

Congress of the United States

Washington, DC 20515

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



James P. McGovern
Member of Congress



Jamaal Bowman, Ed.D.
Member of Congress



Jan Schakowsky
Member of Congress



Deborah K. Ross
Member of Congress



Zoe Lofgren
Member of Congress



Ilhan Omar
Member of Congress



Nikema Williams
Member of Congress



Raja Krishnamoorthi
Member of Congress



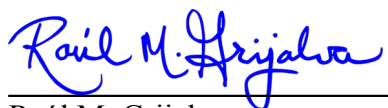
Ted W. Lieu
Member of Congress



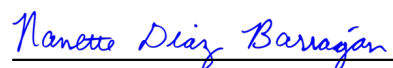
Adriano Espaillat
Member of Congress



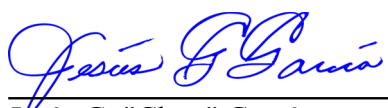
Gwen S. Moore
Member of Congress



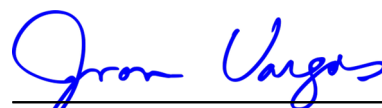
Raúl M. Grijalva
Member of Congress



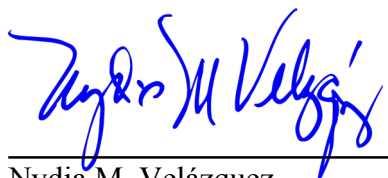
Nanette Diaz Barragán
Member of Congress



Jesús G. "Chuy" García
Member of Congress



Juan Vargas
Member of Congress



Nydia M. Velázquez
Member of Congress



Darren Soto
Member of Congress



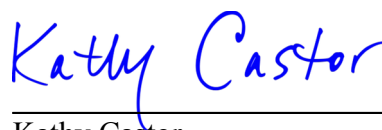
Frank Pallone, Jr.
Member of Congress



Frederica S. Wilson
Member of Congress



Sylvia R. Garcia
Member of Congress



Kathy Castor
Member of Congress



Henry C. "Hank" Johnson, Jr.
Member of Congress



Barbara Lee
Member of Congress



Paul Tonko
Member of Congress



Sydney Kamlager-Dove
Member of Congress



Gregory W. Meeks
Member of Congress



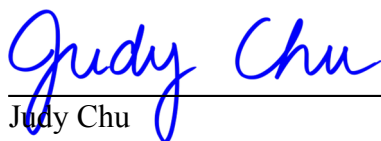
Sheila Jackson Lee
Member of Congress



Robert Garcia
Member of Congress



Grace Meng
Member of Congress



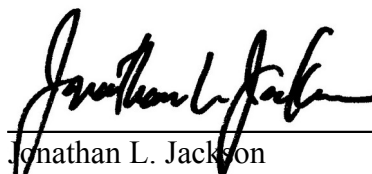
Judy Chu
Chair, Congressional Asian
Pacific American Caucus
(CAPAC)



Earl Blumenauer
Member of Congress



Rashida Tlaib
Member of Congress



Jonathan L. Jackson
Member of Congress



Jasmine Crockett
Member of Congress



Jim Tokuda
Member of Congress



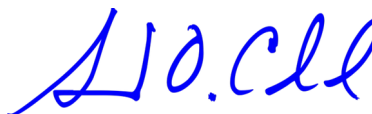
Joaquin Castro
Member of Congress



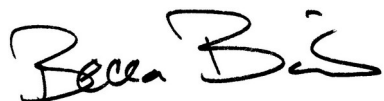
Eric Swalwell
Member of Congress



Yvette D. Clarke
Member of Congress



Salud Carbajal
Member of Congress



Becca Balint
Member of Congress



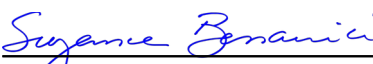
André Carson
Member of Congress



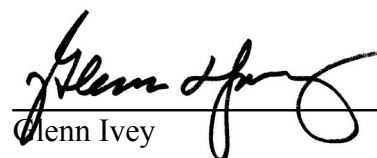
David J. Trone
Member of Congress



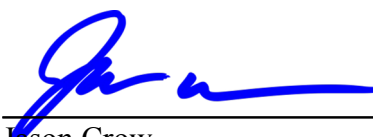
Mary Gay Scanlon
Member of Congress



Suzanne Bonamici
Member of Congress



Glenn Ivey
Member of Congress



Jason Crow
Member of Congress



Veronica Escobar
Member of Congress



Jimmy Panetta
Member of Congress



Mark DeSaulnier
Member of Congress



Dan Goldman
Member of Congress



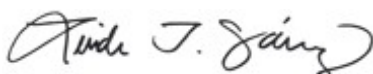
Emanuel Cleaver, II
Member of Congress



Cori Bush
Member of Congress



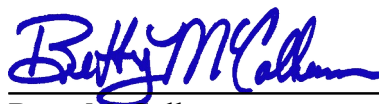
Mark Pocan
Member of Congress



Linda T. Sánchez
Member of Congress



Dwight Evans
Member of Congress



Betty McCollum
Member of Congress



Robert J. Menendez
Member of Congress



Chellie Pingree
Member of Congress




Maxwell Alejandro Frost
Member of Congress



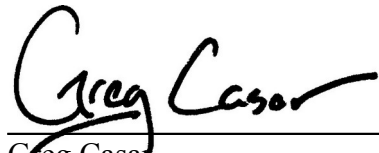
Joseph D. Morelle
Member of Congress



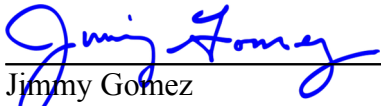
Lauren Underwood
Member of Congress



MARK TAKANO
Member of Congress



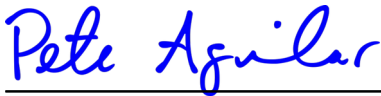
Greg Casar
Member of Congress



Jimmy Gomez
Member of Congress



Rick Larsen
Member of Congress



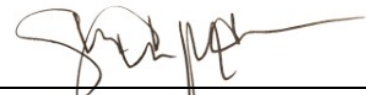
Pete Aguilar
Member of Congress



Lois Frankel
Member of Congress



Alexandria Ocasio-Cortez
Member of Congress



Sheila Cherfilus-McCormick
Member of Congress



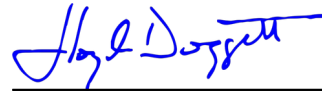
Ritchie Torres
Member of Congress



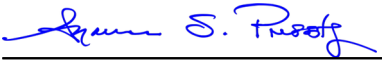
Jamie Raskin
Member of Congress



Adam B. Schiff
Member of Congress



Lloyd Doggett
Member of Congress



Ayanna Pressley
Member of Congress




Bonnie Watson Coleman
Member of Congress



Brian Higgins
Member of Congress



Troy Carter
Member of Congress



Danny K. Davis
Member of Congress



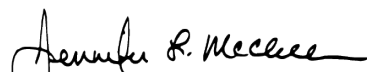
Grace F. Napolitano
Member of Congress



Marc A. Veasey
Member of Congress



Kevin Mullin
Member of Congress



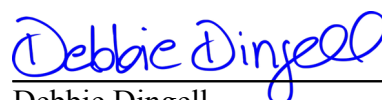
Jennifer L. McClellan
Member of Congress




Sara Jacobs
Member of Congress



Delia C. Ramirez
Member of Congress



Debbie Dingell
Member of Congress



Anna G. Eshoo
Member of Congress




Sean Casten
Member of Congress



Colin Z. Allred
Member of Congress



Teresa Leger Fernández
Member of Congress



John P. Sarbanes
Member of Congress



Summer Lee
Member of Congress



Madeleine Dean
Member of Congress



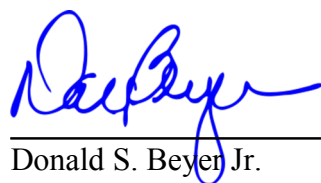
Diana DeGette
Member of Congress



Mike Quigley
Member of Congress



Ruben Gallego
Member of Congress



Donald S. Beyer Jr.
Member of Congress