

Congress of the United States

Washington, DC 20510

July 27, 2023

RECEIVED

By ESEC at 12:47 pm, Jul 31, 2023

The Honorable Alejandro Mayorkas
Secretary
U.S. Department of Homeland Security
301 7th Street SW
Washington, D.C. 20528

The Honorable Ur Jaddou
Director
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security
Washington, D.C. 20528

Dear Secretary Mayorkas and Director Jaddou:

We write to reaffirm our concerns regarding the affirmative asylum application backlog at U.S. Citizenship and Immigration Services (USCIS), as previously expressed in the letter to you dated September 9, 2021. Since that time, the number of pending asylum applications has continued to climb and as of November 2022, USCIS reported it had 607,651 asylum applications pending, with over 202,000 affirmative asylum applications from FY 2022 alone.¹ Meanwhile, external trackers at Syracuse University reported an even higher number—778,084 asylum seekers were waiting for an assessment by USCIS asylum officers at the end of 2022.² USCIS also reported that approximately 27 percent of pending cases were filed prior to October 1, 2017, meaning that about 180,000 cases were filed more than 5½ years ago.³

As you are aware, since January 2018, USCIS has been processing asylum applications under a “last in, first out” (LIFO) approach. Except for a three-year period when USCIS briefly switched to a “first in, first out” policy, LIFO has been the approach that USCIS has used to process affirmative asylum applications for more than 25 years. As a result of LIFO, 180,000 applications have been pending for more than five years. This has caused psychological distress, uncertainty and lengthy periods of family separation for people who have no hope of being scheduled for an asylum interview.

While we understand that USCIS has taken action to address some of the oldest cases in the backlog,⁴ many meritorious cases remain unresolved. In 2021, when we first wrote to you, Human Rights First estimated that their clients stuck in the backlog had been waiting—on average—four years for an interview. Now, that time has stretched to six years.⁵ This reality leaves trauma survivors in a state of limbo, often unable to be reunited with their families while

¹ *Asylum Quarterly Engagement and Listening Session Script & Talking Points*, U.S. CITIZENSHIP & IMMIGRATION SERV., 5 (Dec. 13, 2022), https://www.uscis.gov/sites/default/files/document/foia/Asylum_Quarterly_Engagement-FY23_Quarter_1_Script_and_Talking_Points.pdf.

² *A Sober Assessment of the Growing U.S. Asylum Backlog*, TRAC (Dec. 22, 2022), <https://trac.syr.edu/reports/705/>.

³ *Affirmative Asylum Backlog Grows at Unprecedented Rate*, THE ASYLUMIST (Apr. 5, 2023), <https://www.asylumist.com/2023/04/05/affirmative-asylum-backlog-grows-at-unprecedented-rate/>.

⁴ U.S. CITIZENSHIP & IMMIGRATION SERV., at 6-7.

⁵ Cora Wright, *Asylum Office Delays Continue to Cause Harm*, HUMAN RIGHTS FIRST (Oct. 3, 2022), <https://humanrightsfirst.org/library/barriers-and-backlog-asylum-office-delays-continue-to-cause-harm/>.

they wait for processing.⁶ Such uncertainty exacerbates the trauma applicants have already faced and makes a difficult situation even harder on families. One applicant, who had been waiting nearly five years for an interview, said she twice considered suicide and was desperate to visit her sick mother overseas before she passed away.⁷

Several of our offices have also heard directly from asylum seekers, including LGBTQI+ asylum seekers and torture survivors, who have been waiting for more than seven years to be interviewed by USCIS. They shared how this long wait has retraumatized them and exacerbated mental health challenges they already faced due to the persecution they experienced in their home countries.

We recognize and commend USCIS's efforts to address the dire situation that the backlog creates for asylum seekers. However, we are concerned that these efforts have not been enough.

We therefore request that for each of the 10 asylum offices, by August 18, 2023 you:

1. Commit to designating asylum officers to work "back to front" to address the backlog, giving those asylum seekers moved to the back of the line by the 2018 change to LIFO the opportunity to receive more timely decisions on their cases.
2. Commit to a five-year "cutoff period," after which time a pending application is moved to the front of the line, ensuring that applicants will not wait decades for an interview.

We believe that these commitments will give asylum seekers, especially those currently disadvantaged by LIFO, a much-needed sense of certainty for the future.

In order to better understand the current status of the asylum "queue," we also request that you provide us with answers to the following questions:

1. For each of the 10 asylum offices, how many cases pending for more than five years have not been adjudicated?
2. Which of the 10 asylum offices have asylum officers specifically designated to address the backlog of cases filed over five years ago? For asylum offices that have designated officers, how many and what percent of these officers are dedicated to cases pending more than five years? Is that percent constant or does it fluctuate? If it fluctuates, is there a maximum amount of time officers may leave their backlog post?
3. How do asylum offices without any officers dedicated to adjudicating cases pending more than five years handle these cases?
4. Does USCIS take into account the difficulties caused by lengthy adjudication times in making decisions on asylum cases in the backlog?
5. Once an asylum officer picks up a case that has been pending for more than five years, how long does it take on average for the case to be completed and for the applicant to be notified?
6. How many asylum interviews were conducted in FY 2022 in each of the asylum offices with officers dedicated to adjudicating cases filed over five years ago? How many of these

⁶ Designing a Trauma Informed Asylum System in the United States, Center for Victims of Torture (2021), https://www.cvt.org/sites/default/files/attachments/u101/downloads/2.4.designing_a_trauma_informed_asylum_repo.rt.feb42021.pdf.

⁷ Wright, *supra* note 5.

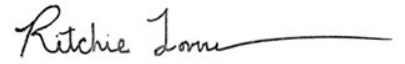
cases were completed, and the applicant notified? What percentage of those completed cases were filed over five years ago?

7. How many asylum interviews were conducted in FY 2022 in each of the asylum offices where USCIS did not designate asylum officers to adjudicate cases pending for more than five years? How many of these cases were completed, and the applicant notified? What percentage of those completed cases were filed over five years ago?

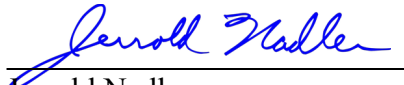
Sincerely,



Mark Pocan
Member of Congress



Ritchie Torres
Member of Congress



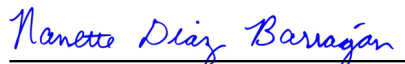
Jerrold Nadler
Member of Congress
Ranking Member, Committee
on the Judiciary



Pramila Jayapal
Ranking Member
Subcommittee on Immigration
Integrity, Security, and
Enforcement



Eleanor Holmes Norton
Member of Congress



Nanette Diaz Barragán
Member of Congress



James P. McGovern
Member of Congress



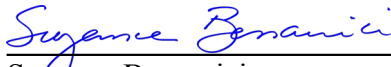
Greg Casar
Member of Congress



Adriano Espaillat
Member of Congress



Grace Meng
Member of Congress



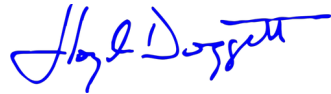
Suzanne Bonamici
Member of Congress



Jamaal Bowman, Ed.D.
Member of Congress



Barbara Lee
Member of Congress



Lloyd Doggett
Member of Congress



Chellie Pingree
Member of Congress



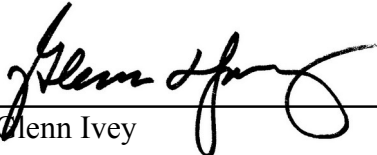
Delia C. Ramirez
Member of Congress





Tony Cárdenas
Member of Congress

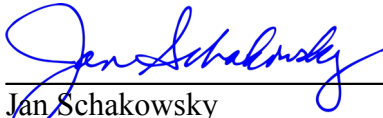



Becca Balint
Member of Congress



Glenn Ivey
Member of Congress

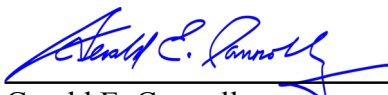

Dan Goldman
Member of Congress


Yvette D. Clarke
Member of Congress



Jan Schakowsky
Member of Congress



Mary Gay Scanlon
Member of Congress


Frederica S. Wilson
Member of Congress


Gerald E. Connolly
Member of Congress


Katie Porter
Member of Congress


Gwen S. Moore
Member of Congress


Madeleine Dean
Member of Congress



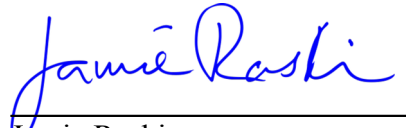
Paul D. Tonko
Member of Congress



Sydney Kamlager-Dove
Member of Congress



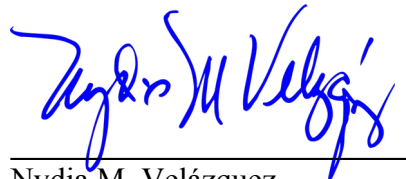
Judy Chu
Chair, Congressional Asian
Pacific American Caucus
(CAPAC)



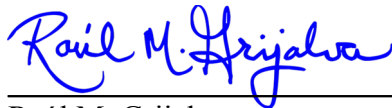
Jamie Raskin
Member of Congress



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



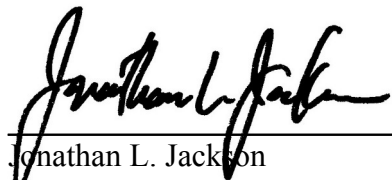
Nydia M. Velázquez
Member of Congress



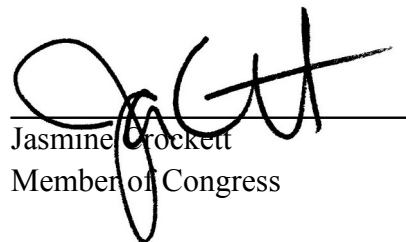
Raúl M. Grijalva
Member of Congress



Alma S. Adams, Ph.D.
Member of Congress



Jonathan L. Jackson
Member of Congress



Jasmine Crockett
Member of Congress



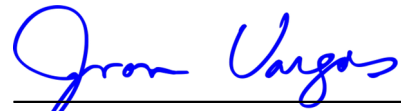
Lori Trahan
Member of Congress



Troy Carter
Member of Congress



André Carson
Member of Congress



Juan Vargas
Member of Congress



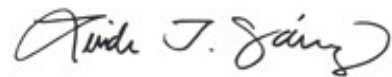
Rashida Tlaib
Member of Congress



Sheila Jackson Lee
Member of Congress



Nikema Williams
Member of Congress



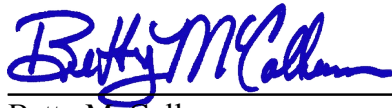
Linda T. Sánchez
Member of Congress



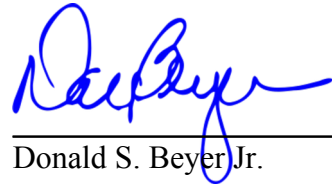
Frank Pallone, Jr.
Member of Congress



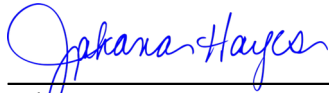
Andrea Salinas
Member of Congress



Betty McCollum
Member of Congress



Donald S. Beyer Jr.
Member of Congress



Jahana Hayes
Member of Congress



Dwight Evans
Member of Congress



Darren Soto
Member of Congress



Mark Takano
Member of Congress



Danny K. Davis
Member of Congress



Veronica Escobar
Member of Congress



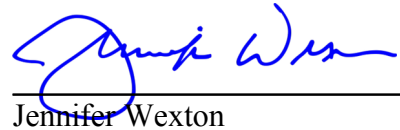
J. Luis Correa
Member of Congress



Ted W. Lieu
Member of Congress

A handwritten signature in blue ink that reads "Joyce Beatty". The signature is written in a cursive style with a large, looping initial "J".

Joyce Beatty
Member of Congress

A handwritten signature in blue ink that reads "Jennifer Wexton". The signature is written in a cursive style with a large, looping initial "J".

Jennifer Wexton
Member of Congress

A handwritten signature in blue ink that reads "Colin Z. Allred". The signature is written in a cursive style with a large, looping initial "C".

Colin Z. Allred
Member of Congress



U.S. Citizenship
and Immigration
Services

June 28, 2024

The Honorable Mark Pocan
U.S. House of Representatives
Washington, DC 20515

Dear Representative Pocan:

Thank you for your July 27, 2023 letter to the Department of Homeland Security (DHS) regarding pending affirmative asylum applications with U.S. Citizenship and Immigration Services (USCIS). I am responding on behalf of the Department.

The affirmative asylum backlog is the result of multiple issues: a prolonged, significant increase in affirmative asylum application filings;¹ growing numbers of credible fear and reasonable fear screenings; and insufficient Congressional appropriations to address the backlog.

During Fiscal Year (FY) 2022, USCIS received 240,800 affirmative asylum applications, a significant increase in new applications over past years. During FY 2023, USCIS received more than 454,300 affirmative asylum applications. USCIS is now experiencing a substantial surge in applications filed by nationals of Cuba and Venezuela. In FY 2023, applications filed by Cuban and Venezuelan nationals together comprised 39 percent (or approximately 175,900) of total receipts, which is a two-fold increase in percentage from FY 2021. In addition, in FY 2022 and FY 2023, USCIS received approximately 19,500 applications filed by Afghan nationals paroled into the United States under Operation Allies Welcome (OAW).

While the number of applications for asylum has been increasing, the volume of credible fear and reasonable fear screenings regularly reached levels beyond annual agency projections. In FY 2023, USCIS received 149,700 credible fear and 10,400 reasonable fear screening referrals. By contrast, USCIS received 30,800 credible fear referrals in FY 2020, 58,947 credible fear referrals in FY 2021, and 68,300 credible fear referrals in FY 2022. USCIS is not resourced to adequately manage this number of referrals.

As you may be aware, the asylum program does not generate fees. On Jan. 3, 2024, USCIS published a final rule² that, for the first time since 2016, adjusts certain immigration and

¹ See Department of Homeland Security, 2022 DHS Congressional Appropriations Reports, *FY22 Report to Congress Asylum Application Processing*, July 17, 2023, available at https://www.dhs.gov/sites/default/files/2023-08/23_0717_uscis_asylum_application_processing.pdf

² See <https://www.federalregister.gov/documents/2024/01/31/2024-01427/us-citizenship-and-immigration-services-fee-schedule-and-changes-to-certain-other-immigration>

naturalization benefit request fees. With this final rule, which took effect April 1, 2024, USCIS can recover its operating costs more fully and support timely processing of new applications. Additionally, the final rule includes a new Asylum Program Fee of \$600 that employers pay if they file certain petitions for workers, including Form I-129, Petition for a Nonimmigrant Worker; Form I-129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker; or Form I-140, Immigrant Petition for Alien Workers. The fee covers some of the costs associated with asylum processing which does not require a filing fee. However, even with the new Asylum Program Fee, the number of affirmative asylum cases and referrals are continuing to grow at a significant pace. To that end, the Administration has requested supplemental funding through the National Security Supplemental Request to hire 1,611 additional asylum officers, plus support staff, to address our growing workload.³

You requested that USCIS consider designating asylum officers to work “back to front” to address the backlog and establishing a five-year cutoff period, after which time a case would be prioritized for interview. USCIS’ current scheduling practice aims to maximize scheduling of cases at each office to the extent feasible, taking into account local resource constraints. Under the “Last In, First Out” (LIFO) policy, the Asylum Division generally schedules recently filed cases for interview ahead of older cases. Within LIFO, asylum applications filed by certain Afghan parolees under OAW as described in section 2502(a) of Public Law 117-43 are prioritized for interview within 45 days of filing, and the final adjudication of their applications is to be completed within 150 days of filing, barring exceptional circumstances. Non-OAW asylum applications that are not scheduled for interview within 21 days of filing are placed into the backlog and are scheduled for interview as asylum office resources permit.

In addition, USCIS must prioritize credible fear and reasonable fear interviews. USCIS asylum officers conduct credible fear screenings of noncitizens placed in expedited removal proceedings who indicate an intention to apply for asylum, express a fear of persecution or torture, or a fear of returning to their country of origin or another designated country of removal. Such noncitizens are entitled by statute to a credible fear interview with a USCIS asylum officer to determine if they have a credible fear of persecution or torture if returned to their home country.⁴ USCIS asylum officers also conduct reasonable fear screenings for noncitizens who are subject to a reinstated order of removal or a final administrative removal order based on an aggravated felony conviction and express a fear of return to the designated country of removal. USCIS must prioritize the credible fear workstream because noncitizens awaiting credible fear determination are subject to mandatory detention, with limited exceptions.⁵ USCIS also must prioritize reasonable fear screenings because DHS regulations require USCIS to complete

³ DHS Fact Sheet: Biden-Harris Administration Supplemental Funding Request, available at: <https://www.dhs.gov/news/2023/10/20/fact-sheet-biden-harris-administration-supplemental-funding-request>.

⁴ Under the Asylum Processing Interim Final Rule, as of May 31, 2022, USCIS may now retain the asylum applications of noncitizens found to have a credible fear for an Asylum Merits Interview, rather than placing the noncitizens into original INA section 240 removal proceedings with an immigration judge. A specialized corps of asylum officers was established and hired in order to conduct Asylum Merits Interviews under the rule. See DHS and DOJ, Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers, 87 Fed. Reg. 18078 (March 29, 2022).

⁵ See 8 U.S.C. § 1225(b)(1)(B)(iii)(IV). See also 8 C.F.R. 235.3(b)(2)(iii).

reasonable fear screenings within 10 days of the noncitizen's referral to an asylum officer for screening, absent exceptional circumstances.⁶

In periods of peak screening volumes, USCIS assigns a substantial portion of its asylum officers to credible fear and reasonable fear screenings, which in turn decreases the number of asylum officers available for affirmative asylum interviews and adjudications. This shift in resources extends the amount of time applicants must wait for their asylum interview and increases the affirmative asylum backlog.

USCIS understands the impact interview and adjudication delays have on asylum applicants and has taken steps to address the backlog by hiring and training additional staff, pursuing new facilities and renovating existing facilities, and examining ways to make the asylum adjudications process more efficient.⁷ USCIS will also continue its practice of considering on a case-by-case basis urgent requests to expedite interview scheduling for emergency or urgent humanitarian reasons.⁸ Furthermore, despite USCIS' need to divert resources to other workloads, once an affirmative asylum applicant is interviewed, the Asylum Division aims to complete their cases within 20 days.

The \$275 million in appropriated funding provided in FY 2022 enabled USCIS to support 154 additional positions across all asylum offices to exclusively address the affirmative asylum backlog. With these positions, asylum offices began to devote a consistent level of staffing to the completion of the longest-pending affirmative asylum applications. All asylum offices were authorized asylum officer positions funded by appropriations to focus on backlog reduction, ranging from 1 officer to 26 officers per office and constituting 1 to 55 percent of all asylum officers. Initially, this backlog reduction effort focused on the completion of applications received on or before January 31, 2018, beginning with the oldest applications and working forward or "back to front," as requested by Congress. In FY 2022, USCIS completed 14,495 of the oldest pending applications. In FY 2023, USCIS completed approximately 9,100 of the oldest pending applications.

Unfortunately, although the President's FY 2023 budget requested \$765 million to reduce USCIS application and petition backlogs, support the increased refugee admissions ceiling, and fund asylum processing, the Consolidated Appropriations Act of 2023 did not include continued funding for appropriated positions for asylum processing or addressing USCIS backlogs. Therefore, USCIS no longer has asylum officers in appropriated positions devoted to backlog reduction. Although USCIS was able to retain that staff and transition them to fee-funded positions, current operating conditions require USCIS to assign most asylum officers, including formerly appropriations-funded backlog reduction officers, to credible fear and reasonable fear screenings.

⁶ See 8 C.F.R. § 208.31(b).

⁷ See Department of Homeland Security, 2022 DHS Congressional Appropriations Reports, *FY22 Report to Congress Asylum Application Processing*, July 17, 2023, available at https://www.dhs.gov/sites/default/files/2023-08/23_0717_uscis_asylum_application_processing.pdf

⁸ See <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/affirmative-asylum-interview-scheduling>.

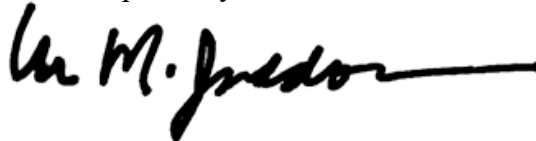
The Honorable Mark Pocan

Page 4

Enclosed is a table addressing your request for statistics related to adjudications of cases pending for five years or more in the asylum backlog.

Thank you again for your letter and interest in this important issue. The cosigners of your letter will receive a separate, identical response. 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

Enclosure

Asylum Applications: Pending, Interviews Completed, Cases Completed, Percent of Completions

	Total	Arlington	Boston	Chicago	Houston	Los Angeles	Miami	Newark	New Orleans	New York	San Francisco	Tampa
Pending applications filed in FY18 or earlier (as of Sept. 30, 2023)	217,610	24,587	12,710	13,133	19,475	24,752	58,430	11,911	2,092	24,502	20,816	5,202
Total interviews completed in FY22*	29,005	2,354	756	5,827	2,513	3,069	2,640	3,093	810	3,592	3,083	1,268
Total applications completed in FY22*	39,023	3,385	1,084	5,517	3,309	4,772	5,280	4,547	1,375	4,716	2,857	2,181
% of total FY22 completions of I-589s filed in FY18 or earlier	38%	51%	45%	34%	22%	45%	31%	42%	14%	50%	38%	35%

* See Asylum Division Monthly Statistics Report. Fiscal Year 2022. October 2021 to September 2022. [Immigration and Citizenship Data | USCIS](#)