions with the highest population of AA and NHPI communities be targeted for the in-person town halls.
- Upon the completion of the town halls, providing a written report to the Belonging, Inclusion, Anti-Asian Hate, Anti-Discrimination Subcommittee for review and discussion to ascertain if more recommendations are needed.



Background and Rationale:

Language and culturally competent services continue to be a huge barrier for AA and NHPI communities in reporting hate crimes and incidents to law enforcement and the FBI tip line. According to the Census Bureau, there are approximately 25 million people who speak a foreign language at home and who speak English “less than very well.”¹ Of that number, almost 5 million speak an Asian or Pacific Island language and speak English “less than very well.”² Consequently, access to computers and/or the internet may also be a barrier. Monolingual or limited English speaking individuals who call the FBI tip line may have to wait for an available interpreter. Several advocacy organizations have hate crime reporting forms in several Asian languages, such as the forms used by the National Asian Pacific Center on Aging, Stop AAPI Hate, and Asian Americans Advancing Justice.

Conducting in-person town halls and virtual town halls will allow community members and victims of hate crimes and leaders/staff of community-based organizations to share their experiences with hate crimes/incidents, share any hate crime/incident data that community-based organizations have collected since the pandemic, and offer recommendations on improving the reporting of hate crimes. Community-based organizations, which provide bilingual and culturally competent services, are trusted by their constituencies/clients who are more comfortable sharing their hate crime experiences with their bilingual staff.

The two main sources of hate crime data are from the Bureau of Justice Statistics National Crime Victimization Survey (NCVS)³ and the Uniform Crime Reporting program (UCR).⁴ The UCR program contains data from city, county, state, tribal, territorial, universities and colleges, and federal law enforcement agencies. These agencies participate voluntarily and not every law enforcement agency in the country participates in the program. The NCVS is a survey of a nationally representative sample of about 150,000 households who have experienced hate crimes. There are huge discrepancies, however, between these two sources of data. Between 2004 and 2015, for instance, the UCR reported an average of 6,739 hate crimes per year⁵ while the NCVS reported an average of 250,000 hate crimes per year.⁶ This is because the definitions of hate crimes differ at the state and federal level and the collection of hate crime data is not required nationally.

According to a joint report on hate crimes by the Department of Justice and Department of Health and Human Services, 23% of “violent hate crimes not reported to the police involved victims who believed that police could not or would not do anything to help,” and that “about 5% were not reported to police because the victim feared reprisal.”⁷ Victims may be additionally fearful of reprisal based on their immigration status. According to a PEW Research Center report in April 2021, “[p]eople from Asia made up



about 14% of the 10.5 million unauthorized immigrants in the U.S. in 2017.”⁸ This along with language access barriers may make it more difficult for AA and NHPI communities to report hate crimes.

Approach for Implementation:

A planning committee composed of Commissioners from the Belonging, Inclusion, Anti-Asian Hate, Anti-Discrimination Subcommittee, WHIAANHPI staff, and Regional Network co-chairs shall develop the agenda, target the cities for the in-person town halls, schedule the dates, times, and locations of the public town halls and virtual town halls, develop an outreach plan to the AA and NHPI communities and organizations, and determine which agencies and agency officials should attend and participate in the town halls. Agency representatives will answer questions and provide information about the importance of reporting hate crimes.

Timeline:

The planning committee should be formed by the end of October 2022. The town halls will be scheduled in the Spring of 2023.



Language Access Subcommittee

Subcommittee Membership:

- **Co-Chairs:** Dr. Amy Agbayani, Victoria Huynh, Dr. Kimberly Chang
- **Members:** Kerry Doi, Grace Huang, Dr. Kamal Kalsi, Ajay Bhutoria, Simon Pang
- **Non-Commission Member:** Deeana Jang
- **Ex-officio Member:** Laureen Laglagaron, Attorney Advisor, Federal Coordination and Compliance Section, Civil Rights Division, U.S. Department of Justice
- **Designated Federal Officer:** Maysee Jacobs

Summary of Meetings:

The Language Access Subcommittee meets bi-weekly. Following the Commission's second meeting on May 12, 2022, the subcommittee met on June 10, July 8, July 22, August 5, August 19, September 2, and September 16, 2022. The subcommittee received presentations from the following subject matter experts who helped to inform their recommendations:

- **Laura Godfrey, Manager at USA.gov, Technology Transformation Services, U.S. General Services Administration (GSA):** Provided an overview of the efforts to standardize the provision of translated web content across the federal government, including both challenges and opportunities.
- **David Hyams, Chief of Enforcement and Regional Partnerships, Conscience and Religious Freedom Division, U.S. Department of Health and Human Services (HHS) Office for Civil Rights (OCR):** Provided an overview of civil rights protections in language access and requirements for those receiving federal funds to provide language access.
- **Nani A. Coloretti, Deputy Director, Office of Management and Budget (OMB); Melissa Newman, Senior Policy Analyst, OMB; and Shaibya Dalal, Senior Equity Fellow, OMB:** Presented information about the process for setting benchmarks on language access spending and needs. Also provided information on the process to allocate more money for language access into federal agency budgets and ways that small community-



based organizations that do language access and translation work may be eligible to receive federal funding.

- **Gregg Orton, National Director, National Council of Asian Pacific Americans (NCAPA); Young Noh Jung, Policy and Programs Manager, NCAPA; Azizah Ahmad, Policy & Community Advocacy Manager, Asian & Pacific Islander American Health Forum (APIAHF); Adam P. Carbullido, Director of Policy and Advocacy, Association of Asian Pacific Community Health Organizations (AAPCHO); Marita Etcubañez, Senior Director of Strategic Initiatives, Asian Americans Advancing Justice-Asian American Justice Center (AAJC); and Navdeep Singh, Interim Policy Director, National Asian Pacific American Bar Association (NAPABA):** Presented on recommendations and principles to revamp the federal government's efforts on language access for AA and NHPI communities, especially given the communities' vast cultural and linguistic diversity and some populations' relatively small size.

Summary of Recommendations:

The Language Access Subcommittee presented the following recommendations at the September 28, 2022 meeting, which the Commission approved in a final vote:

- **Recommendation:** Designate language coordinators to strengthen the executive branch's ability to incorporate language access into operations.
- **Recommendation:** Allocate funding to increase language access resources.
- *In collaboration with the Immigration and Citizenship Status Subcommittee:* **Recommendation:** Expand dissemination of Department of Homeland Security's U.S. Citizenship and Immigration Services' information in multiple languages and increase AA and NHPI community outreach.



Recommendation: Improving Federal Agency Accountability and Transparency for Language Access

The Commission recommends efforts to strengthen the executive branch's ability to incorporate language access into operations (i.e., strengthening Executive Orders 13166⁹ and 13985). More specifically, the Commission recommends that the Attorney General request all federal agencies to recommit to Executive Order (EO) 13166 by:

- Immediately designating a language access point of contact for their agency/department who will be the point person for all language access inquiries for the agency/department;
- Revising their language access plans that include a timeline on expectations when translations will be completed, with particular focus on emergent issues and making them publicly available on the agency/department website, including translations in both written and oral formats;
- Developing a complaint process and system for each agency/department so that stakeholder and persons with limited English proficiency (LEP) know where to ask for help and where to file complaints about the quality or provision of language assistance services; and
- Ensuring that all recipients of federal financial assistance develop, implement, and operationalize language access plans or policies and create a public complaint/accountability system so that LEP beneficiaries have meaningful access to federally-funded programs.

The Commission is particularly interested in language access action by the following federal agencies which have extensive interactions with LEP individuals through their federally-conducted or federally-assisted work: Department of Commerce (DOC), Department of Education (DOE), Department of Health and Human Services (HHS), Department of Homeland Security (DHS), Department of Justice (DOJ), Department of Labor (DOL), Department of Transportation (DOT), and the Small Business Administration (SBA).

Background:

On August 11, 2000, President Clinton signed Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency."¹⁰ The Executive Order requires federal agencies to examine the services they provide, identify any need for services to those with LEP, and develop and implement a system to provide those services so LEP persons can have meaningful access to them. It is expected that agency plans will provide for such meaningful access consistent with, and without unduly



burdening, the fundamental mission of the agency. The Executive Order also requires that federal agencies work to ensure that recipients of federal financial assistance provide meaningful access to their LEP applicants and beneficiaries.

To assist federal agencies in carrying out these responsibilities, DOJ issued policy guidance in 2002, “Enforcement of Title VI of the Civil Rights Act of 1964 - National Origin Discrimination Against Persons With Limited English Proficiency.”¹¹ This LEP guidance sets forth the compliance standards that recipients of federal financial assistance must follow to ensure that their programs and activities are accessible to LEP persons and thus do not violate Title VI’s prohibition against national origin discrimination.

Asian American, Native Hawaiian, and Pacific Islander communities have historically played leading roles in asserting the right to language access:

- A class action lawsuit filed on behalf of Chinese-speaking students against the San Francisco Unified School District alleged that the district failed to provide the same education program to 1,800 Chinese speaking students as it did to English-speaking students. The landmark case ended up at the U.S. Supreme Court, *Lau v. Nichols*,¹² and it established that under federal civil rights law, the failure to provide meaningful access to limited English-speaking children resulted in discrimination on the basis of national origin.
- In 1981, a consortium of community health centers, including Asian Health Services, filed a complaint with the HHS Office for Civil Rights in Region IX alleging that Highland Hospital, the public hospital in Alameda County, California, failed to provide interpreters for patients. The complaint was resolved and the hospital agreed to hire staff interpreters covering five languages.¹³
- In 1999, the Asian Pacific American Legal Center (now called Asian Americans Advancing Justice Southern California) filed a Title VI complaint alleging that the Los Angeles Department of Public Social Services failed to provide adequate language assistance. In 2003, HHS signed a landmark agreement with the county that established, among other things, a centralized civil rights office; toll-free hotlines in threshold languages; a Community Advisory Board; and improvements in the welfare-to-work program to provide LEP persons with meaningful access to employment and training programs. The settlement also included \$1.7 million in benefits illegally denied to non-English and non-Spanish speaking welfare recipients.¹⁴
- In 2013, a community-based organization filed a lawsuit against the Hawaii Department of Transportation alleging that the department’s failure to translate the driver’s license examination into Marshallese, Chuukese, and



Ilocano was discriminatory.¹⁵ The lawsuit was settled in 2015 and now Hawaii translates its driver's license examination into 13 languages, including Hawaiian.¹⁶

On January 20, 2021, President Biden issued EO 13985, "Advancing Racial Equity and Support for Underserved Communities Through the Federal Government."¹⁷ As part of this presidential directive, agencies and departments developed equity plans, many of which included language access as part of their commitment to advance racial equity and support for communities underserved by the federal government. For example, departments that mention language access activities in their racial equity plans include the following:

- The Department of Commerce's Bureau of Economic Analysis and its Bureau of Industry and Security¹⁸ will continue to produce more documents and data services in other languages as needed to reduce linguistic barriers to utilization.
- The Department of Education¹⁹ requires all state and local educational agencies to complete diverse and inclusive plans as part of their funding strategy to receive funds under the Elementary and Secondary School Emergency Relief Fund of the American Rescue Plan Act of 2021. Stakeholders representing the interests of English language learners must be included in those plans.
- The Department of Health and Human Services²⁰ will address the barriers that individuals with limited English proficiency face in accessing health services and benefits. HHS will expand access to in-language assistance across the agency's outreach materials, including through telephonic interpreter services, and will provide federal funding to expand language access services.
- The Department of Homeland Security²¹ will improve access to humanitarian protection during immigration processing by addressing language and disability-access gaps and enhancing access to legal information and resources.
- The Department of Justice²² will improve access to justice programs and resources for individuals with limited English proficiency to ensure all communities understand their rights, can report crimes, and have full and equal access to DOJ's services and resources.
- The Department of Labor²³ will ensure workers with limited English proficiency are fully aware of their rights and can access workplace protections by increasing the agency's language capacity through hiring and retaining more bilingual and multilingual staff.



- The Small Business Administration’s²⁴ Office of Disaster Assistance will secure on-demand translation services to meet the immediate needs of disaster survivors with limited English proficiency and hire local staff within impacted communities to facilitate understanding of the disaster loan process.

Furthermore, consideration of how recipients of federal financial assistance provide meaningful access to LEP individuals is of utmost importance:

- On June 21, 2022, Attorney General Merrick Garland reminded federal agencies of their responsibility to ensure that no person suffers unlawful discrimination in programs and activities that receive federal financial assistance under the Infrastructure Investment and Jobs Act (IIJA) and the fiscal year 2022 Consolidated Appropriations Act.²⁵
- On June 22, 2022, Associate Attorney General Vanita Gupta directed the department to review the implementation and enforcement of Title VI within the DOJ.²⁶

There are limitations to enforcing Executive Order 13166. Executive Order 13166 explicitly states that it is intended to improve the internal management of the executive branch and does not create any right that is enforceable by law. As such, enforcement is needed through public accountability so that the community, and federal agencies themselves, can monitor the progress of implementation of language access initiatives. Federal agencies must recognize that providing language access is crucial to achieving their respective missions, whether related to a public health crisis, emergency preparedness, response and mitigation, law enforcement, tax collection, or immigration services. Furthermore, accountability is a key principle of good governance. The public must be able to see how federal agencies are complying with the Executive Order to hold them accountable, work together, and improve equity, justice, and opportunity for Asian Americans, Native Hawaiians, and Pacific Islanders. This will also benefit all LEP communities nationwide.

Rationale:

Improving federal agency accountability and transparency for language access has been delayed for too long. At the May 12, 2022, public meeting of the Presidency’s Advisory Commission on Asian Americans, Native Hawaiians, and Pacific Islanders, Commissioners expressed irritation, impatience, frustration, outrage, and anger with the delayed implementation of language access measures across the federal government.

Commissioner Luisa Blue expressed the need to hold federal agencies accountable to the communities served: “I’m a little annoyed. These are issues that have been in our



communities for decades. And so somebody in the administration has heard all of this before, and I don't get it. They have resources. Why do they always have to go to the community who has very limited resources for what they have to carry out now and say, oh could you translate this? I'm sorry. You know, you have the resources, pay that community organization! And then how do we hold these agencies accountable? Because this is not okay. And I am seeing that as a theme, you know as I'm listening to all these recommendations that none of this is new, right? And it's not right. And we have to have sharper elbows, because if we're going to have these agencies sit in front of us and give us their blah, blah, blah, and I appreciate the data, nuh uh – it's like what are you going to do then? Because we are tired of it. If you go out to the community, they're just tired of this like, oh really? We've heard that before. You know, so what do we have to do as a Commission to just have our sharp elbows and just hold these folks accountable because we have to go back to our communities. They are looking to us to make things better. Now!"

Similarly, Commissioner KaYing Yang emphasized that more investment in communities with oral language traditions is needed, and federal agency accountability is crucial: "We already know this. And yet there isn't enough investment in those communities. Why are our languages treated differently, right? And this is where we're saying that we really have to name it. This is the manifestation of racism that is experienced by Asian Americans. And I want to just you know, really think through, it is complex because there are many languages that we need to interpret and ensure that communities have access to it. But we already know what those languages are in each of our communities, and so how can we keep, how can we hold these agencies and these laws accountable and in compliance with us, otherwise we sue right?"

And Chief Commissioner Sonal Shah expressed her frustration on the delay in improved language access: "This just needs to get done because this has been talked about enough. Think about just calling us a multilingual nation, and not calling us a nation that's singular, but we are a multilingual nation, and we just need to recognize that as a nation to do that."

It is important to note that four out of the five top languages spoken by LEP individuals in the United States are Asian languages: Chinese, Vietnamese, Korean, and Tagalog.²⁷

In addition, there are documented morbidity and mortality impacts from being LEP and the inability to access information in English. As noted in recommendations from this subcommittee on May 12, 2022, there are health vs. illness and life vs. death impacts. Some background facts that have been noted in prior recommendations from this subcommittee: studies have shown that communities with high numbers of LEP residents and racial minorities tended to be hit hardest by the pandemic with higher rates of incidence and mortality among these populations.²⁸ Yet, many limited English speaking individuals could not access information, testing, and vaccinations in their



languages.²⁹ Furthermore, in the aftermath of the recent flooding in New York City during Hurricane Ida, and also after Hurricane Katrina and the oil spill on the Gulf Coast, immigrant communities including limited English speaking Asian Americans and Pacific Islanders faced particular challenges in receiving timely and accurate information about disaster/emergency preparedness and response and recovery services, and were therefore disproportionately impacted.³⁰ While there have been strides made in ensuring language barriers to accessing services commensurate with civil rights, they have not occurred with enough speed or magnitude. The limited access to federal services due to the language access issues have resulted in deaths due to natural disasters, health inequities, and disparate access to justice systems.

On March 28, 2022, the National Council on Asian Pacific Americans sent a letter to President Biden,³¹ and subsequently presented the information to this subcommittee on August 19, 2022, emphasizing the need for widespread accessibility of language services available to LEP persons in an equitable fashion, for the federal government to build in-house language capacity, and for the federal government to have a community engagement plan to work directly with underserved and impacted communities. One element of NCAPA's calls to achieve these three overarching goals is to ensure the federal government has accessibility, transparency, and accountability of the language access plans of each agency/department.

While many federal agencies have language access plans, they often lack the coordination necessary to ensure consistent implementation of language access policies and procedures across the department. A language access point of contact or coordinator would fill that gap and serve as a central point of contact for all language access inquiries, from within the department and/or the public, including LEP communities.

Federal agencies play a lead role in enforcing the language-related nondiscrimination provision of Title VI. In 2001, the U.S. Supreme Court ruled 5-4 in the case *Alexander v. Sandoval*, holding that there is no private right of action to enforce Title VI disparate impact regulations; only the funding agency issuing the disparate impact regulation has the authority to challenge a recipient's actions under this theory of discrimination.³² With individuals unable to sue for Title VI civil rights disparate impact violations, we must rely on the civil rights enforcement work of the federal government.



Approach for Implementation:

Designate a language access point of contact for each agency/department who will be the point person for revising, implementing, executing, tracking, and monitoring federal agency language access policies and procedures for the department. In the future, this role should be elevated to a Language Access Coordinator position and all efforts should be made to establish a budgeted position for the language access point of contact/coordinator in each agency. This role would be responsible for:

- Creating a mechanism to file and receive language access complaints;
- Working with the federal agencies' Office of Public Affairs to conduct outreach to LEP persons/communities to ensure services are provided effectively to constituents in multiple AA and NHPI languages;
- Coordinating and leading an agency's intra-agency LEP working group, and participating in the GSA's Multilingual Community of Practice to inform on the special needs of Asian and Pacific Islander languages (e.g., ideographic written languages);
- Coordinating and participating in an interagency federal language access coordinators council/working group to regularly discuss, review, and collaborate on common language access opportunities and challenges;
- Training all relevant employees on the agency's language access policies and plans;
- Serving as the central point of contact for all questions related to the implementation of departmental language access policies and procedures, including providing guidance, monitoring performance, and revising language access policies/plans as needed.

Revise each department's language access plans and make them publicly available on the agency/department website to:

- Focus on the roles/responsibilities of the new language access point of contact/coordinator;
- Update websites with more translations in Asian languages. Refer to the best practices noted in the GSA's Multilingual Community of Practice to craft accessible webpages in Asian and Pacific Islander languages;
- Create and highlight the complaint system noted below and make annual complaint reports public.



Develop a complaint process and system for each agency/department so that stakeholders and LEP persons know where to ask for help and can file complaints about the quality or provision of language assistance services. Importantly:

- Complaints can be directed to the language access point of contact/coordinator;
- Provide an annual report to the Attorney General and the President on the complaints recorded during the previous year;
- Make the annual report public on the language access plan website for transparency.

Ensure that all recipients of federal financial assistance develop, implement, and operationalize language access plans or policies and create a public complaint/accountability system so that LEP beneficiaries have meaningful access to federally funded programs.

- Encourage federal agencies to direct components that provide federal financial assistance to issue program-specific language access guidance, incorporate language access plans into Notices of Funding Opportunity and as part of proposal evaluation criteria, provide guidance on including costs of language services in budget requests, etc.

Timeline:

- Designate language access points of contact in each department – immediately
- Language access and equity plans to be made public on each department’s website – immediately
- Each federal language access point of contact/coordinator will convene in six-nine months to share/exchange language access resources/information – six-nine months
- Develop complaint process/system for each agency – within one year (by the language access points of contact)
- Make annual reports on the public complaints – annually
- Convene all language access points of contact by the DOJ Language Access Coordinator – annually
- Establish budgets to develop the language access point of contact role/responsibilities into language access coordinators in each



agency/department – within two years, and start budgeting processes immediately (see recommendation for OMB)



Recommendation: Funding Language Access Resources

- The Office on Management and Budget (OMB) should immediately issue additional guidance/memorandum/circular/communication directing all agencies to allocate funding toward increasing language access resources as they develop their fiscal year 2023 (FY23) budgets.
- The OMB should instruct their internal budget examiners to look for language access priorities reflected within the submitted budgets for FY23.
- Going forward, beginning with their budget building process in FY24, OMB should provide guidance directing agencies to include funding to implement language equity and equity initiatives in agency budgeting plans, including for agency components that provide federal funding to provide guidance on inclusion of language access plans and budgeting for language services.
- The OMB should complete a full evaluation of all executive departments and agencies of the cost to provide translations of the top 12 languages spoken in the US by the end of 2023.
- The President's budget should include funds for translation services in all executive departments and agencies. The budget should fund translation services at a minimum of 70% of OMB's estimate by FY 2025, and at 100% by 2030.

Background:

OMB shapes federal government policy through yearly budget development, management and oversight of federal agency performance, procurement, financial management, central clearance of legislation and executive orders, and regulatory review.³³ It works to implement and enforce the White House's policy priorities and agenda, most visibly through production of the annual budget³⁴ that is reviewed by Congress as it develops annual appropriations legislation.³⁵ Equity and language access are priorities of the administration.

Executive Order 14031 directs the President's Advisory Commission on AA and NHPIs to put forth its recommendations on "policies and practices to improve language access services to ensure AA and NHPI communities can access Federal programs and services."³⁶ Executive Order 13166 directs federal agencies to prepare plans to improve access to its federally conducted programs and activities by eligible LEP persons, and directs federal agencies that provide federal financial assistance to draft Title VI guidance specifically tailored to its recipients.³⁷



Consistent with the goals of the aforementioned Executive Orders, OMB plays an important leadership role in providing both budget and policy guidance.

Rationale:

Community members and AA and NHPI advocates have worked for decades to increase language access to services and programs. Government agencies, however, continue to maintain the status quo, lamenting that they have insufficient funding to implement changes to support language access, while failing to prioritize meaningful levels of agency funding to address the provision of language services. Furthermore, there are no consistent guidelines provided by agencies to recipients of federal financial assistance to support the provision of language services.

EO 13166 was issued in 2000. It has been 22 years, yet language access priorities remain minimally reflected in many agencies' budgets, policies, and programming. AA and NHPI communities have waited over two decades for the federal government to provide equity and parity to government resources through language access. While waiting, AA and NHPI communities have suffered disparate access to federal programs, resulting in deaths,³⁸ health disparities,³⁹ and lack of economic opportunities,⁴⁰ as well as inequitable burdens on inadequately resourced community-based organizations⁴¹ and individuals providing interpretation and translations in their communities.

AA and NHPI advocacy organizations have prioritized the need for a comprehensive, whole-of-government approach to address language access consistently across agencies,⁴² so that community members and organizations are not left with having to advocate on a piecemeal basis for access, agency by agency.

Approach for Implementation:

OMB should immediately issue a memorandum to all federal departments/agencies/offices directing inclusion of language access priorities in their spending plans for FY 2023, including the provision of translation, interpretation, and other language services. Agency spending plans should include funding for comprehensive language services across agencies for at least the top 12 most commonly spoken languages beyond English.

OMB should issue immediate guidance to OMB examiners to assess for language access in agency spending plans in returned budgets and FY 2023 narratives.

OMB should develop memoranda⁴³ with budget instructions for FY 2024 and after that require all agencies to designate a minimum of 3-8% of agency management/operation budgets for language access planning and implementation. OMB guidance should further include:



- Instructions to provide funding for and training of specific designated personnel in each agency to be responsible for implementing its language access plan;
- Schedules for ongoing training for agency personnel on obligations under Title VI and EO 13166;
- Instructions regarding comprehensive translation of agency websites and other public facing information; and
- Instructions requiring agencies that provide federal financial assistance to designate specific resources for the development and vetting of language service providers that can be accessed by grantees and subgrantees with public facing services. Agencies should also be required to provide technical assistance on how to use these language services.

OMB should support the coordination of an inter-agency language access workgroup tasked to:

- Develop model language for inclusion in federal financial assistance notices of funding.
- Develop model funding plans that incorporate trusted community organizations with capacity to address the needs of limited English speaking AAPI community members.

Timeline:

- Initial agency spending plan guidance for FY 2023 and FY 2024 should be updated by end of calendar year.
- OMB budget guidance for increasing language access resources should be developed by June 2023.



Recommendation: Language Access in U.S. Citizenship and Immigration Services Materials

The Commission recommends expanding dissemination of U.S. Citizenship and Immigration Services (USCIS) information in multiple languages and increase AA and PI community outreach.

- It is recommended that USCIS expand its multilingual outreach in AA and PI languages and collaborate with community-based organizations (CBO) in AA and PI languages. In addition, USCIS should direct its community relations offices in each field office and national benefit centers to develop an outreach plan to reach AA and PI communities in their service areas and to develop a language access plan to ensure its community engagement activities are accessible to those communities by the end of 2023.
- USCIS should translate information about the Disability Waiver Process and the English language exemptions allowing for the AA and PI language test for naturalization and citizenship for seniors and elders who have very limited capacity to learn English, and partner with CBOs to disseminate this information.
- It is recommended USCIS update its website with translated digital content, public information in multiple languages around visa rules changes, green card applications and rules, and the naturalization test. USCIS has a very limited number of translated documents. USCIS needs to expand this service with more content in multiple AA and PI languages.

Background and Rationale:

As of 2019, Asian immigrants to the United States are an extremely diverse population. The largest share of Asian immigrants came from Southeast Asia, which includes Vietnam and the Philippines.⁴⁴ Along with these two countries, India, China, and Korea comprise the top five countries of origin.⁴⁵ These five countries all speak different languages, and most have a number of different languages and/or dialects represented in their native populations. These countries also represent one-fifth of the total U.S. foreign-born population.⁴⁶

The AA and NHPI community is the fastest growing immigrant population. Between 2000 and 2019, the AA and NHPI population grew by 81%.⁴⁷ According to the 2020 Census, 19.9 million and 690,000 people identify as Asian or NHPI alone, respectively, and another 4.1 million and 900,000 identify as Asian or NHPI in combination with another race, respectively.⁴⁸ AA and NHPI communities contribute significantly to the overall diversity of the country, and understanding the diversity and specific language



needs of AA and NHPI communities is critical since the United States will be majority people of color by 2043.⁴⁹

AA and PI communities have significant limited English proficient populations. In 2019, approximately 42% of total Asian immigrants were limited English proficient.⁵⁰ There is also variation in rates of English proficiency depending on country of origin. For example, 71% of migrants from Myanmar were limited English proficient, compared to only 22% of Indian migrants.⁵¹

Immigrants from Asian countries utilize immigration services extensively. They are among the fastest to apply for naturalization once they gain eligibility.⁵² Asian immigrants have a 58% naturalization rate as compared to 47% of the total population.⁵³ The Department of Homeland Security has estimated that in 2012, more than a million AA and PI legal permanent residents were eligible for naturalization.⁵⁴ Lack of English proficiency continues to be a significant barrier to naturalization for AA and PI populations.⁵⁵

Approach for Implementation & Timeline:

- It is recommended that U.S. Citizenship and Immigration Services (USCIS) expand its multilingual outreach in AA and PI languages and collaborate with community-based organizations (CBO) in AA and PI languages by 2023-2024.
- USCIS should translate information about the Disability Waiver Process and the English language exemptions (allowing for the AA and PI language test for naturalization and citizenship for seniors and elders who have very limited capacity to learn English) into languages and partner with CBOs to disseminate this information by 2023-2024.
- It is recommended USCIS update their website with translated digital content that includes public information in multiple languages around visa rules changes, green card applications and rules, and the naturalization test. USCIS has a very limited number of translated documents; USCIS needs to expand this service with more content in multiple AA and PI languages by the end of 2022.



Data Disaggregation Subcommittee

Subcommittee Membership:

- **Co-Chairs:** Sarah Min, Dr. Raynald Samoa, Dr. Robert Underwood
- **Members:** Emily Chen, KaYing Yang
- **Non-Commission Members:** Dr. Ninez Ponce, Dr. Joseph Keawe Kaholokula
- **Designated Federal Officer:** Min Guo

Summary of Meetings:

The Data Disaggregation Subcommittee meets bi-weekly. Following the Commission's second meeting on May 12, 2022, the subcommittee met on June 6, June 22, July 6, July 18, August 1, August 15, and August 29, 2022. The subcommittee received presentations from the following subject matter experts who helped to inform their recommendations:

- **Dr. Joshua Quint, Unit Chief, Vaccine Data and Equity, Immunizations Branch, California Department of Public Health, and Data Consultant for Papa Ola Lokahi:** Presented on data disaggregation efforts in Hawaii during COVID-19 for AA and NHPI communities. Shared best practices on COVID-19 case reporting.
- **Dr. Margo Schwab, Co-Chair of the Equitable Data Working Group, Branch Chief for the Statistical and Science Policy, Office of Management and Budget (OMB), and Senior Science Policy Analyst, Office of Information and Regulatory Affairs (OIRA):** Provided an update on the Equitable Data Working Group and anticipated next steps. Shared a new website, Federal Committee on Statistical Methodology, for a catalogue of available disaggregated data sets and big surveys for AA and NHPs. Discussed the June 15, 2022 OMB press release with forthcoming formal review to revise OMB's race and ethnicity standards process.
- **Dr. Stella Yi, Associate Professor, New York University Grossman School of Medicine, Section for Health Equity, Department of Population Health:** Presented on the Innovations in Data Equity for all Laboratory (IDEAL) projects between NYU and the New York State



Governor's office to advise on the best practices for the collection of specific subgroup data for all ethnic groups for the New York State Department of Health.

- **Jordan Matsudaira, Deputy Under Secretary and Chief Economist, U.S. Department of Education:** Discussed the Department of Education's efforts on data disaggregation. Showcased the Free Application for Federal Student Aid (FAFSA) program data collection plan to include the six largest Asian American groups, as well as Native Hawaiians and Pacific Islanders, for the 2024-2025 FAFSA form beginning in October 2023. Discussed the partnership with Census Bureau on this pilot effort.
- **Karthick Ramakrishnan, Founder and Co-director, AAPI Data; Howard Shih, Managing Director, AAPI Data; and Ryan Vinh, Data and Community Partnerships Specialist, AAPI Data:** Presented on a recent report published by AAPI Data with three recommendations highlighting community engagement and data accessibility. Discussed obstacles that are faced by AA and NHPI communities in the data equity realm.

Summary of Recommendations:

The Data Disaggregation Subcommittee presented the following recommendation at the September 28, 2022, meeting, which the Commission approved in a final vote:

- **Recommendation:** The Office of Management and Budget (OMB) should amend the minimum data collection standards for race to include guideline recommendations to collect, analyze, and report data on smaller populations for federal surveys and that OMB partner with the White House Initiative on Asian Americans, Native Hawaiians, and Pacific Islanders (WHIAANHPI) to convene an annual AA and NHPI Data Summit.



Recommendation: Minimum Data Collection Standards & Data Summit

The Commission urges the federal government to implement the following recommendation to promote data equity for AA and NHPI communities:

- Recommend that the Office of Management and Budget (OMB) amend the minimum data collection standards for race to include guideline recommendations to collect, analyze, and report data on smaller populations, such as AA and NHPIs, for federal surveys to fulfill its mission to produce trustworthy, equitable, relevant, and accurate data on the status of health, education, labor, employment, housing, immigration, economy, and other vital indicators for all communities in our nation, including AA and NHPIs.
- Recommend that the Office of Management and Budget (OMB) partner with the White House Initiative on Asian Americans, Native Hawaiians, and Pacific Islanders (WHIAANHPI) to convene an annual AA and NHPI Data Summit that focusses on federal agencies sharing their best practices in producing meaningful disaggregated data on AA and NHPIs with an aim to engage communities to optimize their engagement with data.

Background & Rationale:

By 2060, AA and NHPI populations are projected to increase to 10% in the U.S.,⁵⁶ fueling the urgency to produce accurate, timely, and usable information for a sizeable portion of the population. Many federal agencies continue to group together all individuals from the vast Asian and Pacific Islander community into one category in accordance with the 1997 OMB standards for Classification of Federal Data on Race and Ethnicity.⁵⁷ The socio-economic conditions that motivated so many to migrate to the U.S. are as diverse as the over one hundred cultural groups that comprise the community. The aggregation of data from these groups often hides the diversity of their experiences and obstructs the appropriate allocation of resources to communities with specific needs. This was highlighted in a letter⁵⁸ to Ambassador Susan Rice, Director of the White House Domestic Policy Council, from a group of AA and NHPI community organizations and researchers requesting separate collection categories for self-reporting Asian, Native Hawaiian, and Pacific Islander populations and implementing the American Community Survey practice of collecting information on nativity, including the individual's and their parents' country of birth, as well as allowing multiple self-identification options for race and ethnicity to ensure individuals can fully express their multiracial identities.



The OMB plays a central role in bringing about meaningful data disaggregation for AA and NHPI populations as the agency sets the minimum standards for federally sponsored statistical data collection.⁵⁹ These standards are widely used in the private sector as well.

Priority data areas have been identified by the AA and NHPI community and researchers in health, education, housing, labor, and criminal justice.⁶⁰ Many agencies have been able to produce salient disaggregated data on AA and NHPI subgroups, such as the Census Bureau with its American Community Survey (ACS)⁶¹ and the National Center for Health Statistics (NCHS) with its various surveys.⁶² Presentations to the subcommittee have clarified that disaggregated data on sectors other than health has been made available through community-led efforts and the leadership of national commissions. Although these reports⁶³ brought to light individual community behavioral risks that allowed for effective policy advocacy, they were completed over isolated time periods and not repeated. Stakeholders are thus not able to ascertain if key indicators have improved or worsened over time.

These data priorities fall into the purview of various agencies, yet these agencies are at different stages of delivering data equity for AA and NHPIs. The subcommittee has been informed by subject matter experts that full integration of meaningful data disaggregation for AA and NHPIs would require a budget far beyond what is currently feasible. These observations emphasize two recurring obstacles to effective data disaggregation for AA and NHPI – feasibility and coordination.

Different agencies such as the OMB, the Census Bureau, and the Department of Education have shared with the subcommittee innovative pilot approaches to approaching data disaggregation. These pilots have helped this Commission conclude that feasible solutions to collect, analyze, and report meaningful disaggregated data uniformly need to be investigated. A particular approach suggested is to amend the current OMB minimum standards on data collection for race to provide guidelines in collecting, analyzing, and reporting data on smaller populations. Methods that have been suggested by prior Commissions and federal workgroups and/or presented to this Commission in addressing the limitations of handling data for small populations include: aggregating data across years, geographic aggregation, implementing approaches that provide better estimates of the size of a hidden population, implementing Bayesian methods,⁶⁴ investing innovative multivariate models, and more. This Commission defers commenting on specific data handling methods to subject matter experts, but strongly recommends that these guidelines be made available for use by all federal agencies.

Previous efforts to encourage more effective data disaggregation focused on the issues at a department and/or agency level. The multitude of disparities that span many different sectors experienced by AA and NHPIs require a “whole-of-government approach.” This



requires a more coordinated approach to bring forth disaggregated data as a means to work towards equity. On May 24, 2022, the Asian American, Native Hawaiian, and Pacific Islander Data Equity Summit was facilitated via an academic, community, and WHIAANHPI collaboration. The summit showcased and discussed progress made on data and research involving AA and NHPI populations with a focus on racial equity. Presentations from federal agencies helped inform communities on crucial developments regarding relevant upcoming initiatives to improve the quality of AA and NHPI data reports and prompted more effective and targeted advocacy efforts. The summit also allowed for different agencies to share innovative pilots that can be used by other agencies in their effort to work towards data equity for AA and NHPIs.

Approach for Implementation:

This Commission recognizes the significant complexity in updating the minimum standards categories and the potentially wide impact that such a change would bring. Guidelines on handling data for smaller populations would require significant input from data scientists and community advocates that have experience in the collection, analysis, and reporting of data on small populations. OMB should seek WHIAANHPI's guidance in identifying these subject matter experts and should coordinate the experts' input.

This Commission recommends that OMB sponsor the data summit because it is the agency charged with ensuring that federal agencies adhere to the minimum standards on data collection and reporting. To ensure that community needs are addressed in the summit, the Commission strongly recommends that the OMB partner with WHIAANHPI to develop the summit agenda and solicit community feedback.

Timeline:

- Recommend the amendment include guidelines in collecting, analyzing, and reporting data on smaller populations be implemented with a target date of May 2024.
- Recommend that funding to the OMB be earmarked for FY 2024 to convene an AA and NHPI Data Summit, but that discussions regarding the agenda and presenters commence when the agency and WHIAANHPI have the capacity to meet.



Economic Equity Subcommittee

Subcommittee Membership:

- **Co-Chairs:** Ajay Bhutoria, Simon Pang, Smita Shah
- **Members:** Luisa Blue, Dr. Kimberly Chang, Kerry Doi, Michelle Ka'uhane, Kevin Kim, Ai-jen Poo
- **Designated Federal Officer:** Maysee Jacobs

Summary of Meetings:

The Economic Equity Subcommittee meets bi-weekly. Following the Commission's second meeting on May 12, 2022, the subcommittee met on June 10, June 24, July 8, July 22, August 5, August 19, September 2, and September 16, 2022. The subcommittee received presentations from the following subject matter experts who helped to inform their recommendations:

- **Kemba Hendrix, Senior Advisor, U.S. Office of Personnel Management (OPM):** Provided an overview of the government-wide strategic plan to advance diversity, equity, inclusion, and accessibility (DEIA) in the federal workforce. Gave examples of actions the government has taken to advance DEIA and strategies that can increase representation of underserved communities.
- **Udochi Onwubiko, Senior Policy Advisor, Wage and Hour Division (WHD), U.S. Department of Labor (DOL):** Provided an overview of the strategic enforcement efforts to combat high labor violation rates in low-wage industries where vulnerable AA and NHPI workers are impacted, and strategies to better reach and serve these workers through community-based outreach and in-language resources.
- **Kamal Essaheb, Counselor to the Secretary, U.S. Department of Homeland Security (DHS):** Provided an overview of the Department, what it has done and is doing to protect against the possible exploitation of low-wage immigrant workers.



Summary of Recommendations:

The Economic Equity Subcommittee presented the following recommendation at the September 28, 2022, meeting, which the Commission approved in a final vote:

- **Recommendation:** Increase the percentage of AA and NHPI applicants in the federal workforce.
- **Recommendation:** Support AA and NHPI workers in low-wage jobs and care workers by advancing strategies that ensure a strong direct care workforce meets the rapidly growing demand for long-term services and supports (LTSS); protecting Asian immigrant workers exercising their civil and workplace rights while advancing economic security, opportunity, and equity; and directing the Department of Labor to convene a domestic work advisory board to improve job quality for domestic workers.



Recommendation: Increasing AA and NHPI Representation in the Federal Workforce

This recommendation urges all federal agencies to increase AA and NHPI representation in the federal government at all levels, including career, political, and Senate confirmed positions, strengthening the pipeline for AA and NHPI workforce to enter and advance up the ranks, and remove the barriers to hiring of AA and NHPI candidates via targeted AA and NHPI recruitment drives and outreach within AA and NHPI communities for all open/vacant positions.

Background:

The federal government must cultivate a workforce that reflects the rich diversity of this country.⁶⁵ Currently, there are more than 24 million Asians and nearly 1.6 million Native Hawaiians and Pacific Islanders in the United States, comprising over 6% of the total population.⁶⁶ That number is projected to increase to 10% by 2060.⁶⁷ However, AA and NHPIs represent only 5.6% of the federal workforce and 4.4% of those at the Senior Executive Service (SES) level.⁶⁸ As the federal government undergoes recruiting and hiring, representation and diversity should be prioritized.

This recommendation seeks all federal agencies to increase AA and NHPI representation in the federal government at all levels and strengthen the pipeline for AA and NHPIs to enter and advance up the ranks.

Rationale:

As noted in the U.S. Equal Employment Opportunity Commission's article, *A Practical Guide to Common Issues and Possible Barriers Which Asian and Native Hawaiian or Other Pacific Islander Employees May Face in the Federal Work Force*, "the most commonly reported issues and possible barriers to equal employment opportunity for AA and NHPI employees and applicants concerning outreach, recruitment, and hiring are summarized below.

- Inadequate use of applicant tracking systems and analytical reports from applicant tracking systems among hiring managers;
- In many instances, hiring managers are not fully aware of agency recruitment plans, or of DEIA hiring data for their departments/agency. The outcome is that agencies have a lower percentage of AA and NHPIs in the workforce and hiring than they anticipated;
- AA and NHPI communities across the country are underrepresented in the recruitment process and lack targeted recruitment and outreach;



- Often recruitment efforts are restricted to a particular geographic area, leaving the rest of the country unengaged and without recruiting outreach.”⁶⁹

Approach for Implementation:

Everyone should have the same access to employment opportunities in the federal workforce. By hosting an AA and NHPI recruitment drive, agencies can reach out to AA and NHPI communities to publicize vacant positions, encourage AA and NHPI community members to apply for jobs, educate AA and NHPI applicants about the job requirements and job responsibilities, and hire the best candidates for the agencies’ growing needs. It will also allow agencies to streamline their recruitment efforts, including job postings, resume collection from applicants, and screening and interviewing as well as their selection, hiring, and onboarding process, ultimately leading to growth and retention and an increase in the percentage of AA and NHPIs in their workforce.

The below recommendations are in alignment with recommendations incorporated in the EEOC’s Practical Guide:

- Build a more diverse pipeline of applicants and candidates into the recruitment process by connecting with AA and NHPI community organizations across the country to increase recruitment of underserved AA and NHPI communities.
- To recruit a diverse pool of candidates for all open positions throughout the year, develop and implement an agency-wide outreach plan for AA and NHPI communities around the country.
- To attract a wide range of talent, including those from AA and NHPI communities, review and update recruitment materials in multiple AA and NHPI languages.
- Each agency should review and reduce the barriers to AA and NHPI communities applying for vacant jobs by streamlining their current recruitment processes, policies, and training materials.
- AA and NHPI hiring DEIA data should be published annually by each agency and shared with all hiring managers and supervisors. Effective measures should be taken to increase hiring rates for eligible AA and NHPI applicants.
- It is important that each agency develops an annual recruitment plan which includes goals, objectives, outreach strategies, and an end date for hiring AA and NHPI candidates in order to increase the current number of AA and NHPI applicants by 20%.



- Each agency should roll out a training program to educate recruiters and hiring managers about possible areas of recruitment discrimination, including abusive employment ads, recruitment agencies, word-of-mouth marketing, homogeneous recruiting, stereotyping in decision-making, and discriminatory screening of applicants.
- As part of the national and local activities targeting AA and NHPI employees and applicants, the Talent Acquisition Team should have opportunities to attend and participate in job fairs, conferences, and conventions in AA and NHPI communities. Targeted recruitment efforts should be made to hire from local communities for the open/vacant positions.
- To ensure that AA and NHPI outreach channels are utilized to announce vacant positions and publicize vacant positions, agencies should increase their advertisement budget by 20% to AA and NHPI outreach recruitment efforts by using advertisements on social networking websites targeted to the AA and NHPI community and explore other multiple channels of reaching out to the AA and NHPI communities including ethnic media, WhatsApp groups, and advertisement on social media.
- Agencies should establish relationships with colleges and universities and should work to provide paid internships to AA and NHPI students across the country who are interested in majoring in degrees and occupations which are critical and in demand for agencies and have these students join the agency after completing their education.
- Define the job descriptions, responsibilities, and qualifications details clearly in simplified language so candidates can understand and apply if qualified for the job.
- Each agency should use reports from their applicant tracking system/recruitment system to track and report on all external and internal applicants. Based on the data of applications received, agencies should analyze the effectiveness of their outreach to AA and NHPI communities and enhance their outreach strategies accordingly to increase AA and NHPI applicants/candidates applying for vacant jobs.
- Agencies should publish web-based training on how to create online accounts in USAJobs.gov and submit resumes and provide examples of successful resumes and cover letters for applicants to reference.



Recommendations: Priorities for AA and NHPI Workers in Low-Wage Jobs and Care Workers

The Commission urges the federal government to implement the following recommendations to better address the needs of AA and NHPI workers in low-wage jobs and the care economy:

- Recommendation to advance strategies that ensure a strong direct care workforce to meet the rapidly growing demand for long-term services and supports (LTSS). Specifically, HHS should require states to assess the wage levels necessary to attract a stable workforce and to ensure that the payment of LTSS services (which essentially is a worker's wages) can support these wage levels and other costs to strengthen the Home Care and Community based services across the country.
- Recommendation to protect Asian and Pacific Islander immigrant workers exercising their civil and workplace rights while advancing economic security, opportunity, and equity.
- Recommendation to direct the Department of Labor to convene a domestic work advisory board to improve job quality for domestic workers.

Background:

AA and NHPIs are the fastest-growing racial or ethnic group in the United States, yet both the model minority myth and lack of data disaggregation masks significant geographic and socio-economic diversity across AA and NHPI communities, including high rates of poverty among certain groups.⁷⁰ For example, while 11% of Asian Americans and 15% of Native Hawaiians and Pacific Islanders live in poverty, disaggregated data shows that number jumps significantly to 19% for Bangladeshi Americans, 27% for Burmese Americans, and 31% for Micronesians (outside of those from Guam).⁷¹ In California, nearly one in four AA and NHPIs are struggling with poverty.⁷² Nationwide, AA and NHPIs account for 5% of all low-wage, adult workers below the age of 64⁷³ in industries that include restaurant workers, retail workers, and care and domestic workers, among others.⁷⁴ And, across these industries, AA and NHPI workers are overwhelmingly immigrants.⁷⁵

AA and NHPI low-wage workers are included among the more than 2 million domestic workers who provide essential care for children, seniors, and people with disabilities, and clean homes so others can go to work knowing their families and homes are well cared for. A domestic job is a job-enabling job. Like workers in other low-wage jobs, AA and NHPI domestic workers continue to face a number of challenges: poverty wages,⁷⁶ lack of benefits,⁷⁷ job insecurity, and high rates of wage violations.⁷⁸ Women of color



make up a majority of all domestic workers in the United States, and domestic workers, particularly AA and NHPI domestic workers, are more likely to be immigrants than other workers.⁷⁹ Despite their outsized role in the economy as one of the fastest growing occupations, domestic workers' labor is too often devalued. AA and NHPI domestic workers, paid a median wage of \$13 per hour, experience one of the biggest pay gaps between themselves and AA and NHPI peers in other professions, who are paid a median wage of \$24.46 per hour.⁸⁰

The Biden administration can take executive actions to protect and empower AA and NHPI workers, including domestic and other care workers, to advance economic security, opportunity, and equity.

Advance Strategies to Ensure a Strong Direct Care Workforce to Meet the Rapidly Growing Demand for Long-Term Services and Supports (LTSS)

Approach for Implementation:

- The White House should create an Interagency Task Force and related Advisory Council on LTSS Access and Workforce to provide recommendations with clear action items on measures to support and strengthen the direct care workforce to ensure quality access to LTSS.
- HHS should require states to assess the wage levels necessary to attract a stable workforce and to ensure that the payment of LTSS services (which essentially is a worker's wages) can support these wage levels and other costs to strengthen the HCBS systems across the country.
- HHS should require states to establish training requirements and a full range of training programs but give states the flexibility in designing requirements and certification standards and in engaging stakeholders in a public process.

Rationale:

The pandemic brought into sharper focus the urgent need to ensure that families have access to quality long-term care in the setting that best meets their needs and preferences and that direct care workers who provide LTSS have access to quality jobs and career development. Medicaid, through its Home and Community-Based Services (HCBS) program, is the largest payer of LTSS that enables older adults and people with disabilities to remain in their homes, active in their communities, and live independently.⁸¹ But direct care workers, who provide the labor intensive LTSS, are paid poverty wages, earning an average of \$12.98 per hour,⁸² limited access to benefits such



as health insurance, work long hours in isolation, and lack career advancement opportunities.⁸³

Asian and Pacific Islanders comprise 9% of the 2.4 million worker industry that is overwhelmingly women and women of color.⁸⁴ Low wages, a lack of benefits, and poor working conditions contribute to chronic worker shortages and high turnover rates while the demand for LTSS and direct care workers is rapidly growing largely due to the dramatic expansion of our nation's older populations.⁸⁵

Direct care is one of the fastest growing occupations in our economy, and the U.S. is expected to fill 1.3 million additional direct care jobs through 2029.⁸⁶ Every day, 10,000 Americans turn 65; that number is expected to reach 88 million people, representing over 20% of the population by 2050.⁸⁷ The Biden administration demonstrated its strong commitment to strengthening the care infrastructure and improving job quality of care workers with passage of the American Rescue Plan⁸⁸ which provided funding to Medicaid HCBS programs that enabled states to expand services and raise wages for direct care workers. Accordingly, the White House and the Department of Health and Human Services (HHS) should build on those successes and advance strategies to raise workers' wages and increase support, including training and career advancements.

The proposed Interagency Task Force can be time-limited and anchored and chaired by the HHS Secretary to provide recommendations to support and strengthen the direct care workforce. Other federal agencies that should be part of the task force include the Departments of Labor, Commerce, Veterans Affairs, and a representative of the White House National Economic Council. The related Advisory Council on LTSS Access and Workforce would be an ongoing body that is made up of representatives of relevant stakeholders that can advise and provide recommendations to the Interagency Task Force. The Council would be made up of representatives from worker, aging, and disability groups as well as representatives from the direct care industry. The Council can also include policy experts (i.e., academics, economists) who can aid in developing recommendations. The Council can be a body that continues to be in existence and advise HHS and its relevant sub-agencies on issues related to the workforce and access to LTSS. These policies would help achieve economic security for direct care workers, including AA and NHPI workers, build a worker pipeline to meet the rising needs for direct care workers, and enhance the quality of care and services.



Protecting Asian and Pacific Islander Immigrant Workers Exercising Their Civil and Workplace Rights Advances Economic Security and Opportunity and Achieves Equity

Approach for Implementation:

- The Department of Homeland Security (DHS) and the Department of Labor (DOL) should coordinate a clearly outlined process for immigrant workers to assert their civil rights or workplace rights (including the right to join a union or worker organization) and receive protection from retaliation and immigration enforcement and maintain their ability to obtain work authorization.

Rationale:

Approximately four out of five Asian American workers in low-wage jobs are immigrants.⁸⁹ Workers in low-wage industries are disproportionately affected by workplace violations, including rampant wage theft, discrimination and harassment, and working under hazardous conditions.⁹⁰ Between 2000 and 2015, the Asian undocumented population tripled in size to 1.7 million people, the largest increase among all undocumented groups.⁹¹ Fear that employers can use immigration status against them (i.e., detention and deportation or separation from their families) is a significant barrier for low-wage workers, including Asian immigrant and domestic workers, and prevents them from advocating for higher wages and better job quality and/or seeking to remedy substandard and exploitative working conditions, like wage theft, discrimination, and harassment.⁹²

When an employer exploits the precarious immigration status of immigrant workers, it creates a pervasive culture of fear and intimidation in the workplace that chills efforts by all workers – U.S.-born, foreign-born, authorized and unauthorized – to enforce their rights and better their working conditions. A 2012 study revealed that 85% of domestic workers lacking work authorization reported that they did not complain about their poor working conditions for fear of immigration-based retaliation.⁹³ Surveys show that immigration status, and lack of status, negatively impacts wage rates, health and safety, and working conditions for domestic workers.⁹⁴ More than a third of domestic workers were born outside of the United States, and one in five are noncitizens.⁹⁵ Among AA and NHPI direct care workers, nearly 90% are immigrants.⁹⁶

This recommendation seeks to ensure that all workers, regardless of immigration status, can assert their rights, be fairly compensated for their labor, and treated with dignity and respect in the workplace. It will also improve job quality and economic security for all of our nation's workers. Protecting the most vulnerable workers is a critical



enforcement strategy not just for those who are most vulnerable, but for all workers in the labor market.

Direct DOL to Convene a Domestic Work Advisory Board to Improve Job Quality for Domestic Workers

Approach for Implementation:

- The White House should direct the DOL to convene a domestic work advisory board, including representatives of worker organizations and unions, to provide recommendations on ways to protect, empower, and strengthen job quality for domestic workers and transform care jobs into good jobs.

Rationale:

The COVID-19 pandemic highlighted the health and safety risks faced by low-wage care workers, and numerous articles highlighted the trauma and death toll experienced by AA and NHPI home care and other health care workers.⁹⁷ For instance, direct care workers cared for and provided critical services to seniors and people with disabilities often without proper personal protective equipment (PPE)⁹⁸, putting their own and their families lives at risk. The risks were compounded by little access, if any, to health insurance and healthcare and the lack of paid family and medical leave and paid sick days.⁹⁹

Even before the pandemic, domestic workers faced musculoskeletal injuries and exposure to toxic cleaning chemicals, yet are excluded from the protections under the federal Occupational Safety and Health Act (OSH Act) by agency regulation.¹⁰⁰ A study of Filipino care workers in the Bay Area found that 64% of respondents felt persistent pain, often the result of helping their clients with daily living activities like getting out of bed, toileting, and sitting and standing.¹⁰¹ In addition to the legal exclusion from the federal health and health safety protections, domestic workers are also excluded from federal anti-discrimination and anti-harassment protections.¹⁰²

The domestic work advisory board can bring together relevant stakeholders, including domestic workers and their representatives, employers (representatives of individual employers, agencies, and digital platforms), and other relevant federal agencies, including the Department of Health and Human Services (HHS), the Department of Commerce (DOC), the Small Business Administration (SBA), and the Equal Employment Opportunity Commission (EEOC). The board can examine protections and standards workers need to improve their job quality and transform care jobs into good and dignified jobs. It can also identify what employers, including AA and NHPI employers and small businesses, need to be high-road and good employers. In addition,



the board should recommend legislative, regulatory, and sub-regulatory changes to extend federal health and safety protections to domestic workers since the legal exclusion exists through regulations.

Timeline:

These actions should be pursued as soon as possible and prioritized by the relevant agencies and stakeholders in their plans.



Immigration and Citizenship Status Subcommittee

Subcommittee Membership:

- **Co-Chairs:** Grace Huang, KaYing Yang
- **Members:** Ajay Bhutoria, Simon Pang, Dr. Amy Agbayani, Dr. Robert Underwood
- **Ex-Officio Member:** Amanda Baran, Chief, Office of Policy and Strategy, U.S. Citizenship and Immigration Services (USCIS), U.S. Department of Homeland Security (DHS)
- **Designated Federal Officer:** Carol Wu

Summary of Meetings:

The Immigration and Citizenship Status Subcommittee meets bi-weekly. Following the Commission's second meeting on May 12, 2022, the subcommittee met on June 15, June 29, July 13, July 27, August 10, August 24, August 31, and September 21, 2022. The subcommittee received presentations from the following subject matter experts who helped to inform their recommendations:

- **Gregory Chen, Director of Government Relations, American Immigration Lawyers Association (AILA):** Presented on AILA's efforts to provide free legal representation to individuals in removal proceedings.
- **Francey Lim Youngberg, Assistant Director, Office of Partnership and Engagement, Immigration and Customs Enforcement, U.S. Department of Homeland Security (DHS):** Answered Commissioners' questions on immigration enforcement, check-in processes, and alternatives to detention.
- **Lawrence Bartlett, Director, Office of Refugee Admissions, Bureau of Population, Refugees, and Migration, U.S. Department of State (DOS):** Presented an overview of DOS's efforts to process refugee populations from the Asia-Pacific region.
- **Lauren Edwards, Senior Advisor, Refugee Programs, Office of Refugee Resettlement (ORR), Administration for Children and Families, U.S. Department of Health and Human Services (HHS):**



Presented an overview of ORR's refugee resettlement process in the United States.

Summary of Recommendations:

The Immigration and Citizenship Status Subcommittee presented the following recommendations at the September 28, 2022, meeting, which the Commission approved in a final vote:

- **Recommendation:** The Department of Homeland Security Immigration and Customs Enforcement should establish enforcement policies and procedures that keep families together, restore dignity, and ease the hardships faced by individuals and families living with long term immigration removal orders.
- **Recommendation:** The Department of Homeland Security United States Citizenship and Immigration Services should establish procedures that allow for the stamping of H-1B and L visas in the United States.



Recommendation: Immigration Enforcement

While immigration reform is a complex issue that will take significant legislation, different federal agencies can help individuals and their families by making their enforcement conducive to keeping families together and restoring dignity.

The recommendations below are intended to ease the hardships faced by individuals and families living with long term immigration removal orders. The Immigration and Citizenship Status Subcommittee heard from advocacy organizations, including the Southeast Asia Resource Action Center (SEARAC) and Southeast Asian Freedom Network (SEAFN), as well as the Department of Homeland Security's (DHS) Immigration and Customs Enforcement (ICE) agency. The following recommendations address enforcement practices by DHS ICE, USCIS, and other relevant federal agencies to consider the overreaching aspects of the 1996 immigration laws¹⁰³ which are akin to double punishment, created a fast track to deportation, and resulted in a lack of due process in immigration processes.

Recommendations:

- ICE should exercise its authority to release individuals from detention, or decline to detain, those who are able to demonstrate that they do not pose a risk to public safety, including those with criminal convictions that are five years old or older.
- For families of individuals who are detained, ICE should have a clear process that informs family members, counsel, and/or advocacy organizations about the detained person's whereabouts and case status.
- ICE should reduce the burden on AA and NHPIs subject to supervision by adopting the following procedures to ensure their processes center dignity with the ultimate goal of reuniting families:
 - Making the check-in process more accessible. ICE should keep phone check-ins a possibility, especially for people who have been on an order of supervision for some time, and allow the periods of check-ins to be longer than one year.
 - ICE should also refrain from acting to remove, detain, or arrest anyone with a pending appeal, or motion to reopen before an immigration judge, Board of Immigration Appeals, or federal court.
 - For countries with known difficulties in receiving people removed from the United States (i.e. Laos, Myanmar), ICE can and should work on getting travel documents BEFORE initiating the removal process.



- In deciding whether to exercise prosecutorial discretion, ICE should consider an individual's admission to the United States because they were adopted by U.S. citizens or lawful permanent residents to be a positive factor (equity) or a mitigating circumstance weighing against removal orders.
- Currently, there is no uniform guidance about enforcement priorities due to pending litigation. In addition, existing guidance relating to prosecutorial discretion fails to mention consideration of situations where individuals cannot be deported to countries that will not accept ICE removals (such as Laos or Myanmar) or people who are stateless. Executing removal and/or detention decisions in these situations is an unproductive use of resources and creates hardship for families of individuals with immigration removal orders. ICE can and should consider whether a person would likely be physically removed if they were ordered deported before deciding to start the process, especially when it comes to detention decisions.
- USCIS should provide longer durations of employment authorization for individuals with long term orders of supervision and who are unlikely to be removed in the next several years. USCIS should allow for Employment Authorization Documents (Form I-765/EAD) to be valid for a minimum of two or three years. In addition to reducing the burden on the EAD holders, allowing for longer term EADs would help reduce USCIS application backlogs.
- ICE should end or severely limit the Institutional Hearing Program (IHP), a program designed to expedite the deportation of people who are currently serving a criminal sentence. The IHP process unfairly results in people being deported without a meaningful way for them to defend against removal, as it severely limits access to legal assistance and the means or time to build their legal cases.¹⁰⁴
- ICE should refrain from deporting people who have pending appeals, motions to reopen, or motions to reconsider. A person who is ordered deported by the immigration court or the Board of Immigration Appeals (BIA) can still ask the Executive Office for Immigration Review (EOIR) to reopen or reconsider their case or appeal the removal order to federal court. However, the removal order becomes “final” following the expiration of appeal deadlines within EOIR, and ICE is able to deport people even if they have pending federal court appeals. This means that if the person wants to stay in the U.S. while the motions or appeals are being decided (which can take months) they need to file a motion to “stay” (pause) the removal order with the federal courts. Some courts regularly grant these stays (e.g., 9th Circuit) while others, like the 8th Circuit,



do not. Even if a person is deported, the person can later win their appeal, but the processes to return them from the country of deportation can be involved, messy, and unclear. The administration should institute a policy where a removal order is not executed if an appeal is filed with the federal court or if there is a pending motion to reopen or reconsider. This can be especially important when a person is trying to seek protection from persecution, torture, or death. At the very least, there should be clear guidelines that direct the agency on how to decide which people they should wait for.

Background:

In 1996, Congress passed the Illegal Immigration Reform and Immigration Responsibility Act¹⁰⁵ (IIRAIRA) and the Antiterrorism and Effective Death Penalty Act¹⁰⁶ (AEDPA) which radically expanded the list of crimes for which an immigrant could be eligible for removal and made these changes retroactive. These laws significantly expanded the government's ability to automatically detain and deport people by:

- Redefining the term “aggravated felony” to include a long list of low-level offenses and applying the term retroactively to convictions that took place even before the laws were passed;
- Eliminating many defenses or exceptions to deportation and replacing them with very narrow defenses that are difficult to qualify for;
- Creating mandatory and prolonged detention of immigrants; and
- Creating new fast-track procedures that deport people without letting them see an immigration judge (expedited removal).

Under the new laws, individuals who were not removable in 1995 suddenly became removable in 1996. In addition, the laws limited judicial discretion, preventing immigration judges from considering factors such as whether someone is a long-time lawful permanent resident, has U.S. citizen children, is a successful small business owner, and/or is rehabilitated.¹⁰⁷ Federal courts were also prevented from reviewing many immigration court decisions.

As a result, large numbers of people who trace their heritage to Asian and Pacific Island nations received removal orders. Between 1998 and 2022, these were the total numbers of removals for select Asian countries and Pacific Islands:¹⁰⁸

- China – 75,049
- Indian – 34,366



- Bangladesh – 8,547
- Pakistan – 16,376
- Nepal – 3,619
- Sri Lanka – 6,233
- Philippines – 15,903
- South Korea – 8,122
- Cambodia – 3,106
- Laos – 4,740
- Vietnam – 10,056
- Fiji – 1,777
- Tonga – 890
- Samoa – 428

These laws have disproportionately impacted the incarceration rates and overall well-being of Southeast Asians and Pacific Islanders. From the late 1970s to the late 1990s, arrests of AA and PIs increased by 726%.¹⁰⁹ In the 1990s, incarceration for AA and PIs grew by 250%.¹¹⁰ Further, when compared to their white counterparts committing similar crimes, Asian and Pacific Islander youths had twice the likelihood of being tried as adults in California.¹¹¹ Disaggregated arrest data collected in Oakland exemplifies the high arrest rates for AA and PI youths.¹¹² Samoan, Cambodian, and Laotian youth arrest rates are 14%, 6.3%, and 5.2% respectively.¹¹³

In 2002, the California Youth Authority conducted a study on disaggregated incarceration data. The study found Vietnamese then Laotian youths followed only by African American youths had the highest arrest rates in Richmond in 2000.¹¹⁴ Additionally, in comparison to the expected incarceration rates for the populations, Laotian youth rates were nine times higher and Cambodian youth were four times higher.¹¹⁵

Because of the AEDPA and IIRAIRA, Southeast Asian Americans (SEAAs) and other immigrants who have certain criminal convictions are subject to harsh mandatory detention and automatic deportation laws with very few opportunities for relief. SEAAs from the countries of Cambodia, Laos, and Vietnam, are the largest refugee populations to ever resettle in the U.S. in modern history.¹¹⁶ Many are in the United States because they were allies of or assisted the U.S. in fighting communism during the Vietnam War, the Secret War in Laos, or the Khmer Rouge genocide in Cambodia.¹¹⁷



Once in the U.S., many Southeast Asians were resettled in low-income neighborhoods with short term access to government supports, inadequate access to training or resources, and little room for economic mobility. In a joint letter from national and local Asian American and civil rights organizations to Department of Homeland Security’s Secretary Alejandro Mayorkas in April 2022, they said “SEAA refugees who came to the U.S. fleeing war and persecution were subjected to the same systematic marginalization as many other communities of color in the U.S., often referred to as the school-to-prison pipeline. They were resettled in impoverished neighborhoods with failing schools, racial profiling, over-policing, and mass incarceration that too often harms communities of color in this country. Southeast Asian deportations are a direct result of the war on drugs, tough on crime era policies, mass incarceration and the rise in private prisons, which were further compounded by inhumane federal immigration laws passed in 1996 that dramatically expanded the range of convictions that made a noncitizen deportable.”¹¹⁸

Consequently, some individuals made mistakes and got involved with the criminal legal system. Many noncitizens who had been charged with crimes failed to get informed legal advice about immigration penalties for pleas/convictions; this was particularly the case for those with limited English proficiency.¹¹⁹ Prior to the 1996 legislation, some individuals who had taken pleas, agreeing to what were often minor sentences because the convictions were for non-deportable crimes, were convicted of serious crimes, served their sentences, and reintegrated in their communities. After decades passed, these residents are being deported, notwithstanding their clean criminal records since being released, rehabilitation, and the impacts that deportation would have on their families and livelihoods.

According to the Southeast Asia Resource Action Center (SEARAC), 80% of SEAA deportations (around 13,000) are based on old criminal convictions; this is drastically higher than the 29% deportation rate of all immigrants with old convictions.¹²⁰ Since 1998, over 2,000 Southeast Asians have been removed from the United States and more than 15,000 have received final orders of removal.¹²¹ Today, most of these individuals have children and family members who are U.S. citizens with strong connections to the United States and no ties to their countries of origin.¹²² They have never even been to their country of birth because most came as very young refugee children or were born in refugee camps.¹²³ They consider themselves Americans.

Even though the U.S. has agreements with Cambodia and Vietnam, hundreds of people have been deported and their U.S. citizen families continue to fight for their return to the U.S. because those countries once saw them as ‘enemies’ and no longer accept them as their citizens. The Laos government refuses to accept anyone who is not a Laos citizen as defined by their country’s constitution. Even today, Laos accepts only a handful of people who are identified as Laos citizens.¹²⁴ People with removal orders and their



families with roots from Cambodia, Vietnam, and Laos continue to be retraumatized and have lived every day uncertain of their future for over three decades.

On his first day in office, President Biden issued an Executive Order¹²⁵ on the Revision of Civil Immigration Enforcement Policies and Priorities that revoked the prior administration's priorities which made virtually everyone a target for immigration enforcement. DHS subsequently issued department-wide civil enforcement priorities¹²⁶ which prioritized immigration enforcement against only those who pose national security threats, **current threats** to public safety as determined by an individualized assessment, and threats to border security. In addition, ICE released enforcement directives to support noncitizen crime victims¹²⁷ and strengthen the parental rights of noncitizens,¹²⁸ as well as directives limiting enforcement at worksites¹²⁹ and certain protected locations, such as hospitals, churches, and schools.¹³⁰

However, in June 2022, in the course of pending litigation, a Texas U.S. District Court vacated the September 30, 2021, enforcement priorities memorandum,¹³¹ leaving immigration enforcement decisions to the discretion of local ICE offices.¹³² There is currently no uniform guidance on how to consider whether an individual is likely to be physically removed.

Rationale:

The impact that detentions and deportations have on individuals and families is devastating and felt by entire communities. The deportation of Southeast Asian Americans in particular has disrupted these communities and their livelihoods and overall well-being. One study by the Urban Institute found that a family's income can decrease by an average of 70% after a family member is arrested by ICE.¹³³ Detention and deportation places families left behind in the U.S. at a higher risk of homelessness and food insecurity. Children of detained and deported individuals face an increased risk of depression, anxiety, and post-traumatic stress disorder.

While comprehensive immigration reform will not happen in the foreseeable future, federal agencies can develop more humane and equitable enforcement policies that center families and restore dignity. Agencies can work to reduce the harmful impact that immigration laws have on AA and NHPI families, particularly for Southeast Asian and immigrant families who have borne the brunt of unjust detention and deportation policies. And agencies can restore due process, prevent families from being torn apart, and reduce the loss of family income that leads to housing insecurity and mental health concerns.



Approach for Implementation:

The appropriate agencies (e.g., DHS ICE and USCIS, DOJ) should adopt these recommendations in 2023, issue guidance, and update their policy manuals. Practices should be consistent across all districts in the country, and funding should be sufficiently allocated to ensure that each department or agency can carry out the recommendations.



Recommendation: H-1B and L-1 Visa Stamping

The federal government should create a process to allow those with pending extensions of H-1B¹³⁴ and L-1¹³⁵ visas to reenter the United States if the stamps in their passports are due to expire while they are outside of the country.

This could include providing advanced permission documents to reenter the United States with or without the stamping and restamping in the U.S. by USCIS. USCIS should consider providing advanced travel documents to H-1B and L-1 visa holders when they have to travel out of the country with expired or soon to expire visa stamping to prevent potentially having to wait for restamping in their home country.

Recommendations:

- USCIS should update its policy, as it has done previously, to allow individuals with pending extensions of H-1B and L-1 visas to reenter the United States and obtain restamping by USCIS.¹³⁶
- USCIS should also consider providing advanced travel documents to H-1B and L-1 visa holders when they have to travel out of the country with expired or soon to expire visa stamps on their passport so they can reenter the U.S. without any issues or having to get restamping in their home countries. They should be able to reenter the United States with valid travel documents and a valid H-1B or L-1 visa, even if the stamping has expired on their passports.

Background:

H-1B visa holders, who are waiting for renewals and whose visas expire while they are outside of the U.S., need to get their passports stamped with renewal dates.¹³⁷ This is required if they wish to travel outside of the U.S. and to reenter the U.S.¹³⁸ There is currently no mechanism to obtain approval to reenter the country prior to departure from the U.S. or to obtain documentation from outside the U.S. that allows someone with an approved H-1B visa extension to reenter the country. This is because H-1B visa restamping is not allowed within the U.S. One must travel to their home country or to the nearest country with a U.S. embassy to get H-1B visa renewal stamping. Currently, restamping can only be done at a U.S. consulate outside of the United States.

As a rule, the current procedure for restamping H-1B and L-1 visas is to go to a U.S. consulate outside the United States and submit a H-1B or L-1 visa, passports, and other documents by way of a dropbox or interview.¹³⁹ People have to wait months or years for H-1B visa stamping and sometimes they do not receive a response after submitting all documents, forcing them to wait in their home country for years while their families are



waiting in the U.S. for them to return. This creates real financial and mental health issues for separated families. If the individuals get inquiries or questions or decide to appeal a visa refusal under Section 221(g) of the Immigration and Nationality Act,¹⁴⁰ the process could take several additional months. This causes the applicants to possibly lose their jobs and be separated from their families, and places spouses who may have been fully dependent on the H-1B visa holders in challenging situations. The whole process has proven to be very painful for non-immigrants who are invited to work in the U.S. to help support U.S. companies and its economy. There are a number of general criteria for eligibility to use the dropbox or interview waiver option.¹⁴¹

Rationale:

The Department of State (DOS) issues the H-1B visa. “The National Visa Center (NVC) is part of the U.S. Department of State’s Bureau of Consular Affairs. NVC serves a clerical function in processing immigrant visa applications. NVC’s job is to prepare immigrant visa applications for consular officers to review and adjudicate. After receiving an approved non-immigrant petition from USCIS, NVC works on the visa application package. NVC’s role is to ensure that the minimum paperwork required by the consular officer is received and properly filled out. That way, when a visa application is sent overseas to a U.S. embassy, it is ready to be considered during the interview.”¹⁴²

H-1B, L-1 visas, and other visas are issued by DOS. Renewals of visas are also done by the DOS’s NVC. DOS does not offer customer service inside the U.S. for H-1B visa stamping. Hence, it is recommended to allow USCIS, which handles immigration matters and does have offices in the U.S., to handle these in-U.S. visa applications. The recommendation is to allow restamping of H-1B and L-1 visas in the United States by USCIS.



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