

Congress of the United States
Washington, DC 20510

June 5, 2017

The Honorable John F. Kelly
Secretary
Department of Homeland Security
Washington, DC 20528

Dear Secretary Kelly:

We are writing to request that your Department exercise its prosecutorial discretion and re-evaluate the request for a stay of removal for Mr. Andres Magana Ortiz of Kailua-Kona, Hawaii. We believe the particular circumstances of Mr. Magana Ortiz' case merits the extraordinary grant of a stay. Mr. Magana Ortiz is currently in the process of adjusting to legal status on the basis of his wife's citizenship. In other words, he is trying to do the right thing. Mr. Magana Ortiz is an upstanding member of our community and does not belong in the category of dangerous individuals who should be prioritized for deportation. In fact, during his immigration proceedings, the government itself conceded that Mr. Magana Ortiz possesses good moral character.

We agree that persons that pose a threat to national security and public safety should be a priority for deportation proceedings. However, Mr. Magana Ortiz poses no such threat to national security or public safety and therefore should not be a priority for removal. Rather, it is in our national interest for Mr. Magana Ortiz to remain in the United States where he can continue to work, pay taxes, and raise his family.

The Department has the authority under 8 CFR 241.6 to issue an administrative stay of removal—essentially, to decide whether to keep families together or tear them apart—and in 2014 Mr. Magana Ortiz received a stay. At that time, presumably the Department found his arguments compelling and consistent with federal law, which has not changed. He filed subsequent stays, one of which was not acted upon by the Department, and another that was denied in March of this year. As a result of this denial, Mr. Magana Ortiz received a Final Order of Removal and has been ordered to report to ICE for deportation on Thursday, June 8, 2017.

The Department's most recent denial wastes the government's time and resources on proceedings for an individual who poses no threat to our nation, while a parallel proceeding that could resolve the issue remains open. In 2015, Mr. Magana Ortiz's wife filed an I-130 Petition for Alien Relative. According to the District Court's record, this petition was filed in September of 2015 but receipt had not been acknowledged by the Department until March 29, 2016. Given that this avenue is still open and unresolved and has taken what appears to be an extraordinarily long time, we fail to see the value in the Department's aggressive approach to Mr. Magana Ortiz's deportation.

In his concurring opinion to the denial of the motion, Judge Stephen Reinhardt noted that Mr. Magana Ortiz entered the United States from Mexico in 1989, at the age of fifteen, and has since built a house, started his own business, paid taxes, married a U.S. citizen, and had three U.S. citizen children. He wrote that Mr. Magana Ortiz is by all accounts “a pillar of his community and a devoted father and husband.” Judge Reinhardt further stated that deportation would deprive Mr. Magana Ortiz’ children of a parent and source of financial support, and possibly of a home and an opportunity for education, unless they follow him to Mexico, a country where they have never lived, and where they do not speak the language.

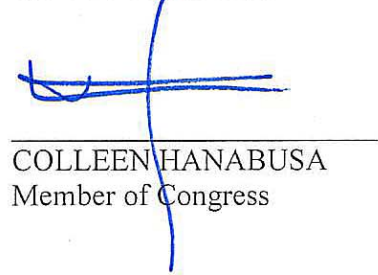
The Department has the power to keep this family together, or to break them apart. Given the urgent nature of Mr. Magana Ortiz’ situation, we request that you exercise prosecutorial discretion by granting a stay of relief. In addition, we ask that you expedite review of his wife’s I-130 petition.

Thank you for your prompt consideration of this request.

Sincerely,



MAZIE K. HIRONO
United States Senator



COLLEEN HANABUSA
Member of Congress



BRIAN SCHATZ
United States Senator



TULSI GABBARD
Member of Congress