

Congress of the United States

Washington, DC 20515

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By ESEC at 9:58 am, Sep 11, 2023

September 10, 2023

The Honorable Joseph R. Biden
President of the United States
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

The Honorable Alejandro Mayorkas
Secretary of Homeland Security
U.S. Department of Homeland Security
3801 Nebraska Avenue NW
Washington, D.C. 20016

Dear President Biden and Secretary Mayorkas:

We write to urge the administration to use all the tools available to provide stability to undocumented individuals and recently arrived asylum seekers, seeking to work lawfully, support their families, and contribute to the economy. While this letter does not focus on Temporary Protected Status (TPS), many of these individuals come from countries that warrant a designation or redesignation of TPS, and we support those on-going efforts. Detailed below are a variety of additional authorities and actions the administration can take to assist certain undocumented individuals who are stuck in limbo and asylum seekers in obtaining work authorization while they wait for their immigration court case to be heard.

Asylum Regulation and Parole:

The administration should ease the undue delays in granting work authorizations to asylum seekers. Due to significant immigration court backlogs, many asylum seekers cannot apply for asylum for a substantial period of time. As a result, through no fault of their own, they remain ineligible to work, making them unable to provide for their families and contribute to the economy. Many asylum seekers want to work and give back to their new communities. Likewise, many states, cities, and communities have enthusiastically welcomed these asylum seekers. The administration could assist asylum seekers and their communities by increasing the use of parole and decreasing the regulatory 150-day wait period for asylum seekers to *apply* for work authorization.

Asylum seekers should be permitted to apply to obtain work authorization from the moment that they file their asylum claim. Section 208(d)(2) of the Immigration and Nationality Act (INA) requires that asylum applicants may not be granted work authorization until their asylum application has been pending for a minimum of 180 days.¹ Regulations go further – under 8 C.F.R. § 208.7 asylum seekers can only apply for work authorization 150 days after submitting their asylum applications and must wait at least an additional 30 days to actually receive their employment authorization documents (EADs).² This means that, for roughly six months after submitting the application, asylum seekers cannot provide for themselves or their

¹ INA § 208(d)(2).

² 8 C.F.R. § 208.7

families. Since asylum seekers usually are unable to immediately file for asylum upon entry, the six-month waiting period is overly burdensome.

As a result, asylum seekers are forced to rely on underfunded community groups to provide them with everything from housing to food to health services. This is particularly troubling given the tight labor market we are experiencing across the country. Millions of new arrivals deserve dignified labor and a chance at rebuilding their lives, and allowing them to swiftly enter the formal workforce will bolster economic growth and support struggling industries. Allowing earlier access to work permits would decrease the pressure on states, cities, localities, and other community groups and provide asylum seekers with the opportunity to live more independent lives, find legal representation, and increase economic growth.³

At the same time the administration should consider, on a case-by-case basis, humanitarian parole for migrants who entered the United States during the use of Title 42, which includes individuals who entered between March 2020 to May 2023. The parole authority under the INA allows individuals to enter the United States for a period of time for urgent humanitarian reasons.⁴ It has been used extensively by both Democratic and Republican administrations since the Eisenhower administration.

The parole process would allow the Department of Homeland Security (DHS) to thoroughly vet each asylum seeker while allowing the individual to apply for work authorization. By granting parole to asylum seekers, we can prioritize their safety and well-being while ensuring they comply with any requirements set forth by DHS.

Provisional Waiver

We also respectfully urge the administration to take steps to reduce the significant backlog in the “provisional waiver” program and provide appropriate relief to those stuck in the queue. The provisional waiver process allows individuals who are statutorily eligible for an immigrant visa⁵ but for their unlawful presence in the country to apply for a waiver of inadmissibility in the United States before they depart for their immigrant visa interview.

Until recently, the provisional waiver has been a very successful and pro-family-unity policy designed to streamline the family-based immigrant visa process for eligible individuals who are part of American families. However, backlogs for the provisional waivers have grown at an alarming rate in recent years. As of April 30, 2023, the wait times for these cases in fiscal year (FY) 2023 have reached an astounding 43.1 months, or approximately 3.6 years.⁶ This is a significant increase compared to the median processing time of 4.5 months just over four years ago in FY 2018.⁷

³ Philippe Legrain, *Refugees are not a burden but an opportunity*, ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (2016), <https://www.oecd.org/employment/refugees-are-not-a-burden-but-an-opportunity.htm>

⁴ INA § 212(d)(5).

⁵ Immigrant visas include immediate relatives, family-sponsored, or employment-based immigrants as well as Diversity Visa selectees.

⁶ *Historical National Median processing Time (in Months) for All USCIS Offices for Select Forms by Fiscal Year*, USCIS (Jun. 2023), <https://egov.uscis.gov/processing-times/historic-pt>.

⁷ *Id.*

The impacts of this backlog have severe consequences for many long-time residents and their families, many of whom are U.S. citizens. Lengthy delays impose uncertainty and unnecessary hardships on applicants and their families, leaving them in a state of limbo for an extended period, and without the ability to fully protect and support their families due to, in part, the lack of employment authorization. We are also concerned that the delays may already be undermining one of the key goals of this policy: to encourage participation in the family-based petition process.

Considering the circumstances, we strongly urge you to take immediate steps to address the backlog that go beyond future promises of increased operational capacity. Applicants and their families need meaningful immigration relief now. In the interim, the administration should also consider, on a case-by-case basis, whether paroling-in-place individuals in the considerable provisional waiver backlog would be warranted for urgent humanitarian reasons or to advance a significant public benefit.⁸

Streamlining Existing Cancellation of Removal Procedures

Lastly, we encourage the administration to establish a process to make non-lawful permanent resident cancellation of removal (cancellation of removal) more accessible to those who are eligible. Such a process would help to streamline cancellation of removal cases and increase access to lawful permanent resident status for immigrants who are vital contributors to their American families and our communities. Under U.S. laws, noncitizens who have resided in the U.S. for at least a decade, have a qualifying family relationship like an American spouse or child, and meet other stringent requirements may be eligible for cancellation of removal and adjustment of status.

Unfortunately, because cancellation of removal applications generally may be filed only once an individual is in removal proceedings, many individuals are not aware of and are unable to apply for this important form of relief. Paradoxically, an individual who is more likely to be granted cancellation of removal and adjustment of status is less likely to access this relief because they will not be a priority for removal.

Through rulemaking, the administration can address this issue by instituting a coordinated process that allows individuals to affirmatively request a review of their cases to make preliminary determinations about their eligibility for this relief. Creating such a process would unlock a path to lawful permanent resident status for individuals who meet the rigorous eligibility requirements and improve efficiencies in the processing of cancellation of removal cases in immigration court—the second-most common type of case.⁹

Unfortunately, positive legislative reforms in immigration are unlikely this congress due to extreme MAGA Republican opposition. However, the administration can make significant and meaningful reforms through many of the authorities already given to it by congress. We strongly urge the administration to use these authorities to the fullest extent possible.

⁸ Immigration and Nationality Act (INA) § 212(d)(5)(A).

⁹ *Beyond Asylum: Deportation Relief During the Trump Administration*, TRAC IMMIGRATION (October 29, 2020), <https://trac.syr.edu/immigration/reports/631/>.

Thank you for your consideration of this important matter.

Sincerely,



Jerrold Nadler
Member of Congress
Ranking Member, Committee
on the Judiciary



Pramila Jayapal
Ranking Member
Immigration Subcommittee



Adam Smith
Member of Congress



Tony Cárdenas
Member of Congress



Eleanor Holmes Norton
Member of Congress



J. Luis Correa
Member of Congress



Katie Porter
Member of Congress



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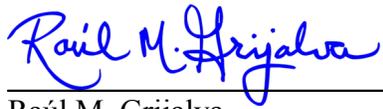
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Member of Congress



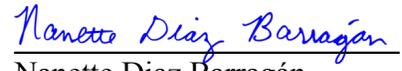
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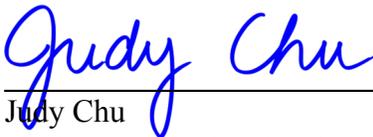
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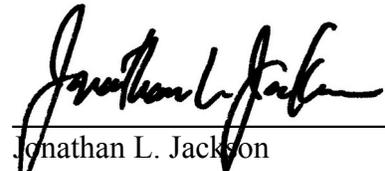
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Chair, Congressional Asian
Pacific American Caucus
(CAPAC)



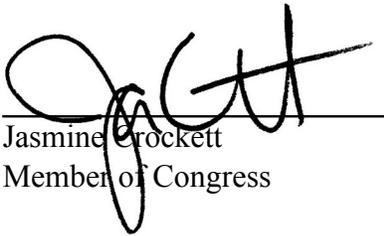
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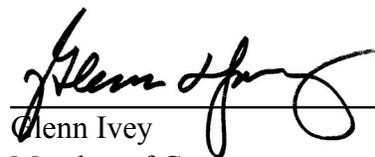
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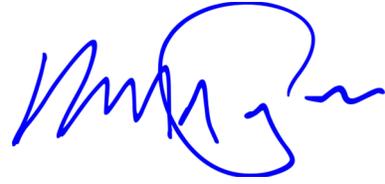
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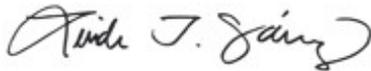
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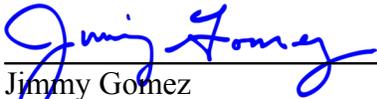
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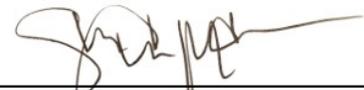
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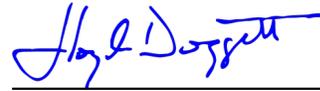
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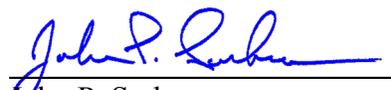

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Member of Congress



U.S. Citizenship
and Immigration
Services

March 6, 2024

The Honorable Jerrold Nadler
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Ranking Member Nadler:

Thank you for your September 10, 2023 letter to the U.S. Department of Homeland Security (DHS). I am responding on behalf of the Department.

We appreciate your feedback and recognize the challenges you highlighted. As you noted in your letter, section 208(d)(2) of the Immigration and Nationality Act (INA) states that employment authorization shall not be granted to an asylum applicant prior to 180 days after the date their asylum application is filed. You suggested DHS amend 8 C.F.R. § 208.7 to reduce the 150-day waiting period for an asylum seeker to file a Form I-765, Application for Employment Authorization. We appreciate this suggestion and will continue to explore and develop ways to reduce barriers to access for vulnerable noncitizens.

We would also like to highlight that U.S. Citizenship and Immigration Services (USCIS) recently made changes to our processing of Form I-765, Application for Employment Authorization, including dedicating more resources and offering online filing for asylum applicants and parolees, which allows for more rapid processing of applications. As a result of these and other efforts, we are processing 87.7% of initial Employment Authorization Document (EAD) requests based on a pending asylum application within 30 days. We continue to explore additional solutions to decrease processing times for this vulnerable population and communications to ensure noncitizens who are eligible to apply for an EAD know they are eligible and how to apply. Looking ahead, we also increased the validity period for pending asylum applicant EADs from two years to five years this past September.

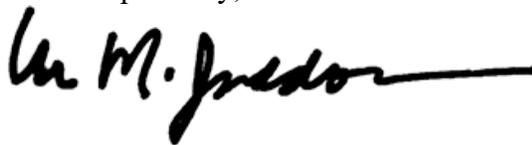
We also note your suggestion to expand the use of parole to expedite access to employment authorization for certain noncitizens who entered the United States between March 2020 and May 2023. DHS will continue to exercise its parole authority when appropriate, on a case-by-case basis. This includes consideration of parole for individuals who use the CBP One mobile application to schedule an appointment at a port of entry as well as for those who seek consideration under the parole processes for Cubans, Haitians, Nicaraguans, and Venezuelans

(CHNV). USCIS has reduced processing times to 30 days for EAD applications filed by parolees who scheduled an appointment through CBP One or who used the processes for CHNV¹. USCIS continues to explore additional methods to make the employment authorization application and adjudication process as expeditious as possible.

Regarding provisional unlawful presence waivers, USCIS continues to address processing times and reduce backlogs for Form I-601A, Application for Provisional Unlawful Presence Waiver. In March 2023, USCIS announced the opening of the Humanitarian, Adjustment, Removing Conditions and Travel Documents (HART) Service Center.² The HART Service Center was created to prioritize and enhance the processing of certain humanitarian applications and petitions, including Forms I-601A, in part by centralizing the adjudication of these form types. By doing so, the HART Service Center promotes cohesive and consistent adjudications, which enables its dedicated workforce to improve the quality and efficiency of humanitarian case processing. As of February 26, 2024, HART is 81% staffed, with 389 employees on-boarded, and USCIS is expeditiously working to hire, onboard, and train the remaining staff.

Thank you again for your letter and interest in these important issues. The cosigners of your letter will receive separate, identical responses. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (240) 721-3801.

Respectfully,

A handwritten signature in black ink, appearing to read "Ur M. Jaddou", with a long horizontal flourish extending to the right.

Ur M. Jaddou
Director

¹ Department of Homeland Security, Fact Sheet: The Biden-Harris Administration Takes New Actions to Increase Border Enforcement and Accelerate Processing for Work Authorizations, While Continuing to Call on Congress to Act, available at: <https://www.dhs.gov/news/2023/09/20/fact-sheet-biden-harris-administration-takes-new-actions-increase-border>.

² USCIS, USCIS Opens the Humanitarian, Adjustment, Removing Conditions and Travel Documents (HART) Service Center, available at <https://www.uscis.gov/sites/default/files/document/notices/USCISOpensTheHumanitarianAdjustmentRemovingConditionsandTravelDocumentsHARTServiceCenter.pdf>.