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Samantha Deshommes
Chief, Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security

Re: Docket ID USCIS-2021-0004-0001, Identifying Barriers Across U.S. Citizenship and Immigration Services (USCIS) Benefits and Services; Request for Public Input

Dear Ms. Deshommes:

We submit this comment in response to the request for public input from U.S. Citizenship and Immigration Services (USCIS), Identifying Barriers Across U.S. Citizenship and Immigration Services (USCIS) Benefits and Services; Request for Public Input, 86 FR 20398 (April 19, 2021) (Docket ID USCIS-2021-0004-0001). As an organization providing technical assistance to a wide range of practitioners, service providers, and applicants for immigration benefits and services, we at the Immigration Legal Resource Center (ILRC) have substantive expertise regarding barriers to benefits and services at USCIS across a wide range of topics. We have enumerated these barriers below, leading with the solutions to each barrier.

The ILRC is a national non-profit organization that provides legal trainings, educational materials, and advocacy to advance immigrant rights. The ILRC's mission is to work with and educate immigrants, community organizations, and the legal sector to continue to build a democratic society that values diversity and the rights of all people. Since its inception in 1979, the ILRC has provided technical assistance on hundreds of thousands of immigration law issues, trained thousands of advocates and pro bono attorneys annually on immigration law, distributed thousands of practitioner guides, provided expertise to immigrant-led advocacy efforts across the country, and supported hundreds of immigration legal non-profit organizations in building their capacity. The ILRC has produced legal trainings, practice advisories, and other materials pertaining to the immigration law and processes.

The ILRC also leads the New Americans Campaign, a national non-partisan effort that brings together private philanthropic funders, leading national immigration and service organizations, and over two hundred local services providers across more than 20 different regions to help prospective Americans apply for U.S. citizenship. Through our extensive networks with service providers, immigration practitioners,

and naturalization applicants, we have developed a profound understanding of the barriers faced by low-income individuals seeking to obtain an immigration benefit.

I. USCIS Policy Manual Changes

We ask in general that your administration engage in a more transparent process of updating the USCIS Policy Manual going forward by issuing a change log of where new changes are made whenever updates are issued. Currently, it is not clear what language was added or rescinded in any update. Providing a change log would increase communication tremendously and allow for better stakeholder engagement regarding all of the changes, including possible negative consequences.

To address the many harmful barriers that were added in the previous administration, we have consolidated a list of general portions of the USCIS Policy Manual and policy memoranda that should be rescinded or withdrawn along with the barrier they represent:

A. Use of Discretion

1. **Withdraw the changes made to 1 USCIS-PM E.8 and 10 USCIS-PM A.5 of the USCIS Policy Manual**, described in the policy alert entitled "Applying Discretion in USCIS Adjudications" on July 15, 2020.[1] These changes represent a radical departure from prior interpretation of "discretion," introduce vague and unnecessary adjudicatory factors, and are not required, nor supported, by law. Moreover, these changes impose a secondary adjudication process on dozens of application forms requiring officers to multiply the amount of time spent determining eligibility, a move that will grind adjudications to an even slower pace and deny applicants relief for which they would otherwise be eligible.
2. **Withdraw the changes made to 7 USCIS-PM A.1 and 7 USCIS-PM A.10 of the USCIS Policy Manual**, described in the policy alert entitled "Use of Discretion for Adjustment of Status" on November 17, 2020.[2] Under this reading of section 245(a) of the INA, USCIS adjudicators are given an extremely broad, amorphous set of factors to consider when determining whether a case warrants a "favorable exercise of discretion," a determination which is now given more weight than was previously typical. This increases the likelihood that an applicant is denied adjustment of status due to an officer finding them "undesirable," despite being fully eligible for lawful permanent resident (LPR) status on a statutory or regulatory basis.
3. **Withdraw the changes made to 10 USCIS-PM A and 10 USCIS-PM B of the USCIS Policy Manual**, described in the policy alert entitled "Applications for Discretionary Employment Authorization Involving Certain Adjustment Applications or Deferred Action" on January 14, 2021.[3] Similar to the above change, USCIS adjudicators are given an extensive but non-exhaustive list of factors to consider when determining whether a case warrants a "favorable exercise of discretion," superseding previous

[1] U.S. Cit. & Immigr. Servs., U.S. Dep't of Homeland Sec., PA-2020-10, Applying Discretion in USCIS Adjudications (2020).
[2] U.S. Cit. & Immigr. Servs., U.S. Dep't of Homeland Sec., PA-2020-22, Use of Discretion for Adjustment of Status (2020).
[3] U.S. Cit. & Immigr. Servs., U.S. Dep't of Homeland Sec., PA-2021-01, Applications for Discretionary Employment Authorization Involving Certain Adjustment Applications or Deferred Action (2021).

policy to simply issue a 2-year EAD.[4] This also appears to reduce the EAD validity period to no more than one year. The changes dramatically restrict employment authorization for DACA recipients in excess of the statute. Considering processing delays at USCIS, an applicant with a one-year EAD would have to almost immediately begin the application process again upon receiving it.

B. **Withdraw the changes made to 7 USCIS-PM P.5 of the USCIS Policy Manual**, described in the policy alert entitled "Liberian Refugee Immigration Fairness" on April 7, 2020.[5] The changes made under this policy alert, the first USCIS policy guidance on the LRIF program released months into the original one year registration period, contradicts the statute by imposing restrictions that go beyond statutory language and requiring excessive documentation from applicants and their family members. Such restrictions disqualify eligible Liberians from accessing LRIF, in contravention to Congress' mandatory "shall adjust" language.[6] The policy manual should be modified to reflect the congressional mandate in the "shall adjust" language. In particular, adjudicators should be advised to accept alternative proof of nationality besides unexpired Liberian passports, including expired passports, birth certificates and other documentation issued by the national government.[7]

C. **Additional Changes Mentioned in this Comment**

For ease of access, we list below all additional changes to the USCIS Policy Manual described in this comment. For additional detail, please refer to the indicated sections below.

1. Withdraw the section on "extreme vetting" described in 12 USCIS-PM D.2(d) of the USCIS Policy Manual in its entirety. **Part IV.A.**
2. Withdraw all guidance on "abandonment" present in 12 USCIS-PM B. **Part IV.B.**
3. Withdraw the changes made to 12 USCIS-PM E.3 of the USCIS Policy Manual, described in the policy alert entitled "Sufficiency of Medical Certification for Disability Exceptions (Form N-648)" on December 12, 2018.[8] **Part IV.D.1.a.**
4. Withdraw the changes made to 12 USCIS-PM E.3 of the USCIS Policy Manual, described in the policy alert entitled "Properly Completed Medical Certification For Disability Exception (N-648)" on December 4, 2020.[9] **Part IV.D.1.b.**
5. Revisit 12 USCIS-PM H.3 in the USCIS Policy Manual and explore options to reduce the continuous residence requirement for both unwed mothers and fathers to the

[4] U.S. Cit. & Immigr. Servs., 7 Pol'y Manual § A.10 (2021); 8 C.F.R. § 274a.12(c)(9) (2021).
[5] U.S. Cit. & Immigr. Servs., U.S. Dep't of Homeland Sec., PA-2020-08, Liberian Refugee Immigration Fairness (2020).
[6] *See* Letter from Afr. Cmmtys. Together et al. to U.S. Cit. & Immigr. Servs. (May 7, 2020), *available at* https://www.ilrc.org/sites/default/files/resources/final_lrif_pm_comment_from_organizations_7_may_2020.pdf.
[7] *See* Letter from Afr. Cmmtys. Together et al. to U.S. Cit. & Immigr. Servs. (May 11, 2021), *available at* https://www.ilrc.org/ilrc-and-lrif-strategy-group-submit-comments-uscis-changes-needed-lrif-guidance-and-process.
[8] U.S. Cit. & Immigr. Servs., U.S. Dep't of Homeland Sec., PA-2018-12, Sufficiency of Medical Certification for Disability Exceptions (Form N-648) (2018).
[9] U.S. Cit. & Immigr. Servs., U.S. Dep't of Homeland Sec., PA-2020-25, Properly Completed Medical Certification For Disability Exception (N-648) (2020).

more generous requirement of one year of residence, previously applicable to claims through unwed U.S. citizen mothers.[10] **Part IV.E.**

6. Correct the legal error in the USCIS policy manual explaining grandfathering under 245(i) and ensure correct application of the 2013 BIA decision *Matter of Estrada* regarding derivative beneficiaries.[11] **Part V.I.**
7. Reconsider the policies made through adopted SIJS Administrative Appeals Office (AAO) decisions and corresponding changes made to the USCIS Policy Manual.[12] **Part VI.B.**
8. Withdraw the policy changes made to 7 USCIS-PM B.2 of the USCIS Policy Manual, described in the policy alert entitled "Temporary Protected Status and Eligibility for Adjustment of Status under Section 245(a) of the Immigration and Nationality Act," and encourage USCIS to issue guidance superseding *Matter of Z-R-Z-C*.[13] **Part VII.A.**
9. Withdraw the policy changes made to 7 USCIS-PM A.3(D) of the USCIS Policy Manual, described in the policy alert entitled "Effect of Travel Abroad by Temporary Protected Status Beneficiaries with Final Orders of Removal."[14] **Part VII.B.**
10. Withdraw the changes made to 7 USCIS-PM A.5, 7 USCIS-PM L.5, and 7 USCIS-PM M.5 of the USCIS Policy Manual, described in the policy alert entitled "Refugee and Asylee Adjustment of Status Interview Criteria and Guidelines" on December 15, 2020.[15] **Part IX.C.**
11. Maintain the current policy for Form I-602—Application by Refugee for Waiver of Inadmissibility Grounds outlined in 7 USCIS-PM M.3 and 7 USCIS-PM L.3 of the USCIS Policy Manual. **Part IX.G.**
12. Withdraw the section on "Conditional GMC Bar Applies Regardless of State Law Decriminalizing Marijuana" in 12 USCIS-PM C.2 of the USCIS Policy Manual.[16] **Part XI.A.**
13. Eliminate the provision in 12 USCIS-PM F.5 of the USCIS Policy Manual that allows for two driving under the influence (DUI) convictions to be considered a

[10] U.S. Cit. & Immigr. Servs., 12 Pol'y Manual § H.3 (2021).
[11] U.S. Cit. & Immigr. Servs., 7 Pol'y Manual § C.2 (2021).
[12] News Release, U.S. Cit. & Immigr. Servs., USCIS Clarifies Special Immigrant Juvenile Classification to Better Ensure Victims of Abuse, Neglect and Abandonment Receive Protection (Oct. 15, 2019), *available at* https://www.uscis.gov/news/uscis-clarifies-special-immigrant-juvenile-classification-better-ensure-victims-abuse-neglect-and-abandonment-receive-protection.
[13] U.S. Cit. & Immigr. Servs., U.S. Dep't of Homeland Sec., PA-2020-17, Temporary Protected Status and Eligibility for Adjustment of Status under Section 245(a) of the Immigration and Nationality Act (2020).
[14] U.S. Cit. & Immigr. Servs., U.S. Dep't of Homeland Sec., PA-2019-12, Effect of Travel Abroad by Temporary Protected Status Beneficiaries with Final Orders of Removal.
[15] U.S. Cit. & Immigr. Servs., U.S. Dep't of Homeland Sec., PA-2020-26, Refugee and Asylee Adjustment of Status Interview Criteria and Guidelines (2020).
[16] U.S. Cit. & Immigr. Servs., 12 Pol'y Manual § F.5(C)(2) (2019).

conditional bar for good moral character and encourage the DOJ to recertify *Matter Castillo-Perez* (A.G. 2019).[17] **Part XI.C.**

14. Withdraw the changes made to 12 USCIS-PM F.5 of the USCIS Policy Manual, described in the policy alert entitled "Conditional Bar to Good Moral Character for Unlawful Acts" on December 13, 2019.[18] **Part XI.C.**

II. Notices to Appear and Requests for Evidence

A. **Issue a memorandum stating that USCIS will only issue a Notice to Appear (NTA) where statutorily mandated.** We appreciate that USCIS rescinded the expansive 2018 NTA Memo. However, USCIS reverted to the 2011 version of this policy, which is unclear and also directs an NTA referral for people who are not within the enforcement priorities.[19] The 2011 and 2018 policies regarding NTAs are both overly broad with very little transparency as to how they are applied. It is not sufficient to revert to the 2011 policy, USCIS must employ a new policy whereby the agency will only issue an NTA where statutorily mandated.

B. **Rescind all changes made by the policy memorandum entitled "Issuance of Certain RFEs and NOIDs; Revisions to Adjudicator's Field Manual (AFM) Chapter 10.5(a), Chapter 10.5(b)" on July 13, 2018**.[20] This memo expanded the situations in which USCIS can deny immigration applications outright without allowing applicants the opportunity to cure any deficiencies. Previously, if USCIS officials needed more information to make certain decisions, they would issue a Request for Evidence (RFE) or a Notice of Intent to Deny (NOID), which gave applicants the ability to correct errors or send in more information. This policy is draconian and inefficient, as applicants must then re-apply with the correct information to have their case re-adjudicated.

III. Fees and Fee Waivers

A. **Expand the ability to e-file an accompanying Form I-912–Request for Fee Waiver for an online form submission**. Currently, applicants must submit a physical fee waiver request separately from an e-filing, creating a lag between submissions and further delaying adjudication. An individual can e-file Form N-400–Application for Naturalization, for example, but they are unable to submit the accompanying fee waiver request as USCIS does not accept online submissions of Form I-912. USCIS should accept Form I-912 submissions online to increase accessibility, ease of submission, and reduce workload at USCIS adjudication centers.

B. **Improve training for USCIS adjudicators regarding fee waivers and assessing fees**. Our practitioners report frequent instances where USCIS improperly rejects an

[17] U.S. Cit. & Immigr. Servs., 12 Pol'y Manual § F.5 (2021); Matter of Castillo-Perez, 27 I&N Dec. 664 (A.G. 2019).
[18] U.S. Cit. & Immigr. Servs., U.S. Dep't of Homeland Sec., PA-2019-11, Conditional Bar to Good Moral Character for Unlawful Acts (2019).
[19] U.S. Cit. & Immigr. Servs., U.S. Dep't of Homeland Sec., PM-602-0050, Revised Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Removable Aliens (2011).
[20] U.S. Cit. & Immigr. Servs., U.S. Dep't of Homeland Sec., PM-602-0163, Issuance of Certain RFEs and NOIDs; Revisions to Adjudicator's Field Manual (AFM) Chapter 10.5(a), Chapter 10.5(b) (2018).

application due to insufficient payment when in reality a fee waiver had already been properly submitted. One practitioner reported that an application was rejected for overpaying by $25.00 rather than returning the excess amount or notifying the applicant to send exact payment.

IV. Naturalization and Citizenship

A. **Withdraw the section on "extreme vetting" described in 12 USCIS-PM D.2(d) of the USCIS Policy Manual in its entirety.** This section requires officers to engage in unnecessary, time-intensive, and burdensome re-adjudication of prior immigration applications.[21] Officers must "verify" the underlying LPR status in all naturalization cases, even where no question about eligibility is raised, in essence re-adjudicating an individual's LPR status. In the process of this "readjudication," officers are requesting documentation "proving" eligibility that in many cases is no longer available, or should be in the possession of USCIS, such as an alleged prior "deportation order" from the 1970s when the applicant had indicated they received "voluntary departure." This disproportionately affects low-income, vulnerable, and unrepresented naturalization applicants, as they may not have resources to obtain verification for various filings and information provided at the original application for LPR status, sometimes decades in the past.[22]

B. **Withdraw all guidance on "abandonment" present in 12 USCIS-PM B**.[23] All accompanying instructions given to USCIS adjudicators about "abandonment" should also be rescinded. Only an immigration judge or the Board of Immigration Appeals can make an abandonment finding, not USCIS. Even if USCIS suspects an applicant has abandoned, the applicant is still eligible to naturalize because an immigration judge has not made a legal finding of abandonment. Someone whom the USCIS suspects has abandoned their residence can still naturalize if the adjudicator uses discretion and fails to issue an NTA, and the individual is still eligible to naturalize. Suspicion of abandonment of residence prior to a finding by an immigration judge is not a ground for denial.

C. **Ensure Accessibility of Naturalization**

1. **Reduce cost prohibitive naturalization fees.** The cost of naturalization today is the highest in U.S. history and among the highest in the world.[24] Fee increases are neither necessary nor helpful to decrease processing times and backlogs. Fee hikes lead to decreased applications, which in turn depress revenue. Higher fees also affect who naturalizes and have a racially disparate impact. Along with restoring and expanding the accessibility of fee waivers and reduced or sliding scale options, the administration must work to reduce naturalization fees.

2. **Improve processing times and clear backlogs**. Processing times for naturalization applications at every USCIS field office should return to the

[21] U.S. Cit. & Immigr. Servs., 12 Pol'y Manual § D.2 (2021).
[22] Randy Capps & Carlos Echeverría-Estrada, Migr. Pol'y Inst., A Rockier Road to U.S. Citizenship? Findings of a Survey on Changing Naturalization Procedures (2020), *available at* https://www.migrationpolicy.org/research/changing-uscis-naturalization-procedures.
[23] U.S. Cit. & Immigr. Servs., 12 Pol'y Manual § B (2021).
[24] *See USCIS Fee Hike: How Immigrants Are Affected*, Boundless, https://www.boundless.com/research/uscis-fee-hike-immigrants-affected/ (last updated Sept. 29, 2020).

pre-2017 standard of four to six months. Currently, the wait time for Form N-400–Application for Naturalization ranges from six months to over two years.[25] We recommend that USCIS:

a) End in-person interview requirements for employment-based green cards and for relatives of refugees and asylees. The shift toward an in-person interview requirement in these cases in 2017 lengthened processing delays by diverting resources to focus on interviews that are unnecessary and wasteful.

b) Hire more permanent and temporary employees to process naturalization applications and assist with administrative tasks.

c) Work to complete naturalization interviews within thirty minutes.

d) Streamline naturalization applications so irrelevant questions outside the scope of the application are not asked.

e) Adopt a nationwide policy of same-day oath ceremonies, while also resuming large scale oath ceremonies as soon as public health guidelines permit, if the applicant is approved.

f) Open up new naturalization offices in busy USCIS districts.

3. **Actively promote naturalization**. USCIS should build on the Obama-era Stand Stronger effort to engage in significant multilingual marketing, advertising, and outreach campaigns to encourage people to apply for naturalization.[26] The United States lags behind other countries, including Canada, in immigrant integration.[27] USCIS should proactively encourage permanent residents to prepare for naturalization from the time they get their green card. Travel through ports of entry also provides an opportunity to encourage eligible permanent residents to apply for naturalization.

4. **Fund the Citizenship and Integration Grant Program**. USCIS should continue to fund and increase the funding for the USCIS Citizenship and Integration Grant Program, which grants funding to community based organizations, to over its current $10 million.[28]

5. **Co-develop technology and accessibility in the naturalization process**. USCIS must ensure that efforts to digitize the naturalization process do not make it inaccessible. We recommend USCIS:

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[25] *Check Case Processing Times*, U.S. Cit. & Immigr. Servs., https://egov.uscis.gov/processing-times/ (last accessed May 17, 2021).

[26] Off. of the Press Sec'y, *Fact Sheet: "Stand Stronger" Citizenship Awareness Campaign*, White House (Sept. 17, 2015), https://obamawhitehouse.archives.gov/the-press-office/2015/09/17/fact-sheet-stand-stronger-citizenship-awareness-campaign.

[27] OECD/Eur. Union, Settling In 2018: Indicators of Immigrant Integration (2018), *available at* https://doi.org/10.1787/9789264307216-en.

[28] *Learn About the Citizenship and Integration Grant Program*, U.S. Cit. & Immigr. Servs., https://www.uscis.gov/citizenship/civic-assimilation/learn-about-the-citizenship-and-assimilation-grant-program (last updated May 17, 2021).

a) Reserve a paper option for applicants unable to submit applications and documentation online.

b) Include a process for submitting fee waivers online in efforts to encourage online applications, as specified above.

c) Make remote or virtual oaths available for applicants who have completed the naturalization process but are not able to participate in in-person oath ceremonies.

d) Make remote naturalization interviews available as an option in the case of a public health emergency rendering in-person interviews unsafe (kept optional so as not to disadvantage applicants with low tech literacy).

6. **Re-engage with community advocates**. USCIS should continue to increase engagement with community advocates who represent applicants and who, in the past, have appreciated open channels of communications with USCIS personnel at local and national levels.

D. **Improve Naturalization Adjudications**

1. **Form N-648–Medical Certification for Disability Exceptions**. Form N-648 adjudication must accord with the purpose and intent of the underlying statute and regulations, which are designed to allow applicants with physical, mental, and developmental disabilities to qualify for naturalization. This administration should reverse actual and proposed N-648 changes. Any effort to lengthen the application form or make applying more onerous must be reversed. Any conditions that go beyond the statutory requirements for demonstrating eligibility for a disability waiver must be eliminated, particularly the stringent and unintuitive requirements for Part 3 Question 8 on how the disability affects the applicant's ability to demonstrate knowledge of English and civics.[29] We also recommend that USCIS:

a) Withdraw the changes made to 12 USCIS-PM E.3 of the USCIS Policy Manual, described in the policy alert entitled “Sufficiency of Medical Certification for Disability Exceptions (Form N-648)” on December 12, 2018.[30]

b) Withdraw the changes made to 12 USCIS-PM E.3 of the USCIS Policy Manual, described in the policy alert entitled “Properly Completed Medical Certification For Disability Exception (N-648)” on December 4, 2020.[31]

2. **Allow any naturalization applicant to apply for naturalization regardless of when or if their green card has expired or will soon expire**. The green card renewal application and a naturalization application must be completely separate and should not affect each other.

E. **Reduce residence requirements for acquiring citizenship through unwed parents**. U.S. citizen parents must meet certain criteria to pass citizenship automatically to their

[29] Dep’t of Homeland Sec., U.S. Cit. & Immigr. Servs., Form N-648, Medical Certification for Disability Exceptions (2021).
[30] U.S. Cit. & Immigr. Servs., PA-2018-12 (2018).
[31] U.S. Cit. & Immigr. Servs., PA-2020-25 (2020).

children born abroad, including certain continuous residence or physical presence requirements. In 2017, the Supreme Court held that requiring different periods of continuous residence or physical presence based on whether the claim for citizenship was through an unwed U.S. citizen father compared with an unwed U.S. citizen mother violated the Equal Protection Clause of the U.S. Constitution.[32] Thus, for children born on or after June 12, 2017, the physical presence requirements for claims through an unwed U.S. citizen mother are lengthened to five years to match the physical requirements for claims through an unwed U.S. citizen father. USCIS should revisit 12 USCIS-PM H.3 in the USCIS Policy Manual and explore options to reduce the continuous residence requirement for both unwed mothers and fathers to the more generous requirement of one year of residence, previously applicable to claims through unwed U.S. citizen mothers.[33]

F. **Allow derivation where the child is "residing permanently."** USCIS should adopt the Second and Ninth Circuits' finding that a child may derive citizenship if both parents naturalized while the child was still under eighteen years old and unmarried, even if the child was not a lawful permanent resident.[34] The Second and Ninth Circuits found that "reside permanently" could include "something lesser," such as application for lawful permanent resident status. These courts' reasoning could allow many more people to derive citizenship automatically by relaxing the residence requirement and would eliminate the preclusion of derivation due to the fluctuation of USCIS processing times.

G. **Allow naturalization applicants to "cure" prior inadmissibility discovered at the time of naturalization through applying for waivers of inadmissibility (e.g. Forms I-601, I-602, I-212, and I-192) retroactively when applying for naturalization.** At the time of naturalization, applicants are sometimes informed or may realize that due to changing interpretations of inadmissibility, such as for alien smuggling or false claim of citizenship, or due to mistake or misadvice, they now need to have a waiver for prior conduct, which would normally have been submitted at the time of adjustment or consular processing for permanent residency. These applicants should be allowed to apply for a *nunc pro tunc* waiver at the time of naturalization.

H. **Institute a formal process for requesting and receiving a prima facie determination from USCIS regarding Form N-400** in acknowledgement of and cooperation with 8 CFR 1239.2(f) on naturalization applications for applicants in removal proceedings. USCIS will not adjudicate the N-400 unless the removal proceedings are terminated, but per 1239(f) the immigration judge needs a prima facie determination from USCIS regarding the N-400 to grant a termination. USCIS unfortunately often does not respond to the request for a prima facie determination prior to an interview, regardless of the manner of request (by writing, through service request, etc), or the USCIS officer at the N-400 interview is unaware of the regulation and denies the N-400 due to the applicant being in removal proceedings. This catch-22 causes much confusion and turmoil, and a formal process for requesting and receiving the prima facie determination would be very helpful.

V. Family Reunification

[32] Sessions v. Morales-Santana, 137 S.Ct. 1678 (2017).
[33] U.S. Cit. & Immigr. Servs., 12 Pol'y Manual § H.3 (2021).
[34] Cheneau v. Garland, No. 15-70636, (9th Cir. May 13, 2021); Nwozuzu v. Holder, 726 F.3d 323 (2d Cir. 2013).

A. **Interpret "false claims" of U.S. citizenship to exclude unintentional false claims.** The false claim ground of inadmissibility and deportability is incredibly broad and, with no general waiver, blocks many noncitizens from gaining lawful status, many of whom have enormous equities and no criminal history. This ground became even more draconian in 2020 when the government re-interpreted false claims to include conduct that was not done knowingly. USCIS should not only withdraw the policy guidance detailed in the policy alert entitled "False Claim to U.S. Citizenship Ground of Inadmissibility and *Matter of Zhang*" on April 24, 2020,[35] but also encourage the U.S. Department of Justice (DOJ) to recertify *Zhang* and return to an interpretation that requires a *mens rea*, or knowledge requirement. The current interpretation bars individuals with no intent to engage in fraud; for example, a person who unknowingly registered to vote while applying for U.S. drivers' license would be interpreted as making a false claim to citizenship. Until issuing further guidance on the issue, USCIS should, at a minimum, limit *Zhang* to its holding in the context of claims of deportability, and retain a *mens rea* requirement for false claim as a ground of inadmissibility and as a negative discretionary factor for good moral character.

B. **Allow filing for an adjustment application according to the Dates for Filing Visa Bulletin chart to lock in a person's age for purposes of the Child Status Protection Act (CSPA)**.[36] While USCIS might allow early filing in a given month per this chart, it does not lock in a child's age at the time of filing, which for CSPA purposes is instead assessed based on the child's age when the visa becomes available per the Final Action Dates chart.[37] Under this policy, a child who is eligible under CSPA may apply for adjustment of status but become aged out by the time the visa application is approved.

C. **Clarify that INA 204(l) protections cover the death of a qualifying relative for a waiver, even if they were not the petitioner or principal beneficiary, by adding them to who is considered a "qualifying relative" for purposes of INA 204(l)**. While USCIS has noted previously that the law doesn't define "qualifying relative" for 204(l) purposes,[38] USCIS does not currently construe Section 204(l) Relief for Surviving Relatives to cover certain instances involving the death of a qualifying relative for an associated waiver application, if the deceased was not also the petitioner or principal beneficiary. For example, if a U.S. citizen son or daughter petitions for a parent, and the parent's spouse is the qualifying relative for an associated application for a waiver of

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[35] U.S. Cit. & Immigr. Servs., PA-2020-09 (2020).

[36] *Adjustment of Status Filing Charts from the Visa Bulletin*, U.S. Cit. & Immigr. Servs., https://www.uscis.gov/green-card/green-card-processes-and-procedures/visa-availability-priority-dates/adjustment-of-status-filing-charts-from-the-visa-bulletin (last updated Apr. 5, 2021); *Child Status Protection Act (CSPA)*, U.S. Cit. & Immigr. Servs., https://www.uscis.gov/green-card/green-card-processes-and-procedures/child-status-protection-act-cspa (last updated Nov. 13, 2020).

[37] *See* U.S. Cit. & Immigr. Servs., 7 Pol'y Manual § A.7(F)(4) (2021) ("An applicant who chooses to file an adjustment application based on the Dates for Filing chart may ultimately be ineligible for CSPA if his or her calculated CSPA age is 21 or older at the time his or her visa becomes available according to the Final Action Dates chart.").

[38] U.S. Cit. & Immigr. Servs., U.S. Dep't of Homeland Sec., PM-602-0017, Approval of Petitions and Applications after the Death of the Qualifying Relative Under New Section 204(l) of the Immigration and Nationality Act: Revisions to Adjudicator's Field Manual (AFM): New Chapter 10.21 and an Amendment to Chapter 21.2(h)(1)(C) (AFM Update AD-10-51) (2010).

inadmissibility but the spouse dies unexpectedly, the beneficiary no longer has a qualifying relative for the waiver and now will be unable to immigrate unless this interpretation is changed. We request that USCIS account for this scenario in its policy regarding the death of a qualifying relative.

D. **Change USCIS's interpretation of the permanent bar in INA 212(a)(9)(C) to exclude minors.**[39] This section addresses those who re-entered or attempted to re-enter the United States illegally after being unlawfully present for over one year or after an order of removal. Unlike 212(a)(9)(B), unlawful presence for purposes of 212(a)(9)(C) accrues even if the person was a minor. The exceptions provided under 212(a)(9)(B) for minors, asylum applicants, victims of abuse or trafficking, and Family Unity beneficiaries are currently not interpreted to apply in the context of 212(a)(9)(C). This is inconsistent with Congressional intent to exclude vulnerable populations from these bars and should be rectified. Even if the statutory language is interpreted as limiting, minors should not be charged with the ability to accrue unlawful presence because they do not have the competence or capacity to make decisions about where they reside, or even potentially know their immigration status. In keeping with public policy and laws surrounding children, minors should universally be exempt from accruing unlawful presence because they are not of age to be charged with knowledge or culpability for their unlawful presence.

E. **Reinterpret the application of the three- and ten-year bars under INA 212(a)(9)(B).** Undocumented immigrants who have lived and worked in the United States for a decade or more have developed strong ties to the community and the economy in the United States, yet the risk of losing the life they have built by being barred from the country prevents them regularizing their status. We recommend that USCIS interpret INA 212(a)(9)(B)(i)(I)/(II) inadmissibility to expire after three/ten years while the individual is within the United States. USCIS should lift up the plain language of the statute to clarify that the three or ten years after triggering the unlawful presence bar may be spent in the United States.

F. **Form I-601A–Application for Provisional Unlawful Presence Waiver and consular processing.**

1. **Faster adjudication of Form I-601A**. The current processing time at USCIS for Form I-601A is 17 to 30 months, with some processing centers only just now adjudicating forms from November 2018.[40]

2. **Eliminate requirement of administrative closure for Form I-601A for individuals in proceedings**. The decision in *Matter of Castro-Tum* has made it nearly impossible to seek administrative closure, creating unreasonably high legal standards and placing the burden on the applicant to try to meet these new standards.[41] Moreover, the recent rule *EOIR Final Rule on Appellate Procedures*

[39] *Unlawful Presence and Bars to Admissibility*, U.S. Cit. & Immigr. Serv., https://www.uscis.gov/laws-and-policy/other-resources/unlawful-presence-and-bars-to-admissibility (last updated July 23, 2020).
[40] *Check Case Processing Times*, U.S. Cit. & Immigr. Servs., https://egov.uscis.gov/processing-times/ (last accessed May 17, 2021).
[41] Matter of Castro-Tum, 27 I&N Dec. 271 (A.G. 2018).

and Administrative Closure prohibits administrative closure altogether.[42] Although it is currently enjoined, the litigation is ongoing.[43] Thus immigrants facing removal proceedings might be unable to obtain administrative closure, essentially blocking them from applying for this waiver. Given the circumstances, USCIS should no longer require administrative closure to submit Form I-601A.

3. **Allow for concurrent filing of Form I-601A and provisional Form I-212–Application for Permission to Reapply for Admission into the United States After Deportation or Removal** to cut down on overall wait time and help reduce the backlog. Faster processing will also reduce the chance an individual will be removed from the United States before these forms can be processed, see below.
4. **USCIS should not refer an applicant with pending or approved Forms I-212 or I-601A to ICE for execution of removal if there are no additional grounds for inadmissibility**. Under current policy, individuals with outstanding removal orders who have never left the United States may apply for a conditional Form I-212 and then Form I-601A in order to begin consular processing. However, there is always the danger of execution of an outstanding removal order or reinstatement of a prior removal order before these forms are processed, as specified above.
5. **Allow for Form I-601A to waive additional grounds of inadmissibility or adjust policy so that if a new ground of inadmissibility is identified, the waiver is not revoked**. Under current policy, if an additional ground is identified the previously approved I-601A waiver is revoked. An applicant must then file another, separate waiver application (Form I-601) for the additional ground as well as re-request a waiver of unlawful presence on that new waiver application, usually on the same basis for which the prior I-601A was approved. This is a duplicative and unnecessary step that increases the burden on both the applicant and USCIS adjudicators. USIC should allow a process for applicants to (a) include all applicable inadmissibility grounds waivable by an I-601 to also be waived through the I-601A process and (b) amend a pending I-601A or submit an additional I-601A for a subsequent ground of inadmissibility without having the prior I-601A revoked.
6. **Allow for a medical exam to be completed in the U.S. by a designated Civil Surgeon**. Currently, an applicant must complete a medical exam after arriving at a consulate in the consular process. This change would streamline the completion of Form I-693–Report of Medical Examination and Vaccination Record prior to arriving at the consulate, expediting the process once they arrive. Civil surgeons are already sanctioned medical providers, and this change would greatly reduce uncertainty in the consular process, provide consistency, and reduce the strain on panel physicians at already backlogged consulates. It also allows an applicant to clear up any potential concerns with medical clearance while still in the United States with full access to their medical records and regular care provider.
7. **Provide 90 days for RFE response for I-601As**. Currently I-601A applicants are only given 30 days to respond to Requests for Evidence (RFE). However, major

[42] 85 Fed. Reg. 81,588 (Dec. 16, 2020).
[43] *See* Centro Legal de la Raza, et al. v. EOIR et al., Case No. 21-cv-00463-SI (9th Cir. Mar. 10, 2021) (order granting preliminary injunction).

delays in adjudication mean the case facts requested have a higher risk of being out of date when the case reaches an officer's desk and an RFE is requested, which in turn requires significant additional time for the applicant to gather new, up-to-date information and documentation, such as new medical records, new financial documentation, and updated psychological evaluations, in order to adequately respond to the RFE.

G. **Reform all relevant forms, but especially Form I-485–Application to Register Permanent Residence or Adjust Status and Form N-400–Application for Naturalization, so that questions regarding inadmissibility are not so overbroad.** For example, both forms include a similar question that asks the applicant to list membership in any "organization, association, fund, foundation, party, club, society, or similar group" anywhere in the world at any time in their life, which covers an incredibly broad and unnecessary number of groups and goes well beyond the statutory requirement. Such overbroad questions increase the burden on applicants and adjudicators and produce a cooling effect on applications to receive LPR status or naturalize. In general, USCIS should review the additions made to both forms under the previous administration and cull unnecessary questions such as the numerous questions on intent to engage in unlawful activity that go beyond statutory requirements.[44]

H. **For all applications that require biometrics (including, but not limited to Forms I-485, I-821, I-821D, and N-400), continue the pandemic practice of reusing previous submissions of biometric information.**[45] A person's biometric information does not change over time, and it is unnecessary and burdensome to require applicants to repeatedly submit it and for USCIS adjudicators to repeatedly verify it. USCIS should also not charge the biometrics fee when no new biometrics will be taken.

I. **Correct the legal error in the USCIS Policy Manual explaining grandfathering under INA 245(i) and ensure correct application of the 2013 BIA decision *Matter of Estrada* regarding derivative beneficiaries.** According to *Matter of Estrada*, 245(i) derivative beneficiaries are considered independently grandfathered for purposes of 245(i) as long as the relationship (a derivative spouse's marriage to the principal beneficiary or birth of child) occurred on or before the 245(i) sunset date of April 30, 2001 and there is a properly filed petition (Form I-130) on file under which they would be considered a legal derivative. However, recent USCIS Policy Manual additions are ambiguous or conflicting on this topic. See, for instance, 7 USCIS-PM C.2(D)(1) where the grandfathering chart states that the relationship must be established "before the qualifying petition or application was filed (on or before April 30, 2001)."[46] In order to be properly considered a derivative, it is sufficient that the relationship is formed before adjudication of the petition. It is an error to imply that the relationship must exist at time

[44] For a detailed catalogue of such overbroad questioning in Form N-400 and Form I-485, see Alison Kamhi, Immigr. Legal Resource Ctr., ILRC Comment to Proposed N-400 Changes (2021), *available at* https://www.ilrc.org/ilrc-comment-proposed-n-400-changes; Immigr. Legal Resource Ctr., Changes to the Form I-485, Application for Adjustment of Status (2018), https://www.ilrc.org/changes-form-i-485-application-adjustment-status-0.

[45] Stakeholder Message, Off. of Pub. Affs., U.S. Cit. & Immigr. Servs. (Mar. 30, 2020), *available at* https://content.govdelivery.com/attachments/USDHSCISINVITE/2020/03/30/file_attachments/1414523/COVID-19%20Biometrics%20Reuse%2003-30-2020.pdf?ct=t(AgencyUpdate_033120).

[46] U.S. Cit. & Immigr. Servs., 7 Pol'y Manual § C.2 (2021).

of filing, because it is legally sufficient for the relationship to come into being after filing on or before April 30, 2001, because such a person would be properly included before the sunset date.

VI. Immigrant Youth and Special Immigrant Juvenile Status (SIJS)

A. **Issue a new Notice of Proposed Rulemaking to update the existing SIJS regulations, incorporating the 2011 and 2019 comments by ILRC and many others with a 60-day comment period.**[47]

B. **Reconsider the policies made through adopted Administrative Appeals Office (AAO) decisions and corresponding changes made to the USCIS Policy Manual**.[48] USCIS announced policy changes to SIJS in 2019, some of which result in fewer children being eligible for this humanitarian path to legal status by heightening the standards for the findings made by state juvenile courts that are a prerequisite to being able to apply for SIJS. In particular, USCIS should rescind the guidance in these decisions on USCIS's "consent" function that requires petitioners for SIJS to demonstrate that the state court granted some type of relief from parental maltreatment—a new, amorphous standard not previously imposed.

C. **Create a new EAD category for SIJS**. USCIS should create a specific EAD category for SIJS so that SIJS youth can work legally and provide for themselves prior to filing Form I-485–Application for Adjustment of Status. This is particularly necessary in light of the long delay that youth from El Salvador, Honduras, Guatemala, and Mexico face before they can adjust status due to annual employment-based visa limits and per-country caps on green cards. These young people are left in limbo, unable to achieve permanency goals and access the protections and stability that SIJS was created to achieve. Accordingly, USCIS should create a new EAD category for SIJS youth so that they can apply for employment authorization while they wait for a visa to become available.

D. **USCIS should not erect additional barriers to SIJS for youth over the age of 18.** In 2018, USCIS changed its internal policy on SIJS applicants who were over 18 at the time a state juvenile court made factual findings for SIJS, resulting in hundreds of denials of SIJS cases that previously would have been approved and rescissions of previously approved cases. In 2019, after various class-action lawsuits, USCIS announced that it would no longer deny post-18 SIJS cases on the basis that the juvenile court lacked authority to reunify the youth with a parent. No further attempts to

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[47] Most of these recommendations to eliminate barriers for SIJS are covered in detail in our comments to changes made in 2011 and 2019. *See ILRC & Public Counsel Comments Submitted on November 15, 2019 to the Proposed Rule Governing the Special Immigrant Juvenile Classification, DHS Docket No. USCIS 2009-0004*, Immigr. Legal Resource Ctr. (Aug. 4, 2020), https://www.ilrc.org/ilrc-public-counsel-comments-submitted-november-15-2019-proposed-rule-governing-special-immigrant.

[48] News Release, U.S. Cit. & Immigr. Servs., USCIS Clarifies Special Immigrant Juvenile Classification to Better Ensure Victims of Abuse, Neglect and Abandonment Receive Protection (Oct. 15, 2019), *available at* https://www.uscis.gov/news/uscis-clarifies-special-immigrant-juvenile-classification-better-ensure-victims-abuse-neglect-and-abandonment-receive-protection.

restrict SIJS for youth over 18 should be attempted as federal law clearly allows youth to be eligible to apply for SIJS until the age of 21.[49]

E. **Implement a policy fully respecting state confidentiality laws that govern juvenile records and cease requesting such confidential records for adjudication**. Many USCIS forms currently require applicants and petitioners to disclose juvenile records and information. These requirements ignore laws in many states that make juvenile records confidential for the specific purpose of preventing collateral consequences from youthful mistakes. In some states, such as California, it is against the law to share juvenile records or information without court permission because these records are protected by strict confidentiality laws. Applicants often cannot obtain permission from the court to release these records, and are sometimes denied as a matter of discretion for not producing them, even though it would be against state law to do so. By requesting juvenile records, USCIS is creating a catch-22 for applicants that punishes them for obeying state law while undermining public policy of allowing youth a second chance. USCIS should cease asking for juvenile records on all applications and forms. Juvenile adjudications do not constitute convictions for immigration purposes, and they should not be considered for discretionary purposes, in line with state policies limiting collateral consequences of youthful violations of the law.

F. **Restore access to non-adversarial affirmative asylum procedures for many vulnerable children**. USCIS should rescind the 2019 memorandum on "Updated Procedures for Asylum Applications Filed by Unaccompanied Alien Children" governing initial jurisdiction of unaccompanied minor (UC) asylum claims and fully restore the policies set forth in the 2013 memorandum entitled "Updated Procedures for Determination of Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children."[50] Requiring asylum officers to individually investigate a parent's "availability" lengthens detention for children in Office of Refugee Resettlement (ORR) custody, creating delays and confusion, as different asylum officers interpret their role and a parent's "availability" differently. Interrogating children about the availability of their parents during the asylum interview also contributes to re-traumatization of the child and may impair their ability to make their asylum claim.

VII. TPS and Advance Parole

A. **Interpret return on an advance parole as an "inspection, admission, or parole**." For many years, USCIS (and previously INS) policy was to consider a TPS holder who traveled abroad and returned with advance parole as "paroled" into the United States upon return under INA 245(a). However, in August 2020 USCIS adopted the decision in *Matter of Z-R-Z-C*, reversing course to find that travel with advance parole now is not actually "parole" for purposes of INA 245(a). This decision contravenes long standing policy, conflates legal concepts, and effectively bars TPS holders from one of their only

[49] U.S. Cit. & Immigr. Servs., U.S. Dep't of Homeland Sec., Special Immigrant Juveniles, https://www.uscis.gov/working-in-the-united-states/permanent-workers/employment-based-immigration-fourth-preference-eb-4/special-immigrant-juveniles (last updated March 18, 2021).

[50] U.S. Cit. & Immigr. Servs., U.S. Dep't of Homeland Sec., HQRAIO 120/12a, Updated Procedures for Asylum Applications Filed by Unaccompanied Alien Children (May 31, 2019); U.S. Cit. & Immigr. Servs., U.S. Dep't of Homeland Sec., HQRAIO 120/12a, Updated Procedures for Determination of Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children (May 28, 2013).

paths to adjust status.[51] USCIS should withdraw the policy changes made to 7 USCIS-PM B.2 of the USCIS Policy Manual, described in the policy alert entitled "Temporary Protected Status and Eligibility for Adjustment of Status under Section 245(a) of the Immigration and Nationality Act," and encourage USCIS to issue guidance superseding *Matter of Z-R-Z-C*.[52]

B. **Interpret travel abroad on advance parole by TPS holders with outstanding removal orders as executing the removal order.** When a person with an outstanding removal order leaves the country on advance parole, USCIS should interpret this departure as having executed the removal order so that the person may return as an "arriving alien" and adjust status before USCIS. USCIS should specifically withdraw the policy changes made to 7 USCIS-PM A.3(D) of the USCIS Policy Manual, described in the policy alert entitled "Effect of Travel Abroad by Temporary Protected Status Beneficiaries with Final Orders of Removal."[53]

VIII. Employment Authorization Documents (EADs)

A. **EAD Delays and Automatic Extensions.** The current processing times for Form I-765–Application for Employment Authorization vary anywhere from two months to one year, causing considerable financial and career hardships for applicants.[54] We recommend that USCIS:

1. **Prioritize the adjudication of EADs, initial and renewals**, to reduce the backlog and prevent gaps in employment at no fault of the applicant.
2. **Expand categories of EAD automatic extensions, and, considering the lengthy processing times, lengthen the period of automatic extension**. In this regard, also update the I-9 instructions to direct employers to accept expired EADs for List B and C requirements, together with any notice of automatic extension by USCIS, whether individualized or not, including public notices and website notifications. Presently employers are terminating employees with expired EADs whose authorization has been extended automatically by USCIS, such as many of those with TPS.

B. **Return to 90-day rule on EAD adjudications**. In January 2017, DHS eliminated the regulatory requirement to adjudicate EAD applications within 90 days of receipt.[55] At the same time, USCIS extended the work authorization of certain EAD renewal applicants for 180 days while their applications are pending, but did not provide any accommodation to first-time EAD applicants. First-time applicants may not work until they receive their EAD. Many applicants may have little means of financial support, and their lives and livelihoods are at risk each day their EAD is delayed. Since the change in 2017, the timeframe for EAD adjudications has lengthened to an unacceptable

[51] U.S. Cit. & Immigr. Servs., PM-602-0179 (2020).
[52] U.S. Cit. & Immigr. Servs., PA-2020-17 (2020).
[53] U.S. Cit. & Immigr. Servs., PA-2019-12 (2019).
[54] *Check Case Processing Times*, U.S. Cit. & Immigr. Servs., https://egov.uscis.gov/processing-times/ (last accessed May 17, 2021).
[55] Retention of EB-1, EB-2, and EB-3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers, 81 Fed. Reg. 82,398 (Nov. 18, 2016).

degree, with many applications pending for four or five months before approval, some up to a year.[56]

C. **Extend the period of EAD eligibility to two years for all categories currently at one year**.

IX. Asylum and Refugee Status

A. **Rescind the June 26, 2020 rule on Asylum Application, Interview, and Employment Authorization for Applicants, 85 Fed. Reg. 38,532**, which requires asylum seekers to wait a full year before being able to apply for work authorization and adds ultra vires bars to work authorization eligibility. Beyond adding new eligibility bars, the rule also allows USCIS to deny employment authorization for asylum seekers as matter of discretion. The regulation also adds new categories of delays that will result in denial of employment authorization to 8 CFR 208.7(a)(iv). Practitioners report instances where this regulation has been applied indiscriminately and retroactively without consideration of circumstance or subsequent immigration status. For example, this regulation was recently applied to an attorney's client in 2020 for a failure to appear in 2006, even though the client had been granted an EAD in the meantime.

B. **Restore the 30-day processing provision for initial submissions of Form I-765 Employment Authorization Application for asylum applicants**, which was removed August 21, 2020.[57] Applicants with asylum often arrive in the United States having made a difficult journey to flee dangerous conditions with little to no resources or savings. An EAD is an essential step toward building a new and self-sufficient life. Processing delays for EADs can result in wait times up to one year.[58] In addition to the request above to restore 90-day adjudication for general EAD applications, we also request that the 30-day adjudication rule be reapplied to EAD applications for asylum seekers, as well as other vulnerable populations such as SIJS and U-visa recipients.

C. **Withdraw the changes made to 7 USCIS-PM A.5, 7 USCIS-PM L.5, and 7 USCIS-PM M.5 of the USCIS Policy Manual**, described in the policy alert entitled "Refugee and Asylee Adjustment of Status Interview Criteria and Guidelines" on December 15, 2020.[59] These changes make interviews for adjustments mandatory for asylees, refugees, and their derivative family members under the guise of detecting fraud and public safety risks. This process is duplicative and burdensome to both USCIS and the applicants themselves. By receiving and maintaining asylee or refugee status, these applicants have already been thoroughly screened for any instance of fraud or risk to public safety, and there is no reason to effectively re-adjudicate these claims. In addition, since many of these claims are adjudicated by the Department of Justice and the Department of State, officers are inappropriately re-adjudicating legal issues settled in other forums.

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[56] *Check Case Processing Times*, U.S. Cit. & Immigr. Servs., https://egov.uscis.gov/processing-times/ (last accessed May 17, 2021).
[57] Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applications, 85 Fed. Reg. 37,502 (June 22, 2020).
[58] *Check Case Processing Times*, U.S. Cit. & Immigr. Servs., https://egov.uscis.gov/processing-times/ (last accessed May 17, 2021).
[59] U.S. Cit. & Immigr. Servs., PA-2020-26 (2020).

D. **End the "First In, Last Out" (LIFO) policy enacted in January 2018 that prioritizes the most recently filed affirmative asylum applications when scheduling asylum interviews**.[60] Though an attempt on the part of USCIS to address the growing asylum backlog, the LIFO policy has caused many applicants to wait years to continue their asylum applications, effectively stranding them in the United States without the ability to legally work and separating them from family members in their home countries. USCIS should instead prioritize the longest pending applications, applicants with family who face danger abroad, and those with pressing humanitarian or medical concerns.

E. **Rescind or at least do not extend the rule entitled "Asylum Interview Interpreter Requirement Modification Due to COVID-19," which requires asylum applicants who speak certain languages to use USCIS-provided phone interpreters**.[61] Though in theory a government-provided interpreter is a boon for applicants who have difficulty locating or affording an interpreter of their own, there have been extensive problems with this system. Practitioners report interpretations riddled with errors, no interpreter available for interviews, no interpreter available in a client's dialect, and interpreters ending their shifts in the middle of an interview. Advocates also report asylum officers pressuring applicants to complete interviews in their second or third language or through an interpreter who spoke the incorrect dialect, disproportionately affecting speakers of indigenous languages.[62]

F. **Make the various USCIS exemptions for material support of terrorism more easily available to applicants and service providers**. This includes making the availability of and the process for requesting such exemptions (if any) more transparent, such as including them in the instructions for relevant forms (including, but not limited to Forms I-485, I-821, I-821D, and N-400). Though USCIS maintains the page "Terrorism-Related Inadmissibility Grounds Exemptions" on the agency website, it unfortunately does not provide needed details on certain common questions.[63] USCIS should release guidance creating an exception from material support grounds for children.

G. **Maintain the current policy for Form I-602–Application by Refugee for Waiver of Inadmissibility Grounds outlined in 7 USCIS-PM M.3 and 7 USCIS-PM L.3 of the USCIS Policy Manual**, which states that USCIS can grant an asylee or refugee an inadmissibility waiver without requiring I-602. The instructions for Form I-602 should also be changed to reflect this policy. We also request that USCIS revert to the former, one-page version of Form I-602 used prior to August 11, 2020 instead of the most recent ten-page version to reduce applicant and adjudicative burden.

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[60] *Affirmative Asylum Interview Scheduling*, U.S. Cit. & Immigr. Servs., https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/affirmative-asylum-interview-scheduling (last updated Jan. 26, 2018).

[61] Asylum Interview Interpreter Requirement Modification Due to COVID-19, 86 Fed. Reg. 15,072 (Mar. 22, 2021).

[62] Katy Murdza, *USCIS Is Preventing Asylum Seekers from Bringing Their Own Interpreters to Interviews*, Immigr. Impact (Sept. 29, 2020), https://immigrationimpact.com/2020/09/29/uscis-is-preventing-asylum-seekers-from-bringing-their-own-interpreters-to-interviews/#.YJwrmBNKhSo.

[63] *Terrorism-Related Inadmissibility Grounds Exemptions*, U.S. Cit. & Immigr. Servs., https://www.uscis.gov/laws-and-policy/other-resources/terrorism-related-inadmissibility-grounds-trig/terrorism-related-inadmissibility-grounds-exemptions (last updated Nov. 19, 2019).

H. **Relatives of Asylees and Refugees.**

1. **Rescind the policy memorandum entitled "Expanding Interviews to Refugee/Asylee Relative Petitions" on November 18, 2020**, which made interviews for adjustments mandatory for relatives of asylees and refugees.[64] Prior to 2016, USCIS generally only required an interview when there was a question of criminal conduct. Mandatory interviews are burdensome to USCIS and applicants, requiring extra time and resources in an already drawn-out process (see below).

2. **Address derivatives of asylees and refugees under Form I-730–Refugee/Asylee Relative Petition who have fallen through the cracks**. During the Obama administration, I-730 derivatives who themselves had prior removal orders were routinely granted asylee status, but this changed under the Trump administration. Currently, these individuals have had their cases fall into limbo, risking ICE detention due to their prior removal order while they wait for their I-730 petition to be granted. Current processing times for an I-730 petition range from 15.5 to 29 months (over two years).[65] Regulations put no restrictions on granting derivative asylee status to those within the United States and those with prior orders. As a matter of law, these cases should be granted to comport with the law and the right of asylee families to remain together.

X. U Visa Adjudication and Benefits

A. **Prioritize timely preliminary adjudication of U visa petitions**. Currently, the deferred action provided during the U-visa process can take four to five years to be granted. This delay is an extreme disservice to victims of crime in the United States, and we recommend that USCIS allocate resources to reduce this wait time to a maximum of six months. The U-visa is subject to a statutory cap, meaning many applicants will have to wait in line for their status to be finalized. In the meantime, USCIS should issue EADs to applicants so that they can support themselves during the wait.

B. **Allow parole for U visa applicants outside of the country**, per the regulatory authority and the recommendation of the DHS Ombudsman in 2016 (with which USCIS agreed).[66] 8 CFR 214.14(d)(2) instructs USCIS to grant parole once the ten thousand U cap has been met: "USCIS will grant deferred action or parole to U-1 petitioners and qualifying family members while the U-1 petitioners are on the waiting list." USCIS should implement a streamlined process to grant parole to this group of applicants. Per the Ombudsman: "Since U visas were first established, USCIS policy, settled in regulation, has explicitly provided that individuals who have established eligibility for U nonimmigrant status and who reside outside of the United States should be granted parole to enter the country while they await U visa availability. The development of a consistent parole policy would comply with this regulatory mandate, address the

[64] U.S. Cit. & Immigr. Servs., PM-602-0180 (2020).
[65] *Check Case Processing Times*, U.S. Cit. & Immigr. Servs., https://egov.uscis.gov/processing-times/ (last accessed May 17, 2021).
[66] Memorandum from Léon Rodríguez, Director, U.S. Cit. & Immigr. Servs., to Maria Odom, Ombudsman, U.S. Cit. & Immigr. Servs. (Aug. 18, 2016); *Ombudsman Recommendation on Parole for Eligible U Visa Principal and Derivative Petitioners Residing Abroad*, U.S. Cit. & Immigr. Servs., https://www.dhs.gov/publication/ombudsman-recommendation-parole-eligible-u-visa-principal-and-derivative-petitioners (last updated Mar. 22, 2019).

urgent humanitarian concerns of principals and beneficiaries residing abroad and streamline adjudications of parole requests."[67]

C. **Allow advance parole for U visa applicants residing in the United States**. Due to USCIS delays combined with the statutory cap on U visas, many U visa applicants live with a pending U visa petition (a "U status") for an extended period of time. Applicants are effectively stranded in the United States for this time, separated from opportunities and loved ones abroad, as they risk being blocked from returning or triggering inadmissibility bars for unlawful presence by leaving. U status applicants should be eligible for advance parole to allow them short trips outside the country, which is available to pending applicants of several other immigration benefits.

D. **Rescind or re-write the 2019 U Visa Law Enforcement Resource Guide**.[68] While containing useful information, this guide is framed in a way that conveys suspicion of immigrant victims, suggests limits and restrictions on certifications, and emphasizes the discretionary nature of the process. Many law enforcement agencies rely on this guide for information on how to process and respond to requests for U visa certifications. We encourage USCIS to rewrite this guide to recognize the hardships that immigrant survivors face and encourage certifiers to apply a rebuttable presumption of helpfulness (as codified in some state laws already[69]) and grant all requests for certification where the applicant suffered a crime and there is no evidence that they were not helpful.

XI. Criminal Justice and Immigration

A. **Withdraw the section on "Conditional GMC Bar Applies Regardless of State Law Decriminalizing Marijuana" in 12 USCIS-PM C.2 of the USCIS Policy Manual**.[70] This policy provides that a lawful permanent resident lacks "good moral character" if (a) they are legally (under state law) employed in the multi-billion dollar cannabis industry and pay state and federal income taxes on their work; or (b) they use medical or recreational marijuana in accord with state law. Like most Americans who live in states where marijuana is legalized, and often highly advertised, applicants have no way of knowing that their employment or use technically violates federal law. In practice, this rule acts as a cynical entrapment of people who reasonably believe that they are obeying all laws.[71] To that end, USCIS should also:

1. **Advise USCIS staff that they should not affirmatively seek to obtain an applicant's admission that they possessed or used marijuana (or simple possession of any controlled substance).** Currently, some USCIS officers pressure applicants to complete a "marijuana affidavit" confessing to their (permitted under state law) conduct.

2. **Amend all current advisories on issuing a Notice to Appear to say that one or more charges, admissions, or convictions for simply possessing or using marijuana (or any controlled substance) is not a basis for a referral for a Notice to Appear**.

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[67] *Id.*
[68] U.S. Cit. & Immigr. Servs., U.S. Dep't of Homeland Sec., U Visa Law Enforcement Resource Guide (2019).
[69] *See, e.g.*, Cal. Penal Code § 679.10 (2021).
[70] U.S. Cit. & Immigr. Servs., 12 Pol'y Manual § F.5(C)(2) (2019).
[71] *See* Kathy Brady, Immigr. Legal Resource Ctr., USCIS Policy Manual Penalizes Legalized Marijuana (2019).

B. **Limit "good moral character" analysis to conduct within the statutory time period.** USCIS adjudicators should not give undue weight to a naturalization applicant's conduct before the five or three year statutory period for good moral character.

C. **Eliminate rebuttable presumption rule for DUIs.** Despite no language regarding DUIs in the statute, *Matter of Castillo-Perez* created a new rebuttable presumption that a naturalization applicant who has been convicted of two or more DUIs during the statutory period for naturalization lacks good moral character. This presumption is ultra vires. USCIS should eliminate the provision in 12 USCIS-PM F.5 of the USCIS Policy Manual that allows for two driving under the influence (DUI) convictions to be considered a conditional bar for good moral character and encourage the DOJ to recertify *Matter Castillo-Perez* (A.G. 2019).[72] To that end, USCIS should also withdraw the changes made to 12 USCIS-PM F.5 of the USCIS Policy Manual, described in the policy alert entitled "Conditional Bar to Good Moral Character for Unlawful Acts" on December 13, 2019.[73]

XII. Surveillance and Social Media

A. **Fraud Detection and National Security (FDNS) Directorate should cease to collect information on refugees and asylum seekers (and all applicants for benefits) via social media checks**. These checks have been shown to be ineffective, invasive, inaccurate, and unnecessary. In addition to a report from the DHS Office of the Inspector General recommending a halt to social media background checks, DHS also wrote a brief for the Trump administration concluding that some of the pilot programs for checks "did not yield clear, articulable links to national security concerns, even for those who were found to pose a potential national security threat based on other security screening results."[74] USCIS adjudicates all other benefits without social media checks, and the asylum and refugee application process already includes one of the most stringent forms of background checks of any benefits process. These social media checks undermine the current system in place to use "security threats" as grounds for excluding certain applicants.[75]

XIII. Customer Service

A. **Return to the previous USCIS mission statement prior to the 2020 version.**

B. **Shorten length of forms overall**. In the past four years alone, the length of forms across the board has increased exponentially. By August of the first year of the Trump presidency, 14 forms had been extended a collective 84 pages, an over 200%

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[72] U.S. Cit. & Immigr. Servs., 12 Pol'y Manual § F.5 (2021); Matter of Castillo-Perez, 27 I&N Dec. 664 (A.G. 2019).

[73] U.S. Cit. & Immigr. Servs., PA-2019-11 (2019).

[74] Off. of Inspector Gen., U.S. Dep't of Homeland Sec., OIG-17-40, DHS' Pilots for Social Media Screening Need Increased Rigor to Ensure Scalability and Long-Term Success (2017); Faiza Patel et al., Brennan Ctr., Social Media Monitoring (2020), *available at* https://www.brennancenter.org/publication/social-media-monitoring.

[75] For further arguments against social media monitoring in an immigration context, see Letter from Immigr. Legal Resource Ctr., to Paperwork Reduction Act Officer, U.S. Cit. & Immigr. Servs. (Aug. 22, 2016), *available at* https://www.ilrc.org/sites/default/files/resources/2016-08-22_comment_on_cbp_social_media_collection.pdf.

increase.[76] Current forms request information well beyond the statutory requirements for benefits, overburdening applicants who must obtain extra and unnecessary evidence and extended legal help as well as USCIS officers who must then verify this information. As we state above, USCIS should review the additions made to all forms, particularly under the previous administration, and remove unnecessary questions.

C. **Improve process for biometrics**. As previously stated, we recommend USCIS continue its pandemic policy to re-use biometric information across the board, speeding up processing and eliminating duplicative submissions of necessarily unchanging information. USCIS should also not charge the biometrics fee when no new biometrics will be taken. We also request that USCIS look into and address the prolonged delays for DACA biometrics in particular.

D. **Make sure there is in-person, non-web based access to appointments and interviews**. Though remote appointments are convenient to many and we do recommend keeping remote options available after pandemic conditions subside, USCIS should be sure to maintain in-person appointments so as not to disadvantage applicants with low tech literacy, as we also recommend in the naturalization process.

E. **Allow applicants to appear at the USCIS office closest to their residence**. District and zip code realignment to deal with backlogs have created barriers to appear at offices and secure counsel. While these measures are to assist with the backlog, they introduce uncertainty into an already complicated process for the applicant. Those that have obtained counsel find themselves required to report to an office outside the geographic practice area of nonprofits and attorneys near their home. USCIS should staff offices according to workflow instead of moving interviews without notice. The two to three weeks provided to applicants is often not enough time to make arrangements for what often requires a full day off work, special childcare, and transportation arrangements. The USCIS is in the position to ascertain staffing needs of various offices and staff accordingly to manage the backlog while still maintaining realistic expectations for in-person appearances.

F. **Return receipt notices in a timely manner**. Receipt notices for applicant submissions have been delayed, some taking up to a month or more. The delay can cause a ripple effect of lost benefits and even employment. For example, applicants for Conditional Lawful Permanent Residency (CLPR) need proof of receipt of their Form I-751–Petition to Remove Conditions on Residence to show that their CLPR status is extended and they are still authorized to work and travel. Others need their EAD renewal receipt notice to continue their own authorized employment.

G. **Reinstate registration for InfoPass appointments via internet portal *in addition* to Customer Service 1-800 line**. USCIS has removed the option to schedule an appointment online for domestic offices due to applicants making multiple appointments. The solution, however, is not to remove online accessibility. We recommend USCIS instead allow applicants to schedule online with added “guardrails” that prevent users from making appointments over a certain number at the same time or for the same purpose.

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[76] David J. Bier, *Trump Admin Doubles Immigration Form Length, Says It’ll Take No More Time to Do*, Cato Inst.: Cato at Liberty (Aug. 28, 2017, 4:20 PM), https://www.cato.org/blog/trump-admin-doubles-immigration-form-length-says-itll-take-no-more-time-do.

H. **Customer Service Center 1-800 line**:

1. **As a symbolic gesture and to restore emphasis to the value of customer service, return to using the name "Customer Service Center" rather than the Trump-era "Contact Center."**
2. **Improve the voice mail system and add easy access to a human representative**. Currently, a caller must go through three or more dial menus with eight or more options each to reach the option to talk to a human, and even then callers are usually met with a voicemail box.
3. **Shorten call back wait time.** Presently the call back period after leaving a voicemail is 14 days, which is unhelpful for applicants and service providers who cannot afford a two week delay.
4. **Allow callers to schedule a specific call back time instead of a USCIS representative calling back anytime within the next 14 days**. The present system results in missed calls and the necessity for the applicant or representative to restart the process all over again.
5. **If a callback is missed by the original caller, allow immediate rescheduling rather than starting the 14 day period all over again**.
6. **Provide for emergent InfoPass appointments if not provided via internet portal.**

I. **Re-establish the supervisory review option at all hotlines**, especially for USCIS errors and significantly reduce response times for hotline phone and email responses, as practitioners report weeks and even months of wait for responses in many cases, and some receive no response at all.

J. **Eliminate the need for InfoPass at all if someone is granted relief at court**. Due to frequent technological issues with InfoPass that can cause a delay of benefits, USCIS should coordinate with the ICE Office of Chief Counsel at the end of an immigration case to also send a copy of the individual's file to the local USCIS field office, with a copy of the immigration judge order, for further processing of the I-551 green card. Photos could be mailed in if necessary.

K. **Hire more USCIS officers in all the divisions (asylum, field offices, service centers)**. One of the most pervasive and persisting problems for recipients of benefits and services at USCIS is the enormous backlog of cases awaiting adjudication, which affects nearly every stage of every process. Though Congress controls the USCIS budget, USCIS has the authority to transfer money away from wasteful "extreme vetting" procedures and toward more personnel to make case processing more efficient.

L. **Institute a grace period of at least six months for all old editions of applications and forms, especially where the application was updated to be less burdensome**. As an example, Form I-485–Application for Adjustment of Status was recently reverted to the prior version because of changes in the public charge rule. However, there was a very short period (one month) in which an applicant could submit either version of the form, after which any application using the old form would be rejected, even though the

previous application required more information, not less.[77] Applicants and their counsel sometimes work for months to gather all the materials and information necessary to complete an application, particularly during COVID-19. If a form edition changes with a very short grace period, this causes a huge amount of work for service providers that must work with clients to redo an application and obtain new signatures. As an example of good policy, we appreciate that while the I-912–Request for Fee Waiver was also recently updated due to the elimination of public charge, here USCIS explicitly states they will accept earlier editions.[78]

M. **Create a streamlined procedure for attorneys and accredited representatives to use their USCIS online account number and add a case to their account on their own when receiving forms**. Even when attorneys or accredited representatives write their account number on the submitted forms, they are frequently sent a notice of "new account creation" despite their existing account. USCIS is the one who must add cases and forms to an attorney's online account, but if USCIS does not acknowledge an existing account there is no way for the representative to do it themselves. As a result this account does not serve its intended purpose, which is to streamline and ease the process for representatives as well as USCIS. While USCIS troubleshoots the technical difficulties related to the program, we recommend empowering attorneys and accredited representatives by giving them the ability to update their account manually if need be.

Thank you for your consideration of these comments. If you have questions or comments, please don't hesitate to reach out to Alison Kamhi at akamhi@ilrc.org.

Sincerely,

/s/

Alison Kamhi

Supervising Attorney

Immigrant Legal Resource Center

[77] *Public Charge*, U.S. Cit. & Immigr. Servs., https://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge (last updated Apr. 15, 2021).

[78] *I-912, Request for Fee Waiver*, U.S. Cit. & Immigr. Servs., https://www.uscis.gov/i-912 (last updated Apr. 23, 2021).