

United States Senate

WASHINGTON, DC 20510

March 26, 2024

The Honorable Joseph R. Biden, Jr.
President
1600 Pennsylvania Ave., NW
Washington, D.C. 20500

RECEIVED

By ESEC at 9:47 am, Apr 01, 2024

Dear Mr. President:

We urge your Administration to take all available actions to streamline pathways to lawful status for undocumented immigrants, providing certainty to the American businesses, communities, and families who rely on them.

In 2019 alone, undocumented immigrants contributed an estimated \$9.7 billion in federal and state taxes and over \$11 billion in social security contributions.¹ Over 1.1 million U.S. citizens are married to an undocumented immigrant, and roughly 4.9 million U.S. citizen children have at least one undocumented parent.²

Deporting all such individuals—as former President Donald Trump has threatened to do if reelected³—would devastate the American economy and destroy American families.⁴

Alternatively, streamlining pathways for undocumented immigrants with no criminal history and deep ties to the United States to obtain parole or a lawful immigration status would provide stability to their families, require them to pay taxes, and to check in with the U.S. government regularly. To implement such streamlining, we urge you to consider the following recommendations.

Protect and Unify American Families. The more than 1.1 million undocumented spouses married to a U.S. citizen have lived in the U.S. on average 16 years, and many have been married to their U.S. citizen spouses for at least a decade.⁵ Yet, these families live in fear that they may be separated from their loved one due to deportation, and often forgo much needed health care⁶ and decline to report crimes due to their immigration status.⁷ The fear of deportation has also

¹ *Examining the Economic Contributions of Undocumented Immigrants by Country of Origin*, NEW AMERICAN ECONOMY RESEARCH FUND (March 8, 2021), <https://research.newamericaneconomy.org/report/contributions-of-undocumented-immigrants-by-country/>.

² *American Families United Act: Priority Bill Spotlight*, FWD.US (Oct. 5, 2023), <https://www.fwd.us/news/american-families-united-act/>.

³ Isaac Arnsdorf, Nick Miroff, and Josh Dawsey, *Trump and allies planning militarized mass deportations, detention camps*, WASH. POST (Feb. 21, 2024), <https://www.washingtonpost.com/politics/2024/02/20/trump-mass-deportations-immigration/>.

⁴ *Undocumented Immigrants*, NEW AMERICAN ECONOMY, <https://www.newamericaneconomy.org/issues/undocumented-immigrants/>.

⁵ *American Families United Act: Priority Bill Spotlight*, FWD.US (Oct. 5, 2023), <https://www.fwd.us/news/american-families-united-act/>.

⁶ Doshi M, Lopez WD, Mesa H, Bryce R, Rabinowitz E, Rion R, et al., *Barriers & facilitators to healthcare and social services among undocumented Latino(a)/Latinx immigrant clients: Perspectives from frontline service providers in Southeast Michigan*, PLoS ONE 2020, <https://doi.org/10.1371/journal.pone.0233839>.

⁷ See, e.g., Stefano Comino, Giovanni Mastrobuoni, Antonio Nicolo, *Silence of the Innocents: Undocumented Immigrants Underreporting of Crime and their Victimization*, J. OF POLICY ANALYSIS AND MANAGEMENT (Sept.

been associated with psychological stress linked to an increased risk of chronic disease for children with an undocumented family member.⁸

While U.S. citizens can normally sponsor their spouses for lawful status, our outdated immigration system includes many categorical bars that prevent spouses from obtaining status.⁹ As a result of these categorical bars, immigration officers and judges have no discretion to grant relief even in urgent cases.¹⁰ We urge your Administration to return some of this discretion to immigration officials, and create a process to allow undocumented immigrants married to U.S. citizens to seek parole, on a case-by-case basis, if doing so would be warranted for urgent humanitarian reasons or to advance a significant public benefit.¹¹

Permit Spouses of Americans to Work While Their Green Card Cases are Pending. Today, some spouses of U.S. citizens applying for a green card must be processed at a U.S. consulate abroad. However, they face significant processing delays, due in large part to backlogs in the provisional waiver program. The provisional waiver process allows individuals who are statutorily eligible for a green card, but need a waiver of inadmissibility, to apply for the waiver in the United States before they depart for their immigrant visa interview at a U.S. consulate.¹² This has allowed many families to achieve stability by streamlining the family-based green card process for eligible individuals.

However, the process has recently been plagued by processing delays, with applications taking a median of 42.4 months to complete.¹³ We urge your Administration to take all available steps to reduce processing times for these applications. Please also consider all available options to assist these families and give applicants stability and a chance to work while they wait for an approval, similar to applicants seeking adjustment from within the United States.¹⁴

Streamline the Process to Change to a Nonimmigrant Status. The Deferred Action for Childhood Arrivals (DACA) program has offered many young undocumented immigrants an opportunity to pursue higher education and meaningful careers. American employers have recognized the benefits of hiring these skilled individuals, and often have sought to sponsor them for a nonimmigrant status that would provide both the DACA holder and the employer with more stability in light of pending litigation to end the DACA program. However, many applicants face processing hurdles when they seek to change status. For example, they often must travel to a consulate to change status and struggle to obtain an appointment during the period of advanced

2020), <https://onlinelibrary.wiley.com/doi/epdf/10.1002/pam.22221>.

⁸ A. Martinez, L. Ruelas, and D. Granger, *Household fear of deportation in Mexican-origin families: Relation to body mass index percentiles and salivary uric acid*, AM J HUM BIOL. 2017; L. Rojas-Flores, M. Clements, J. Hwang Koo, and J. London, *Trauma and psychological distress in Latino citizen children following parental detention and deportation*, PSYCHOL TRAUMA 2017.

⁹ See, e.g., INA 212(a)(6); 8 U.S.C. 1182(a)(6); see also, Rusty Surette and Andy Krauss, *Aggie DREAMer stuck in Mexico is returning home to Texas on Thursday*, KBTX 3 (Sept. 8, 2021), <https://www.kbtx.com/2021/09/09/aggie-dreamer-stuck-mexico-is-returning-home-texas-thursday/>.

¹⁰ See *id.*

¹¹ INA 212(d)(5); 8 U.S.C. 1182(d)(5).

¹² *Provisional Unlawful Presence Waivers*, USCIS, <https://www.uscis.gov/family/family-of-us-citizens/provisional-unlawful-presence-waivers>.

¹³ *Historical National Median processing Time (in Months) for All USCIS Offices for Select Forms by Fiscal Year*, USCIS (Feb. 2024), <https://egov.uscis.gov/processing-times/historic-pt>.

¹⁴ 8 CFR 245.15(n)

parole granted by United States Citizenship and Immigration Services (USCIS).¹⁵ We urge you to take steps to streamline the process by which DACA holders may obtain another status, such as increasing coordination between the Department of State and USCIS to ensure timely scheduling of appointments for DACA holders seeking to change status.

Modernizing Cancellation of Removal Rules so America’s Family Caregivers Can Stay Together. Last year, we requested that the Department of Homeland Security (DHS) and the Department of Justice (DOJ) issue a regulation to specify that certain nonpermanent residents may be eligible to apply for cancellation of removal without first being placed in removal proceedings under section 240 of the Immigration and Nationality Act.¹⁶ We were pleased to see this proposal on the Unified Regulatory Agenda, and urge DHS and DOJ to issue this regulation.¹⁷ 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—often as caregivers to children with acute needs—and our communities.

We appreciate your careful consideration of these recommendations and all available options to provide much needed relief for undocumented immigrants and the American businesses, families, and communities that rely upon them.

Sincerely,



Richard J. Durbin
United States Senator



Alex Padilla
United States Senator



Catherine Cortez Masto
United States Senator



Robert Menendez
United States Senator

¹⁵ *Adjustment of Status Through Work Visas for DACA Recipients: Explainer*, NATIONAL IMMIGRATION FORUM (Dec. 12, 2023), <https://immigrationforum.org/article/adjustment-of-status-through-work-visas-for-daca-recipients-explainer/>.

¹⁶ *Letter from Senators Catherine Cortez Masto (D-NV), Durbin (D-IL), Menendez (D-NJ), Lujan (D-NH), and Padilla (D-CA) to Director Jaddou of USCIS and Director Neal of the Executive Office of Immigration Review* (May 31, 2023), https://www.cortezmasto.senate.gov/wp-content/uploads/media/doc/cortez_masto_letter_to_uscis_eoir_affirmative_cancellation_of_removal_5312023.pdf.

¹⁷ *Affirmative Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents*, Office of Information and Regulatory Affairs, Office of Management and Budget (Fall 2023), <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202310&RIN=1615-AC87>.

Ben Ray Lujan

Ben Ray Lujan
United States Senator

C.A. Booker

Cory A. Booker
United States Senator

Ben Cardin

Benjamin L. Cardin
United States Senator

Mazie K. Hirono

Mazie K. Hirono
United States Senator

Tammy Duckworth

Tammy Duckworth
United States Senator

Laphonza Butler

Laphonza Butler
United States Senator

Jeffrey A. Merkley

Jeffrey A. Merkley
United States Senator

Bernard Sanders

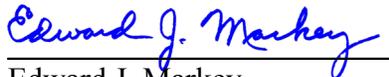
Bernard Sanders
United States Senator

Ron Wyden

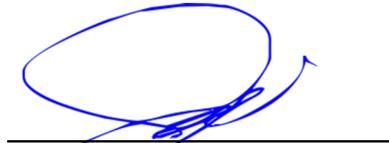
Ron Wyden
United States Senator

R. Warnock

Raphael Warnock
United States Senator


Edward J. Markey
United States Senator


Chris Van Hollen
United States Senator


John Fetterman
United States Senator


Michael F. Bennet
United States Senator


Jacky Rosen
United States Senator



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

May 9, 2024

The Honorable Richard J. Durbin
United States Senate
Washington, DC 20510

Dear Senator Durbin:

Thank you for your March 26, 2024 letter to President Biden. I am responding on behalf of the Department of Homeland Security (DHS).

In your letter, you urge the Administration to create a process to allow undocumented noncitizens married to U.S. citizens who are present in the United States to seek parole, if doing so would be warranted for urgent humanitarian reasons or significant public benefit. As you know, under section 212(d)(5)(A) of the INA, 8 U.S.C. 1182(d)(5)(A), the Secretary of Homeland Security can, at his discretion, parole into the United States temporarily under such conditions as he may prescribe on a case-by-case basis for urgent humanitarian reasons or significant public benefit, any noncitizen applying for admission to the United States. Parole may be granted to noncitizens who are already present in the United States without admission; this is called parole in place. Such noncitizens can apply for parole in place, which may be granted in cases in which the noncitizen can demonstrate urgent humanitarian reasons or significant public benefit and that they warrant a favorable exercise of discretion.

DHS continues to evaluate its humanitarian programs and policies, including parole. We acknowledge your suggestion for a parole process for undocumented noncitizens married to U.S. citizens and will take it under advisement.

You also recommend the Administration take all available steps to reduce processing times for provisional unlawful presence waivers and to permit spouses of U.S. citizens to work while their immigrant visa cases are processed at a U.S. consulate abroad. Please know U.S. Citizenship and Immigration Services (USCIS) has shifted adjudication of the Application for Provisional Unlawful Presence Waiver (Form I-601A) exclusively to the HART Service Center where specially trained officers focus on humanitarian benefits like Form I-601A. With the launch of the HART Service Center at the beginning of 2023, USCIS committed to significantly increasing the number of officers devoted to working the Form I-601A. While USCIS is still in the process of fully staffing the HART Service Center, the HART Service Center is already making positive impacts in improving Form I-601A processing. For instance, USCIS has already completed more I-601A adjudications in the first quarter of Fiscal Year 2024 (13,208) than all of Fiscal Year 2023 (12,208).

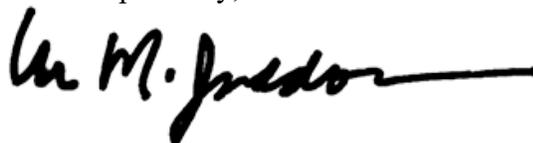
USCIS continues to convert paper-based benefit requests into electronic format for efficient adjudication. However, as to your recommendation that applicants for provisional unlawful presence waivers be permitted to work while they wait for approval of their Form I-601A, this is expressly prohibited by the provisional unlawful presence waiver regulations, which states that “[a] pending or an approved provisional unlawful presence waiver does not support the filing of any application for interim immigration benefits, such as employment authorization or an advance parole document.” *See* 8 C.F.R. 212.7(e)(2)(ii).

In your letter, you also ask the Administration to take steps to streamline the process by which Deferred Action for Childhood Arrivals (DACA) recipients may obtain another status, such as increasing coordination between the Department of State (DOS) and USCIS to timely scheduling of appointments for DACA recipients seeking to change status. USCIS may issue an advance parole document to DACA recipients if their travel abroad is for humanitarian, educational, or employment purposes. We appreciate your suggestion that USCIS coordinate with DOS to timely schedule consular appointments during DACA recipients’ period of authorized travel and will take this recommendation under advisement.

You also recommended making changes to current cancellation of removal processes in order to streamline cases and increase access to lawful permanent resident status. We appreciate your interest and support in modernizing cancellation of removal regulations so certain nonpermanent residents may be eligible to apply for cancellation of removal without first being placed in removal proceedings under section 240 of the Immigration and Nationality Act. As you noted in your letter, DHS and DOJ have proposed an affirmative cancellation rulemaking in the Fall 2023 Unified Regulatory Agenda. USCIS is exploring all paths to modernize cancellation of removal regulations and, through this rulemaking, will be seeking feedback from the public to inform the development of any new process. USCIS is committed to exploring all available avenues to eliminate unnecessary barriers, restore faith in the immigration system, and improve transparency, efficiency, and integrity in the system.

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