

February 29, 2016

Via: Email and First Class Mail

Secretary Jeh Johnson
Department of Homeland Security
Washington, D.C. 20528

Secretary Sylvia Mathews Burwell
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Re: **Request for Directive to Protect Immigrant Victims of Flint Water Crisis**

Dear Secretary Johnson and Secretary Burwell,

When the federal and state governments allowed contaminated water to flow through the taps in Flint, Michigan, that water poisoned citizens and non-citizens alike. In the wake of this disaster, it is critically important to ensure that **all** Flint residents have access to clean water and lead testing, as well as needed health interventions. Unfortunately, many immigrant families and their children are not getting the help they so desperately need because they fear that if they access government services, Immigration and Customs Enforcement (ICE) or Customs and Border Protection (CBP) could identify and deport undocumented family members.

As organizations that advocate for vulnerable children, promote public health, and support immigrant families, we applaud the Department of Homeland Security's February 24, 2016 announcement that ICE and CBP "are not conducting enforcement operations at or near locations distributing clean water in Flint, Michigan or surrounding areas affected by the current water situation," and that "DHS officials do not and will not pose as individuals providing water-related information or distributing clean water as part of enforcement activities."¹ We agree that the DHS' top priorities in the current water emergency in Flint must be "to support State and local government efforts to distribute clean water and related supplies" to impacted individuals and to focus on "life-saving and life-sustaining activities."²

We are grateful that DHS has recognized that immigration enforcement in Flint can prevent vulnerable families from accessing safe drinking water. DHS' announcement is a critically important first step in protecting the immigrant victims of the Flint disaster. At the same time, more needs to be done to ensure the health and safety of immigrant children and families in Flint.

¹ Department of Homeland Security, "Public Notice on the Current Water Emergency in Flint, Mich." (Feb. 24, 2016), available at <https://www.dhs.gov/news/2016/02/24/public-notice-current-water-emergency-flint-mich>.

² *Id.*

We therefore ask you, in light of your expressed commitment to the life-saving and life-sustaining activities, to:

- grant immigration relief to immigrants whose families were poisoned during the water crisis,
- provide assurance that any records related to the water crisis (such as public health records or infrastructure surveys) will not be used for immigration enforcement purposes, and
- immediately and publicly suspend *all* immigration enforcement activities in Flint until the public health crisis has been comprehensively addressed.

Since lead exposure results in long-term and irreversible health, neurodevelopmental, and cognitive damage³, immigrants as well as their U.S. citizen children must be able to access health and special education services for years to come. Therefore, immigrants who have been poisoned must be able to seek appropriate immigration relief, so that neither they nor their children will be deported to countries where they may not be able to get the health and educational interventions needed to mitigate the damage done by Flint's toxic water.

In addition, while DHS' commitment not to conduct enforcement operations at or near locations distributing clean water is very helpful, immigrants in Flint must also be able to seek out testing and treatment for their and their children's health needs, travel through Flint to access such services, have their homes inspected for purposes necessary to address the water crisis, and purchase water and supplies at grocery stores. Immigrants in Flint should not need to fear that their children (many of whom are U.S. citizens) will be left to grow up without their mother or father because a parent was apprehended by immigration agents while accessing health services or because agents obtained records from the family's participation in a lead testing program.

DHS' History of Exercising Enforcement Discretion to Protect Victims and of Limiting Enforcement During Humanitarian Crises and at Sensitive Locations

The tragedy in Flint is unprecedented, both because the government is answerable for poisoning its people and because, as a result of that poisoning, Flint residents will need monitoring as well as health and educational interventions for years to come. This unique situation requires the government to take responsibility for the harm it has caused to victims, including here both immigrant victims and U.S. citizen children in immigrant families. This situation also requires the government to protect public health not just during the immediate crisis but over the long term.

The relief we request is tailored to these unusual circumstances. At the same time, our request draws on well-established DHS policies and procedures. Those existing policies and procedures establish that DHS 1) already exercises prosecutorial discretion in enforcing immigration law for

³ "Flint Combats Lead-Contaminated Water Effects on Child Development," National Public Radio (Jan. 16, 2016); Centers for Disease Control, "CDC Lead Poisoning Prevention and Treatment Recommendations for Refugee Children".

health and other humanitarian reasons and with respect to individuals who are victims, witnesses, or plaintiffs; 2) already limits immigration enforcement during times of humanitarian crisis so as not to jeopardize the health and safety of either immigrants or the general public; 3) already limits immigration enforcement in certain sensitive areas for humanitarian reasons; and 4) already restricts the use of healthcare information for immigration enforcement purposes. We ask that those principles now be applied in Flint.

First, as set out in Director Johnson's November 20, 2014 memo on "Policies for the Apprehension, Detention and Removal of Undocumented Immigrants," DHS has recognized that it "must exercise prosecutorial discretion," must "develop smart enforcement priorities," and must ensure that "use of its limited resources is devoted to the pursuit of those priorities."⁴ Therefore DHS instructs its personnel to exercise discretion and consider factors such as a person's "status as a victim, witness or plaintiff in civil or criminal proceedings," and "compelling humanitarian factors such as poor health, age, pregnancy, a young child, or a seriously ill relative."⁵ As explained below, those factors clearly apply in Flint.

Second, President Obama has declared a federal emergency in Flint, which includes authorizing the Department of Homeland Security to take measures to protect public health and safety, alleviate hardship and suffering, and provide appropriate assistance.⁶ ICE and CBP have, in response to similar emergency or disaster declarations – including hurricanes Katrina,⁷ Ike⁸, Alex⁹, Isaac¹⁰, Sandy¹¹ and Karen¹² – issued directives limiting regular enforcement activities in

⁴ Available at https://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf.

⁵ Jeh Johnson, "Memo on Policies for the Apprehension, Detention and Removal of Undocumented Immigrants" (Nov. 20, 2014).

⁶ "White House Press Release: President Obama Signs Michigan Emergency Declaration", available at <https://www.whitehouse.gov/the-press-office/2016/01/16/president-obama-signs-michigan-emergency-declaration>.

⁷ Jack Date, "Immigration: No Enforcement During Evac," *ABC News* (Aug. 31, 2008) (quoting ICE as stating "there are no immigration enforcement operations, and there are no immigration enforcement checkpoints associated with the evacuations"), available at <http://abcnews.go.com/Travel/story?id=5697052>; Andy Grimm, "Hispanic immigration post-Katrina finding permanent roots in metro New Orleans," *Times Picayune* (Aug. 27 2015) (noting that "immigration enforcement was relaxed immediately after Katrina").

⁸ "FEMA Statement: Federal Preparations: Ike Threatens Florida, Heads Towards Gulf" ("There will be no immigration enforcement operations associated with evacuations."), available at <http://www.fema.gov/news-release/2008/09/07/federal-preparations-ike-threatens-florida-heads-towards-gulf>.

⁹ "ICE Statement of Priorities as Hurricane Alex Approached South Texas" (June 29, 2010) ("There will be no ICE immigration enforcement operations associated with evacuations and sheltering. The Department's law enforcement components will be at the ready to help anyone in need of assistance."), available at <http://www.nilc.org/10icehuralex.html>.

order to address humanitarian catastrophes. The February 24, 2016 DHS Public Notice announcing that ICE and CBP will limit enforcement around water distribution sites reflects these same priorities.

Third, ICE has a history of limiting enforcement at sensitive locations, as set out in Director Morton's October 24, 2011 memo on "Enforcement Actions at or Focused on Sensitive Locations."¹³ Under ICE's Sensitive Locations Policy, any enforcement actions within the designated areas must have prior approval from senior ICE officials. ICE thus already recognizes that for humanitarian reasons, enforcement activities should not take place in certain areas.

Finally, ICE already has a policy, as set out in the October 2013 "Clarification of Existing Practices Related to Certain Health Care Information", that it will not use health care information for immigration enforcement purposes.¹⁴

We now ask ICE and CBP to apply these same principles to the situation in Flint. Criminal inquiries into the Flint disaster are ongoing.¹⁵ Because immigrants are among those most seriously harmed, as set out below, they may well become witnesses in those investigations. Immigrants are also plaintiffs and witnesses in the numerous class actions and other civil

¹⁰ "Hurricane Isaac: Statement from Immigration & Customs Enforcement and Customs & Border Protection as Hurricane Isaac Approached Florida and the Gulf Coast" (August 27, 2012) (stating "there will be no immigration enforcement initiatives associated with evacuations or sheltering related to Isaac"), available at www.dhs.gov/publication/ice-cbp-joint-message-regarding-hurricane-isaac.

¹¹ "Hurricane Sandy: Statement from Immigration & Customs Enforcement and Customs & Border Protection as Hurricane Sandy Approached the East Coast of the U.S." (October 26, 2012) (stating "there will be no immigration enforcement initiatives associated with evacuations or sheltering related to Sandy"), available at <http://www.dhs.gov/news/2012/10/27/ice-cbp-joint-message-regarding-hurricane-sandy>.

¹² Department of Homeland Security Statement on Tropical Storm/Hurricane Karen (2013) (stating "there will be no immigration enforcement initiatives associated with evacuations or sheltering related to Karen"), available at https://cliniclegal.org/sites/default/files/2013_10_04_16_31_28.pdf.

¹³ Available at <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf>.

¹⁴ Available at <https://www.ice.gov/doclib/ero-outreach/pdf/ice-aca-memo.pdf>.

¹⁵ See e.g., Michael Miller, "Manslaughter charges possible in Flint water crisis, says top investigator," *Washington Post* (Feb. 10, 2016); Paul Egan, "FBI joins Flint drinking water investigation," *Detroit Free Press* (Feb. 2, 2016).

lawsuits that have been filed to secure justice for the residents of Flint.¹⁶ Both criminal and civil inquiries are in their infancy. Moreover, public health officials and government regulators are only beginning to identify which homes had the highest lead concentrations and which individuals suffered the most serious health damage.

While that process is playing out, DHS should create and announce a mechanism and criteria for immigrants in Flint to seek immigration relief on a case-by-case basis where appropriate, with adequate protections to ensure against the triggering of removal proceedings on the basis of an application for relief. For example, where children (whether citizens or non-citizens) have been poisoned, they and their family members should be eligible for immigration relief to ensure that those victims get the long-term health and educational services they need. In addition, prosecutorial discretion should be exercised for any Flint residents in removal proceedings, considering the individual's and family's need for access to information, screening and medical care related to lead exposure, as well as cooperation in any law enforcement/government investigations.

In addition, ICE and CBP should suspend *all* enforcement activities within Flint¹⁷ so that victims, witnesses, and plaintiffs are not deported while the criminal investigations and civil lawsuits play out. Finally, ICE and CBP should pledge not to use any records related to the water crisis for immigration enforcement purposes.

Immigrant Families Are Among the Most Vulnerable Victims of the Flint Water Crisis

Immigrant families in Flint are among the most severely impacted by the water crisis. Many immigrants – and their children – drank, cooked and bathed in the toxic water long after the state admitted the water is unsafe. Because public health information was not initially made available in languages other than English, families with limited English proficiency simply did not know that the water was dangerous. Disastrously, state-run water distribution centers at first denied water to individuals who did not have identification documents. Because Michigan denies

¹⁶ See, e.g., *Concerned Pastors for Social Action v. Khouri*, No. 2:16-cv-10277-MAG-SDD (E.D. Mich. filed Jan. 27, 2016); *Mays v. Snyder*, No. 2:15-cv-14002-JCO-MKM (E.D. Mich. filed Nov. 13, 2015); *Mays v. City of Flint*, No. 16-106112-CZ (Mich. 7th Cir. Ct. filed Jan. 19, 2016); *Mays v. Snyder*, No. 16-000017-MM (Mich. Ct. Cl. filed Jan. 21, 2016); *Estate of Debra Kidd v. McLaren Regional Medical Cntr.*, No. 16-106199-NO (Mich. 7th Cir. Ct. filed Feb. 1, 2016); *Boler v. Earley*, No. 2:16-cv-103230PDB-APP (E.D. Mich. filed Jan. 31, 2016); *Kincaid v. City of Flint*, 311 Mich. App. 76 (Mich. Ct. App. 2015).

¹⁷ We recognize that there may be exceptional circumstances where immigration enforcement would still be appropriate. A directive protecting the people of Flint could draw on the framework set out in the Sensitive Locations Policy, which allows for enforcement in situations involving national security, terrorism, or certain other situations. See John Morton, “Memo on Enforcement Actions at or Focused on Sensitive Locations” (Oct. 24, 2011).

identification documents to anyone who is not lawfully present¹⁸, this ID requirement meant that undocumented immigrants could not access safe water.¹⁹ While the state has since stopped requiring ID to get drinkable water, the damage has been done. Reports from both local advocates and the media indicate that many immigrants remain afraid to go to water-distribution centers. Because many immigrant families are mixed status and include U.S. citizen children, family members with and without status have been harmed by the toxic water.

While the harm to Flint immigrants cannot be overstated, it is also important to recognize that the city's immigrant population is relatively small. That means that the requests set out here should be feasible for DHS to adopt.²⁰

Fear of Immigration Enforcement Prevents Immigrant Victims From Accessing Safe Water, Lead Testing, and Health Services

The *Detroit Free Press* reports that “[s]tepped-up raids this year by federal immigration agents have made undocumented immigrants even more nervous about asking for help and opening the door to strangers. This has caused challenges for reaching them with bottled water.”²¹ If immigrant families are too scared of immigration raids to answer the door, they will lose access not only to safe drinking water, but also to critical health information and services. As the *Latin Post* reports, fear of deportation “has also stopped undocumented residents in Flint from getting themselves and their children tested for lead poisoning. As a result, those who have been exposed to toxic water may not get proper access to health care.”²²

Fear in the community has been heightened by rumors of immigration raids at local grocery stores, where some immigrants purchased water after being unable to get water from state-

¹⁸ M.C.L. §§ 257.307(1)(b), 257.307(15); 28.291(5), 28.291(9).

¹⁹ See, e.g., Niraj Warikoo, “Flint immigrants struggle to get help, info on water,” *Detroit Free Press* (Feb. 4, 2016); “Flint Water Crisis: Undocumented Immigrants Scared To Get Water or Lead Testing in Wake of Deportation Raids,” *Latin Post* (Jan. 29, 2016).

²⁰ Flint has a population of approximately 99,000, with 1.2% foreign-born and 2.6% speaking a language other than English in the home. Latinos comprise about 4% of the population. See United Census Bureau Quick Facts for Flint, available at <http://quickfacts.census.gov/qfd/states/26/2629000.html>. The undocumented population is estimated as less than 700. See Center for Migration Studies, “Estimates of the Unauthorized Population,” available at: <http://data.cmsny.org/puma.html>.

²¹ See *id.*; Rebekah Sager, “ICE raids may have worsened woes for undocumented community in Flint,” *Fox News Latino* (Jan. 28, 2016) (noting that ICE’s immigration raids in January 2016, which caused widespread panic in Latino communities, “coincided with the time that uniformed officers were trying to go door-to-door to try and make everyone in the city become aware of the dangers of Flint’s tap water”).

²² “Flint Water Crisis: Undocumented Immigrants Scared To Get Water or Lead Testing in Wake of Deportation Raids,” *Latin Post* (Jan. 29, 2016).

distribution centers. Late last month an ICE spokesperson refused to answer reporter questions about the grocery-store apprehensions, fueling rumors that immigrants face deportation if they venture out to buy water.²³ Even if – as we hope – federal agencies are not actually arresting immigrants at grocery stores, widespread fear of such arrests is making it difficult for immigrants to take care of their families during this crisis.

DHS' February 24 announcement that ICE and CBP are not conducting enforcement at or near water distribution sites may begin to calm these fears. Unfortunately, given how events have unfolded in Flint, that announcement is not enough to reassure immigrant families that they can get the help they need. Due to the state's initial insistence on ID, some immigrants are not obtaining their water from official water distribution sites, but instead are going to churches or grocery stores. Moreover, immigrant families will not get critical health information and services if they are too afraid of home raids to open the door, too afraid of vehicle stops to travel through Flint, and too afraid of sharing personal information to access health services.

We are also extremely concerned by reports from local advocates that immigrant families are fleeing Flint. Families are understandably terrified that extensive government and law enforcement activities in the city – from door-to-door canvassing to inspection of water lines – will bring them to the attention of immigration authorities. Any immigrant family that flees Flint will not have access to the information and services that we hope will be developed to address the long-term health consequences of lead exposure. We are similarly concerned that any individuals who are deported from Flint, and who may take their U.S. citizen children with them, will not have access to the necessary health care in the countries to which they are sent.

If Immigrant Families Cannot Participate in Public Health Interventions A Comprehensive Public Health Response Will Be Impossible

Immigrants and their children are not the only ones who will suffer if they are not included in public health interventions. The government will lose its ability to address this public health crisis comprehensively, which is a central objective in this as in any public health emergency. As leading public health experts in Flint have explained, “lead is a potent, irreversible neurotoxin” with “lifelong and damning consequences,” including lowering IQ and affecting cognition and behavior.²⁴ The consequences of lead exposure are not necessarily immediately apparent, and public health experts have emphasized the need for ongoing monitoring of Flint residents, particularly children, who have been exposed to lead.²⁵

²³ Tracy Samilton, “Fear prevents some undocumented immigrants from getting water in Flint,” *Michigan Radio* (Jan. 27, 2016).

²⁴ “Flint Combats Lead-Contaminated Water Effects on Child Development,” *National Public Radio* (Jan. 16, 2016).

²⁵ *See id.* *See also* Centers for Disease Control, “CDC Lead Poisoning Prevention and Treatment Recommendations for Refugee Children” (“Neurodevelopmental monitoring should continue long after a child’s [lead levels] have been reduced, as many deficits will not manifest themselves until after a child starts school.”).

Public health priorities in Flint include researching how severe the exposure to lead has been, doing long-term neurodevelopmental follow-up on exposed children, and assessing the effectiveness of interventions to mitigate the consequences of lead exposure.²⁶ If immigrants are afraid to cooperate with the government because they fear such cooperation will lead to ICE or CBP enforcement action against them, other government agencies will be unable to achieve basic public health goals, such as lead testing and follow-up monitoring for all Flint children. Unless immigrant families are confident that they can, over the long-term, access safe water, lead testing, and health services without fear of deportation, the public health response to the crisis will be spotty and many children – including U.S. citizen children of immigrants – will be excluded.

The Government Must Take Responsibility for Protecting Immigrant Victims of the Flint Catastrophe

While investigations are still underway to determine culpability for the disaster in Flint, it is absolutely clear that the catastrophe was the result of a fundamental failure at all levels of government. Both state and federal agencies are responsible, and both the state and federal government must take responsibility for the health of those who were poisoned as a result of the government's failures.²⁷ We are asking for the federal government to do so here with respect to vulnerable immigrant victims.

The government can take responsibility by not deporting immigrant victims to countries where they cannot get the healthcare they need. The government can take responsibility by establishing a mechanism for immigrant victims to seek immigration relief in appropriate cases. The government can take responsibility by temporarily suspending all immigration enforcement in Flint until the public health crisis has been comprehensively addressed, thereby reassuring immigrant families that they can access water and health care without fear of deportation. The government can take responsibility by publicly committing not to access or use any records related to the water crisis, such as public health records or infrastructure surveys.

We urge you to act quickly. The government has failed the people of Flint. That failure only grows larger with every glass of poisonous water drunk by children whose parents must choose between the risk of deportation and the health of their families. The government should not force any parent to make such a choice.

²⁶ See, e.g., “Flint Combats Lead-Contaminated Water Effects on Child Development,” National Public Radio (Jan. 16, 2016); Steve Carmody, “MSU and Hurley Children’s Hospital to work together on Flint water crisis study” (Jan. 14, 2016).

²⁷ The Environmental Protection Agency was aware of problems with Flint’s water as early as last April, but those concerns were not made public, and Flint residents continued to drink the water. See Lindsey Smith, “EPA Faces Fallout from Flint, Mich., Water Crisis,” National Public Radio (Jan. 22, 2016).

Sincerely,

9to5, National Association of Working Women
Advancing Justice - Asian Law Caucus
Alianza Americas
Alliance for a Just Society
American Academy of Pediatrics
American Civil Liberties Union and ACLU of Michigan
ACCESS
Asian Americans Advancing Justice-LA
Asian Pacific American Labor Alliance, AFL-CIO (APALA)
Association of Asian Pacific Community Health Organizations
Capital Area Immigrants' Rights Coalition
CARECEN DC (Central American Resource Center)
Center for Civil Justice
Center for Law and Social Policy
Child Welfare League of America
Church World Service
Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA)
Coalition on Human Needs
Detention Watch Network
Evangelical Lutheran Church in America, Advocacy Office
Farmworker Justice
First Focus
Franciscan Action Network
Freedom House Detroit
Genesee County Hispanic Latino Collaborative
Illinois Coalition for Immigrant and Refugee Rights (ICIRR)
Juntos
Justice and Witness Ministries, United Church of Christ
Latin America Working Group (LAWG)
MAIZ
Michigan Association for Children with Emotional Disorders
Michigan Coalition for Immigrant and Refugee Rights ("MCIRR")
Michigan Immigrant Rights Center
Michigan League for Public Policy
Michigan Nurses Association
Michigan United
National Association of Social Workers, Michigan Chapter
National Council of Jewish Women
National Employment Law Project
National Immigration Forum
National Immigrant Justice Center

National Immigration Law Center
National Korean American Service and Education Consortium
National Lawyers Guild, National Immigration Project
National Lawyers Guild, Detroit and Michigan Chapter
National Network for Arab American Communities
NETWORK, A National Catholic Social Justice Lobby
New York Immigration Coalition
One Michigan for Immigrants Rights
OneAmerica
Our Lady of Guadalupe Catholic Church
Pediatric Advocacy Clinic, University of Michigan Law School
Pre-Health Dreamers
Reformed Church of Highland Park (NJ)
Sargent Shriver National Center on Poverty Law
Services, Immigrant Rights, and Education Network (SIREN)
Sojourners
South Asian Americans Leading Together
United We Dream
University Access for Post-Secondary Success (UPASS)
UnLocal, Inc.
Virginia Coalition of Latino Organizations (VACOLAO)
We Belong Together

cc: R. Gil Kerlikowske, Commissioner, Customs and Border Protection
Sarah Saldaña, Director, Immigration Customs and Enforcement
Craig Fugate, Administrator, Federal Emergency Management Agency
Nicole Lurie, Assistant Secretary for Preparedness and Response, Department of Health
and Human Services
Megan Mack, Officer for Civil Rights and Civil Liberties, Office for Civil Rights and
Civil Liberties, Department of Homeland Security
Lucas Guttentag, Senior Counselor to the Director, Citizenship and Immigration
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Felicia Escobar, Special Assistant to the President for Immigration Policy, Domestic
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Julie Rodriguez, Special Assistant to the President and Senior Deputy Director of Public
Engagement, Office of Public Engagement, Executive Office of the President