

June 18, 2010

Hon. Eric H. Holder, Jr.  
Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Hon. Janet Napolitano  
Secretary of the U.S. Department of Homeland Security  
U.S. Department of Homeland Security  
Washington, DC 20528

Re: *Carachuri-Rosendo v. Holder*, No. 09-60, 560 U.S. -- (2010)

Dear Attorney General Holder and Secretary Napolitano:

We, the undersigned community groups and advocacy organizations, urge the Department of Justice and the Department of Homeland Security to provide a fair and clear process for all immigrants—including those who have already been deported—to reopen their removal cases in order to seek discretionary relief from removal under the Supreme Court’s recent decision in *Carachuri-Rosendo v. Holder*. In its unanimous decision, the Supreme Court rejected the Government’s “counterintuitive” and “misleading” interpretation of the “drug trafficking aggravated felony” relief bar provision and held that “second or subsequent simple possession offenses are not aggravated felonies under §1101(a)(43) when . . . the state conviction is not based on the fact of a prior conviction.” See *Carachuri-Rosendo*, Slip Op. at 2, 10, 17. Yet untold numbers of longtime lawful permanent residents and others with nontrafficking drug offenses have been denied hearings for cancellation of removal, asylum or other relief under the Government’s misinterpretation. American principles of justice—fairness, due process, and discretion—require that these immigrants now receive their day in court.

The necessity of a fair and clear process to seek such hearings is particularly critical for immigrants who have already been deported under the incorrect legal interpretation. It is our understanding that the Government has no set procedures or transparent mechanisms for bringing deportees back even when it becomes clear that they were deported under a misinterpretation of the law. Many individuals have been deported while their cases were pending or after facing months or years of detention due to their minor drug possession convictions. Many of these individuals fought their cases *pro se* with little access to their families, communities, and legal support. Every individual who did not receive a hearing under the Government’s misinterpretation of the law should now be provided with an opportunity to be heard under *Carachuri-Rosendo*, regardless of whether these individuals were able to remain in the United States or preserve all of their appeals under these circumstances.

We know that the Government has the authority to ensure these hearings and has taken similar measures in the past when the Supreme Court has corrected similar misinterpretations of the law. Nothing prevents the Government from creating and implementing a comprehensive set of procedures to ensure fair hearings for all immigrants who stand to benefit from *Carachuri-Rosendo*. Indeed, providing such access to relief would be in the best interests of our country as a whole. The exercise of discretion is a cornerstone of our justice system, and many of the individuals and families directly affected by this decision are among those whose cases are most compelling and are therefore most likely to benefit from the opportunity to pursue discretionary relief. They seek only to demonstrate that their positive equities—their family ties, lengthy residence, history of employment, community and military service, and rehabilitation—outweigh the nature of their past drug offenses, and/or that they possess a well-founded fear of persecution in their country of origin. Justice is better served when an immigration judge has the authority to consider these factors and exercise discretion to keep our families and communities together.

We hope that you will act swiftly to address this important issue.

Sincerely,

American Immigration Council  
Washington, DC

Asian American Institute  
Chicago, IL

Asian American Justice Center  
Washington, DC

Asian Law Caucus  
San Francisco, CA

Asian Pacific American Legal Center  
Los Angeles, CA

Breakthrough  
New York, NY

Casa Esperanza  
Plainfield, NJ

Center for Constitutional Rights  
New York, NY

Coalition for Humane Immigrant Rights of Los Angeles  
Los Angeles, CA

Immigrant Defense Project  
New York, NY

IRATE & First Friends  
Elizabeth, NJ

Families for Freedom  
New York, NY

Florence Immigrant and Refugee Rights Project  
Florence, AZ

Florida Immigrant Advocacy Center  
Miami, FL

Georgia Latino Alliance for Human Rights  
Atlanta, GA

Maria Baldini-Potermin & Associates, PC  
Chicago, IL

National Association of Criminal Defense Lawyers  
Washington, DC

National Immigrant Justice Center  
Chicago, IL

New Sanctuary Coalition  
New York, NY

Northern Manhattan Coalition for Immigrant Rights  
New York, NY

Northwest Immigrant Rights Project  
Seattle, WA

Immigrant Rights Clinic,  
New York University School of Law  
New York, NY

Post Deportation Human Rights Project,  
Center for Human Rights and International Justice,  
Boston College  
Boston, MA

Refugio del Rio Grande  
San Benito, TX

South Asian Americans Leading Together  
Takoma Park, MD

University of Houston Immigration Clinic  
Houston, TX

cc: Ivan Fong, General Counsel, U.S. Department of Homeland Security  
Thomas Hussey, Director, Office of Immigration Litigation, U.S. Department of Justice  
Esther Olavarria, Deputy Assistant Secretary for Policy, U.S. Department of Homeland Security  
William H. Orrick, Deputy Assistant Attorney General, Civil Division, U.S. Department of Justice  
Juan Osuna, Associate Deputy Attorney General for Immigration Policy, Office of the Deputy Attorney General, U.S. Department of Justice  
Thomas Perez, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice  
Margo Schlanger, Officer for Civil Rights and Civil Liberties, U.S. Department of Homeland Security  
Tony West, Assistant Attorney General, Civil Division, U.S. Department of Justice