

THOMAS R. SUOZZI

MEMBER OF CONGRESS
3RD DISTRICT, NEW YORK

COMMITTEE ON
HOMELAND SECURITY



House of Representatives
Washington, DC 20515

WASHINGTON, DC OFFICE
1117 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
202-225-3335

DISTRICT OFFICE
242-09 NORTHERN BOULEVARD
DOUGLASTON, NY 11363
718-631-0400

May 8, 2024

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

RECEIVED

By ESEC at 8:58 am, May 13, 2024

Dear President Biden,

While the border has been relatively quiet for the past few weeks, we know a surge is not far off. We urge you to use your Executive Authority to help **bring order to the border** and **extend legal work permits** to populations of the long-term undocumented who have shown significant roots in our nation and a history of economic contributions. These executive orders will help secure the border while also adding workers to the tax-paying labor force. Despite bipartisan efforts, Congress has failed to act. The American people now need you to use your authority to help stop the abuse of our asylum system while also welcoming a defined and worthy population to the tax rolls.

Executive Action to Bring Order to the Border

The Refugee Act of 1980 established our asylum process which was designed to protect those fleeing persecution in their home country (in 1980, many of those claiming asylum were fleeing communist and authoritarian regimes). Today, the asylum process is being misused by many who are not fleeing persecution, but who have been instructed to tailor their response to satisfy the low “credible fear” standard.

We urge you to consider issuing an executive order to help **bring order to the border by 1) restricting the abuse of the asylum process by cartels guiding migrants between ports of entry, and 2) raising the credible fear standard to a higher threshold.**

Pursuant to The Immigration and Nationality Act (8 U.S.C. § 1182), the President may restrict the entry of any “aliens or of any class of aliens” that would be “detrimental to the interests of the United States.” Currently, the asylum system is being abused by cartels employing ‘coyote’ guides to pad their profits. Cartel coyotes have been responsible for coaching and shepherding desperate migrants on their entry into the U.S. between ports of entry. By instructing migrants on the language necessary to access the asylum process, migrants are presenting falsified stories during credible fear exams, gaining access to the U.S. for years, only to ultimately be denied entry by an immigration court judge. In FY23, only 18% of cases that originated with a credible fear claim were ultimately granted asylum. In the first quarter of FY24 that share decreased, with only 9% of such cases resulting in asylum. You have broad authority to prevent this abuse by limiting use of asylum between ports of entry and by raising the credible fear standard.

Executive Action to Extend Legal Work Permits

We urge you to consider issuing an executive order that would **expand our tax-paying labor force by extending legal work permits to the 1.1 million immigrant spouses married to U.S. citizens.**

The Executive Authority for such an order is currently the basis for the admirable program which allows enlistees in the U.S. armed forces to adjust the immigration status of their spouses or their parents. Using this authority for undocumented, long-term contributor spouses married to U.S. citizens would keep families together and expand our tax-payer labor force. In addition, it is estimated that these work permits for immigrant spouses will generate \$16 billion in growth to U.S. GDP.

We support efforts to bring order to the border and fairness for long-term contributors. Our nation needs solutions, and an overwhelming majority of U.S. citizens will support meaningful steps taken in this direction.

Thank you for your attention to this issue.

Sincerely,



Thomas R. Suozzi
Member of Congress



Brian Fitzpatrick
Member of Congress



**U.S. Citizenship
and Immigration
Services**

July 8, 2024

The Honorable Thomas R. Suozzi
U.S. House of Representatives
Washington, DC 20515

Dear Representative Suozzi:

Thank you for your May 8, 2024 letter to President Biden. Your letter was referred to the U.S. Department of Homeland Security (DHS), and I am responding on behalf of the Department.

Your letter urges the President to “limit the use of asylum between ports of entry.” On June 4, 2024, President Biden announced a Presidential Proclamation under sections 212(f) and 215(a) of the Immigration and Nationality Act (INA) temporarily suspending entry of certain noncitizens who cross the southern border, defined as both the southwest land border and the southern coastal borders, into the United States, unless they qualify for certain exceptions enumerated therein. The Secretary of Homeland Security and the Attorney General also jointly issued an interim final rule, *Securing the Border*, 89 FR 48710, that, consistent with the Proclamation, generally restricts asylum eligibility for those described in the Proclamation across the southern border during periods of high border encounters, with certain exceptions.

Section 208(a)(1) of the INA provides that “any [noncitizen] who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including [a noncitizen] who is brought to the United States after having been interdicted in international or United States waters), irrespective of such [noncitizen’s] status, may apply for asylum...” The Secretary of Homeland Security (Secretary) also has the authority under section 208(d)(5)(B) of the INA to “provide by regulation for any other conditions or limitations on the consideration of an application for asylum.” Such conditions or limitations must not be inconsistent with other provisions of the INA. Under this same authority, prior to promulgating the *Securing the Border* interim final rule, the Secretary had already imposed a condition on asylum that applies not only to noncitizens who arrive in the United States between ports of entry, but also to those who arrive at ports of entry, with certain exceptions. The *Circumvention of Lawful Pathways* final rule, 88 FR 31314, imposes a rebuttable presumption of ineligibility for asylum on certain noncitizens who enter the United States from Mexico after traveling through a third country at the southwest land border or adjacent coastal borders without documents sufficient for lawful admission. Since this rule was implemented on May 11, 2023,

through March 31, 2024, noncitizens who were subject to the rule's presumption and screened by USCIS asylum officers were found to have a credible fear of persecution or torture under the "reasonable possibility" standard at a rate of 52 percent, compared to an 83 percent credible fear screen-in rate in the pre-pandemic period of 2014 to 2019.

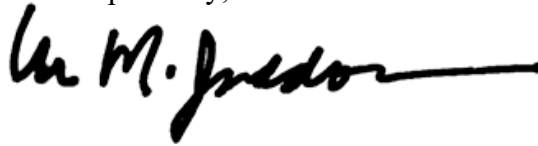
Your letter also urges the President to raise the credible fear standard. Section 235(b)(1)(B)(v) of the INA defines credible fear of persecution as "a significant possibility, taking into account the credibility of the statements made by the [noncitizen] in support of the [noncitizen's] claim and such other facts as are known to the officer, that the [noncitizen] could establish eligibility for asylum." Because this "significant possibility" standard is codified in statute, only Congress can change it. However, the Securing the Border interim final rule, 89 FR 48710, raises the screening standard for withholding of removal under section 241(b)(3) of the INA and protection under Article 3 of the Convention Against Torture (CAT) to "reasonable probability of persecution or torture" in cases where the noncitizen is unable to demonstrate a significant possibility that they could establish that they are not subject to the interim final rule's limitation on asylum eligibility or that they are excepted from the limitation.

This new standard is a substantially higher standard than that applied under the Circumvention of Lawful Pathways rule, which itself raised the screening standard for withholding of removal under section 241(b)(3) of the INA and protection under the CAT from "significant possibility" of establishing eligibility for statutory withholding of removal or protection under the CAT to "reasonable possibility of persecution or torture" in cases where a noncitizen is subject to the presumption of asylum ineligibility and does not establish an exception or fails to rebut the presumption. Under the Circumvention of Lawful Pathways rule, due to the operation of the presumption of ineligibility on asylum discussed above, those noncitizens who are unable to establish a significant possibility of being able to demonstrate an exception to the applicability of the presumption or to rebut it, must demonstrate either a reasonable possibility of persecution or a reasonable possibility of torture to access the opportunity to present their claims in a full merits hearing before an immigration judge. *See* 8 C.F.R. § 208.33(b).

You also asked the President to extend "legal work permits to the 1.1 million immigrant spouses married to U.S. citizens" using the existing "Executive Authority ... which allows enlistees in the U.S. armed forces to adjust the immigration status of their spouses or their parents." On June 17, 2024, the President and the Department of Homeland Security announced actions to promote family unity in the immigration process. Specifically, DHS will establish a new process to consider, on a case-by-case basis, parole requests from certain noncitizen spouses of U.S. citizens who have lived in the United States for 10 years or more; do not pose a threat to public safety or national security; are otherwise eligible to apply for adjustment of status; and merit a favorable exercise of discretion. In the coming weeks, USCIS will provide further information on how this process will work and when it will be open to receive requests through a notice in the Federal Register.

Thank you again for your letter and interest in these important issues. The cosigner 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